

**ORDINANCE 2009-27**

**AN ORDINANCE AUTHORIZING THE LEASE OF PROPERTY LOCATED AT 324 N COULSON IN TRACT 43 OF ORCHARD SUBDIVISION IN THE CITY OF FRUITA TO THE MESA COUNTY PUBLIC LIBRARY DISTRICT**

**WHEREAS**, the City of Fruita is the owner of property located at 324 N. Coulson in Tract 43 of Orchard Subdivision, in the City of Fruita, County of Mesa, State of Colorado, and

**WHEREAS**, in November 2008, Fruita residents approved a measure for the construction of a new community center, and

**WHEREAS**, the City of Fruita and the Mesa County Public Library District desire to relocate the Fruita branch of the library and incorporate a new library facility as part of the community center with the terms and conditions for financing the cost of construction and use of the facility as a library to be set forth in a long term lease agreement, and

**WHEREAS**, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City.

**WHEREAS**, it is the intent of this ordinance to authorize the City Manager to execute the necessary documents to lease property owned by the City of Fruita to the Mesa County Public Library District.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:**

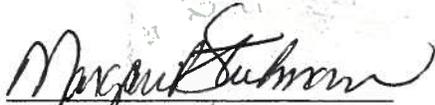
**Section 1:** The City Manager is hereby authorized to execute any documents necessary to lease a portion of the community center located at 324 N. Coulson to the Mesa County Public Library District pursuant to the terms of an intergovernmental agreement and long-term lease agreement attached hereto as Exhibit A.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
ON THE 15th DAY OF DECEMBER, 2009**

City of Fruita

  
H. Kenneth Henry, Mayor

ATTEST:

  
City Clerk

**EXHIBIT A**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN**

**THE CITY OF FRUITA, COLORADO  
AND THE**

**MESA COUNTY PUBLIC LIBRARY DISTRICT**

**FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF  
A PUBLIC LIBRARY IN FRUITA, COLORADO**

This Intergovernmental Agreement between the City of Fruita, Colorado and the Mesa County Public Library District for the Design, Construction, and Operation of a Public Library in Fruita, Colorado ("Agreement") is entered into on 12/15, 2009, by the following parties:

**City of Fruita, Colorado**, a Colorado home-rule municipality (the "City")  
Address: 325 East Aspen, Fruita, Colorado 81521,

and

**Mesa County Public Library District**, a public library district and political subdivision of the State of Colorado organized and operated in accordance with Colo. Rev. Stat. §24-90-101 *et seq.* (the "Library")  
Address: 530 Grand Avenue, Grand Junction, Colorado, 81501.

The Effective Date of this Agreement shall be the last date this Agreement is approved by both (i) the City Council for the City of Fruita, Colorado, and (ii) the Board of Trustees of the Mesa County Public Library District.

**Part 1: Recitals** 1.1 The City is authorized to enter into this Agreement pursuant to Colo. Const. Art. XX, Colo. Const. Art. XIV, § 18, and Colo Rev. Stat. § 29-1-203.

1.2 The Library is authorized to enter into this Agreement pursuant to Colo. Rev. Stat. §§ 29-1-203 and 24-90-109.

1.3 The Library currently operates a branch library in Fruita ("Current Facility") on the second floor of the Fruita Civic Center, located at 325 East Aspen Avenue, Fruita, CO 81521. The Fruita Civic Center is a City-owned facility.

1.4 In November 2008, Fruita residents approved a measure for the construction of a new community center ("Center"). The City has hired Sink Combs Dethlefs, a Professional Corporation for Architecture ("SCD"), to design the Center, and FCI Constructors, Inc. ("FCI") to build the Community Center.

1.5 The City desires to relocate the Library's Fruita branch to the Center upon its completion. The Library believes that the new location will better serve the residents of Fruita and western Mesa County. The Library has therefore agreed to work with the City in designing and building that portion of the Center that will serve as the new Fruita branch library. The portion of the Center that will house the new branch library is referred to in this Agreement as the "New Facility" or the "Premises."

1.6 The purpose of this Agreement is:

1.6.1 To describe the process, procedures and conditions by which the City and the Library will cooperate in the design and construction of the New Facility as part of the Center; and

1.6.2 To describe the conditions of the lease under which the Library will occupy the New Facility.

1.7 NOW, THEREFORE, in consideration of the covenants set forth below, the parties agree as follows:

## **Part 2: Design and Construction**

2.1 **Center Design.** The parties shall cooperate to plan and design the New Facility as part of the Center. The New Facility will contain between 6,000 to 8,000 square feet. The City and the Library confirm their common goal of designing the Center and the New Facility in a manner that will meet their respective goals and intended uses. The Library shall pay a design fee for services provided by SCD and its sub-contractors for the planning and design directly and solely attributable to the design of the New Facility. The Library's performance of other terms and conditions of this Agreement are contingent upon acceptance of the final plans and construction cost estimates by the Library's Board of Trustees.

2.2 **Construction.** The Library will pay the actual costs associated with the construction of the New Facility, which shall not exceed the "Guaranteed Maximum Price." SCD and FCI shall determine actual construction costs for the New Facility and certify these costs to the City and the Library.

2.3 **Payment.** The Library will pay its share of design or construction costs by reimbursing the City for invoices certified and received. The Library may require evidence of completion and payment of subcontractors and material before remitting payment for any portion of the construction.

2.4 **Fixtures.** The City acknowledges that the Library's shelving, displays, equipment, furniture, and racks may be attached to walls and floors for safety or functional reasons. Such items shall remain the Library's property, even though they may be affixed to the New Facility. All such items shall be removed by the Library, at

the Library's sole cost, upon expiration or other termination of the Library's tenancy under Part 3 below. The Library shall repair at the Library's cost any holes or damages caused by removal of the Library's property.

**2.5 Schedule.** The parties anticipate that the planning and design stage will be substantially complete by September, 2009 and that construction will begin in September, 2009. Construction will take approximately 16 months. Construction may be delayed by the City due to financing constraints, modifications to the design, or any other mutually agreed-upon reason.

**2.6 City's Covenants.** The City covenants that the City has and will retain good title to the Center, free and clear of all liens and encumbrances, excepting only liens established in connection with financing arrangements for the construction of the Center; zoning ordinances and other building and fire ordinances; governmental regulations relating to the use of the Premises; and easements, restrictions and other conditions of record. The City represents and warrants that the City has full right and authority to enter into this Agreement and that the Library, upon paying the rental and performing the other covenants and agreements set forth in this Agreement, shall peaceably and quietly have, hold and enjoy the Premises for the term without hindrance or molestation from the City, subject to the terms and provisions of this Agreement.

**2.7 Library's Covenants.** The Library covenants that the Library has full right and authority to enter into this Agreement and to pay the rental and perform the other covenants and agreements set forth in this Agreement.

### **Part 3: Lease Terms**

**3.1 Lease.** In light of the substantial financial contribution of the Library toward construction of the New Facility, the City, as owner of the Center, agrees to lease the New Facility to the Library under the terms and conditions of this Part 3.

**3.2 Term.** The Library shall have the exclusive use of the New Facility for a period of ninety-nine (99) years. Upon issuance of a certificate of occupancy for the New Facility, the parties will execute a Lease Commencement Certificate in substantially the form of Exhibit A, which is attached to this Agreement and incorporated by this reference.

**3.3 Termination.** Although the parties anticipate that the Library will occupy the New Facility for the full term, the parties also recognize that circumstances may change. Therefore, the Library's tenancy under this Part 3 may be terminated as follows:

**3.3.1** The City may terminate the tenancy by written notice to the Library. The notice shall specify the lease termination date, which shall be at least 365 days after the date of the notice. If the lease termination date falls prior to the 30<sup>th</sup> anniversary date of the Lease Commencement Date as set forth in the Lease Commencement Certificate, the City shall pay to the Library a portion of the

Library's total contribution to the construction of the center and the interior build-out of the new facility. The portion to be repaid shall equal the Library's total contribution divided by the number 30, then multiplied by 30 less the number of years and partial years during which the Library occupied the new facility (i.e. from the Lease Commencement Date to the lease termination date specified from the City). The City shall remit 50% of the portion to be repaid with its notice terminating the lease, and shall pay the balance within six months thereafter.

3.3.2 The Library may terminate the tenancy by written notice to the City. The notice shall specify the lease termination date, which shall be at least 365 days after the date of the notice.

3.3.3 The Library may terminate the tenancy by written notice to the City if the Library's Board of Trustees fails to authorize funding for the operation of any branch library in the area west of 21 Road. The Library shall notify the City of any such decision by its Board of Trustees within ten business days of the Board's action. The tenancy shall terminate as of the date when funding ceases to be available.

3.3.4 Upon termination of the tenancy, the Library shall surrender the Premises on the designated date, and the provisions of this Part 3 shall cease to have any effect. Each party shall be relieved of its obligations under this Part 3, except those obligations which arose prior to the termination and have not been fulfilled. Until the Library vacates the Premises, all terms and conditions of this Part 3 shall remain in effect.

3.4 **Rent.** The Rent payable under this Part 3 shall be equal to One Dollar (\$1.00) per year, due on the Lease Commencement Date and on the anniversary of the Lease Commencement Date each year.

3.5 **Use of Premises.**

3.5.1 The Library agrees to use the Premises for the operation of a public library and for other lawful purposes incidental to operation of a public library. The Library shall determine the hours when the Premises will be open to the public. The Library shall be the sole arbiter as to the activities, materials, services displays or programs to be offered by the Fruita branch. The Library's use of the Premises shall not be restricted based upon the content of any of the activities, materials, services, displays or programs authorized by the Library's management or Board of Trustees.

3.5.2 The Library shall not keep, use, or sell anything prohibited by any policy of fire insurance covering the Premises, and shall comply with all requirements of the insurers applicable to the Premises necessary to keep in force the fire and liability insurance.

3.5.3 The Library shall not allow any waste or nuisance on the Premises, or use or allow the Premises to be used for any unlawful purpose. The Library shall comply with any applicable health, fire, environmental or other laws and regulations of any level of government. The Library shall not permit any unsightly accumulation of wreckage, debris, or trash in or around the Premises or the Center.

### 3.6 **Shared Expenses.**

3.6.1 The Library shall pay for its use of the following utilities: water, gas, sewer, electric, trash removal, janitorial service (with either separate billing accounts, maintenance contracts, or both) or when said utilities are separately metered or separately billed for the New Facility. To the extent any utility or service is not separately metered or separately billed, the Library shall pay a proportionate share of the expense.

3.6.2 The Library's proportionate share shall be determined by dividing the Library's square feet in the Premises by the total square feet in the Center. The exact number of the Library's square feet in the Premises, and in the Center, will be determined by the City's architect after construction of the Center is complete, and will be set forth in the Lease Commencement Certificate to be executed by the parties. The architect's determination shall be binding upon the parties. "Library's square feet" shall be determined by measuring to the inside finished surface of the walls of the Premises, excluding any major vertical penetrations of the floor. No deductions shall be made for columns or projections necessary to the structural integrity of the building.

3.6.3 The City shall arrange and pay for all utilities and common area maintenance. The City shall notify the Library of its monthly share of the expenses described in this Section. The Library shall remit payment for its share of expenses within thirty (30) days of the receipt of the City's notice.

3.6.3 The Library shall have the right to inspect and audit those portions of the City's financial and business records which relate to the shared expenses described in this Section. To exercise this right, the Library shall give the City at least ten (10) days advance notice. Inspection shall take place during regular business hours at the City's offices.

3.7 **Library's Expenses.** The Library shall arrange and pay for telephone service, internet service, and any other services unique to the Library's operation.

3.8 **Signage.** The Library shall have the right, at its expense, to install appropriate signage on the exterior of the Premises and at any interior entrances to the Premises.

Prior to installing signage, the Library will provide the City with detailed specifications for any planned signage for approval. The City agrees not to withhold its approval unreasonably. The Library shall remove all library signage at the termination of the tenancy. All installations and removals of signage shall be handled so as to avoid injury or defacement of the building.

### **3.9 Alteration and Improvements.**

3.9.1 The Library shall not make any alterations, improvements, additions and changes ("Improvements") to the Premises without the City's prior written consent. If the Library wishes to make any Improvements, the Library shall submit detailed plans and specifications to the City for review. The City, in its reasonable discretion, may approve, reject, or require modifications to any such plans.

3.9.2 All Improvements by the Library shall be made at the Library's sole cost and expense. The Library shall comply with all applicable building and fire codes and shall obtain at its expense all permits, licenses and other regulatory or governmental approvals for the Improvements. All work shall conform to customary standards and shall be of good, workmanlike quality. The City may require that the Library remedy, at the Library's expense, any work which does not conform to these standards or to the plans and specifications approved by the City.

3.9.3 All Improvements made by the Library to the Premises that are removable shall remain the property of the Library and shall be removed by the Library, at the Library's sole cost, upon expiration or other termination of the Library's tenancy. The Library shall repair at the Library's cost any holes or damages caused by removal of the Library's property.

3.9.4 The Library shall indemnify and hold harmless Lessor from all expense, liens, claims and damages to persons or property arising out of, or resulting from, the making or removal of any Improvements to the Premises.

### **3.10 Repairs and Maintenance**

3.10.1 **Library's Obligations.** The Library shall, at its own cost and expense: (a) keep the interior walls, ceilings and floors of the Premises in good repair; (b) repair all damage or injury to the Premises caused by Library agents, employees, or patrons; (c) install or construct any improvements, equipment, or fixtures required by any governmental authority or agency as a consequence of the Library's use and occupancy of the Premises; and (d) maintain any improvements to the Premises which are required or necessary to the Library's use and occupancy of the Premises.

**3.10.2 City's Obligations.** The City, at its expense, will maintain and keep in good repair and condition the exterior walls, load-bearing walls and structures, foundation, roof, and other structural components of the Center. The City will also maintain and keep in good repair and condition all heating, cooling, mechanical, electrical, water, sewer, drainage, and plumbing systems for the entire Center. The Library understands it is responsible for its pro rata share of these repairs. In the event reimbursement for the Library's portion of repairs is sought, The City will arrange with the Library for such reimbursement. The City will make all other repairs, except those required to be made by the Library.

**3.10.3 Duty to Notify.** As a condition precedent to all obligations of the City to repair, the Library will notify the city in writing of the need for such repair. If the City fails to commence the making of repairs within ten (10) days after such notice, and the failure to repair has materially interfered with the Library's use of the Premises, the Library may cause such repairs to be made and may charge the City the reasonable cost of such repairs. If the repair is necessary to end or avert an emergency and if the City after receiving notice from the Library of such necessity fails to commence repair as soon as reasonably possible, the Library may do so at the City's cost, without waiting ten (10) days.

**3.11 Entry on Premises by City.** The City reserves the right to enter on the Premises at reasonable times to inspect them, perform required maintenance and repairs, and the Library shall permit the City to do so. The City may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with such repairs, all without incurring liability to the Library for disturbance of quiet enjoyment of the Premises, or loss of occupation of the Premises. The City shall minimize to the fullest extent reasonably possible interruption of the Library's activities when entering the Premises for such purposes.

**3.12 Insurance.** The parties agree that the Center and the Premises shall not be used in any way, at any time, unless the following insurance coverages are in full force and effect:

**3.12.1 Building Insurance:** The City shall obtain and pay the premiums for physical damage insurance for the full replacement value of the Center. The Library shall be named as a loss payee on the policy with respect to its interest.

**3.12.2 Liability Insurance:** Each party shall obtain and maintain in full force and effect, at its own cost and expense, general public liability and property damage insurance in amounts equal to or greater than Two Million Dollars (\$2,000,000.00) for each person injured, Two Million Dollars (\$2,000,000.00) for any one accident, and One Million Dollars (\$1,000,000.00) for property damage.

3.12.3 Contents Insurance: The Library shall obtain and maintain, at its own cost and expense, insurance on all Library property and contents of the branch library, including furniture, collections, and equipment.

3.12.4 Worker's Compensation: At all times during the tenancy, each party shall comply with all applicable laws concerning worker's compensation insurance, and shall maintain in force, at the party's expense, worker's compensation for all employees required to be covered by such insurance, in compliance with applicable statutory limits.

3.12.5 Each party shall deliver to the other party, on or before the Lease Commencement Date, and thereafter within ten (10) business days after a request, a certificate of insurance with respect to each policy required to be maintained pursuant to this Section 3.12, to evidence such coverage. Each insurance policy shall require thirty (30) days notice prior to cancellation to each insured, named insured or additional insured. If a party fails to pay any insurance premium, the other party may, but is not obligated, to make such payments and to recover such premium payment upon demand.

**3.13 Indemnification.** To the extent not covered by the insurance coverages to be procured pursuant to Section 3.12, each party shall indemnify and save harmless the other party against all losses, actions, claims and demands whatsoever, including costs, expenses and attorneys fees, arising out of or resulting from the indemnifying party's: (a) breach of any provision of this Part 3; (b) occupancy, use, possession, maintenance, repair, operation, condition, return, occupancy or use of the Center or any part of the Center, whether such actions, claims or demands result from or are claimed to have resulted from any act or omission of the indemnifying party or arise out of the doctrines of strict or absolute liability in tort, warranty, contract, or any other theory of law. For all purposes under this Section, any reference to a party includes that party's governing body and members (past, present and future) of the party's governing body; that party's employees, agents, and representatives; and that party's legal successors in interest and authorized assigns.

**3.14 Default.** A party shall be in default under this Part 3 if upon the party breaches any warranty or representation made by it in this Part 3, or fails to make any payment or perform any other covenant or obligation under this Part 3, and fails to cure the default is within thirty (30) days after notice of the default is given by the other party. The notice of default shall specify the nature of the default. If the party in default is unable to correct any default within the specified 30-day period, due to circumstances beyond that party's control, and if the default is not of a material nature, the party in default shall have a reasonable time to correct the default if the party in default commences corrective measures within the 30-day period and proceeds diligently to complete such corrective measures.

**3.15 Remedies.** If any default remains uncured, the party not in default may, at its sole option:

3.15.1 Make any payment or perform any obligation required of the party in default, and recover from the party in default all amounts expended for this purpose;

3.15.2 Terminate the tenancy by written notice to the party in default. The notice shall specify the effective date of the termination; and

3.15.3 Recover from the party in default any damages resulting from the default.

The notices of termination under this Section are the same notices required by law and not additional notice requirements. The party's rights and remedies stated in this Section are nonexclusive and cumulative with each other and with all other rights and remedies under applicable law.

**3.16 Destruction of Premises.**

3.16.1 Partial destruction of the Premises due to fire, act of God, the elements, or other casualty, shall not terminate the tenancy or render this Part 3 void or voidable, except as provided in this Section. Within thirty (30) days after any damage to the Premises, the City shall notify the Library of the estimated time required for the repair or restoration of the Premises. If the estimated time is less than 90 days after the occurrence of the damage, the City shall proceed diligently to repair the Premises, and this Part 3 shall remain in full force and effect during such period. If the estimated time exceeds 90 days after the occurrence of the damage, then within thirty (30) days after the City notifies the Library of the estimated time for repairs, either party may elect, upon written notice to the other party, immediately to terminate the tenancy.

3.16.2 If the Premises are completely destroyed, either party may terminate the tenancy upon thirty (30) days written notice to the other party.

3.16.3 Each party shall be entitled to recover its share of any insurance proceeds payable with respect to damage or destruction of the Premises.

**3.17 Obligations on Termination.** Upon expiration of the term or termination of the tenancy, the Library shall surrender the Premises in the same condition as when the Library took possession (except as provided in Section 3.9 regarding authorized alternations and improvements), allowing for reasonable use and wear, and damage by acts of God, fires, storms, and other causes beyond the Library's control. Before surrender, the Library shall be entitled to remove, and shall remove, all business signs, fixtures, shelving, displays, and racks, and other personal property belonging to and placed on the Premises by the Library. The Library shall repair at the Library's cost any holes or damages caused by removal of the Library's property.

**3.18 Holding Over.** If, after the expiration of the term or termination of the tenancy for any reason, the Library remains in possession of the Premises, such holding or possession shall be deemed to be a tenancy from month to month. The City may terminate such tenancy from month to month in accordance with applicable Colorado law. During any period of such tenancy from month to month, all other terms and conditions of this Part 3 shall continue in full force and effect.

**3.19 Survival of Terms and Conditions.** The parties understand and agree that all terms and conditions of this Part 3 which require continued performance, compliance, or effect beyond the expiration of the term or the termination of the tenancy shall survive the expiration or termination and shall be enforceable if a party fails to perform or comply.

#### **Part 4: General Provisions**

**4.1 Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in Mesa County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the parties waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.

**4.2 Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom the waiver is sought to be enforced. The failure of any party at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth in this Agreement shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act under this Agreement.

**4.3 No Presumption.** Each party waives any statutory or common law presumption which would serve to have this Agreement construed in favor of or against any party.

**4.4 Attorney's Fees; Interest.** If either party files an action to enforce any provision contained in this Agreement, or for breach of any covenant or condition, the prevailing party shall be entitled to recover costs, expenses and a reasonable attorney's fees for the services of an attorney in the action, to be fixed by the court. The prevailing party shall also be entitled to recover interest at the rate of 8% per annum on all amounts due to the prevailing party under this Agreement, with interest calculated from the date of default.

**4.5 Relationship of the Parties.** The parties agree that each is an independent entity, entering into this Agreement on behalf of its constituency. This Agreement is not intended to and does not create any partnership or agency between the parties. No agent, employee, servant or representative of any party shall be deemed to be an employee, agent, servant or representative of any other party for any purpose. Each party will be solely and entirely responsible for its acts and for the acts of its agents, employees and servants under this Agreement.

**4.6 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause or action in favor of, or claim for relief for, any third-party, including any agent, consultant or sub-contractor of a party. Absolutely no third-party beneficiaries are intended by this Agreement, and, specifically, neither SCD nor FCI or any affiliate of such third-parties is an intended beneficiary of this Agreement. Any third-party receiving a benefit from this Agreement is any incidental and unintended beneficiary only.

**4.7 TABOR.** The parties understand and acknowledge that the City and the Library are each subject to some or all provisions of Colo. Const. Art. X, § 20 ("TABOR"). The City represents to the Library that it has (or will, by the end of the City's current fiscal year) budgeted and appropriated sufficient funding to meet the City's obligations to construct the Center as provided for in this Agreement. The Library represents that it has or presently intends to appropriate funds for construction of the New Facility. Therefore, the parties acknowledge that the provisions of TABOR are met.

For any amounts not fully appropriated, the parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. As to unappropriated amounts to be paid pursuant to this Agreement, it is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of either party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the party's current fiscal year. Financial obligations of a party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations and resolutions of the party and any other applicable law.

**4.8 No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be

available by law to a party, its officials, officers, employees, contractors or agents, or any other person acting on behalf of a party.

**4.9 Binding Effect.** The parties agree that this Agreement shall be binding upon the parties and their respective their legal successors in interest and authorized assigns.

**4.10 Assignment.** Except as expressly provided in this Agreement, neither party shall assign, sublet, or otherwise transfer or encumber, whether voluntarily or by operation of law, any of that party's rights, duties, obligations, responsibilities, or benefits set forth in Agreement without the prior written consent of the other party. Any attempted assignment, transfer encumbrance or subletting without such consent shall be void.

**4.11 Notice.** All notices required by this Agreement shall be in writing and shall be deemed to be delivered when delivered personally or when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below, or at such other addresses as the parties may specify by written notice.

City of Fruita, Colorado  
c/o City Manager  
325 East Aspen  
Fruita, CO 81521

Mesa County Public Library District  
c/o Library Director  
530 Grand Avenue  
Grand Junction, CO 81501

**4.12 Terminology.** The use of any gender shall be deemed to be or include the other genders and the use of the singular shall be deemed to be or include the plural (and vice versa), wherever appropriate. Headings and other captions in this Agreement are for convenience of reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays. If the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

**4.13 Complete Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions contemplated by this Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to such matters, whether written or oral.

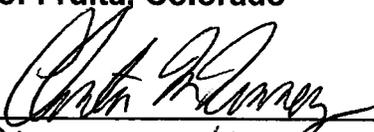
**4.14 Amendment or Termination.** No provision of this Agreement may be changed, waived, discharged or terminated in any manner other than by an instrument in writing, signed by both parties to this Agreement.

**4.15 Severability.** If any provision of this Agreement, or the applicability of a provision to a given circumstance, is determined to be invalid, unenforceable or

inoperative for any reason, such determination shall not adversely affect any other provision of this Agreement, nor shall the applicability of such provision to other circumstances be affected by such determination. The remainder of this Agreement shall be enforced according to its terms and in a manner which fulfills the intentions of the parties. The parties further agree that any provision determined to be invalid, unenforceable or inoperative may be enforced in a manner which renders it valid, enforceable and operative.

4.16 **Authority.** The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Fruita and the Mesa County Public Library District and to bind their respective entities.

**City of Fruita, Colorado**

By:   
Clinton M. Kinney, City Manager  
Print name and title:

Date Approved: 11/30/09

**Mesa County Public Library District**

By:   
Eve Tallman, Library Director  
Print name and title

Date Approved: 11/09/09

EXHIBIT A: LEASE COMMENCEMENT CERTIFICATE

This Lease Commencement Certificate is entered into by the following parties:

**City of Fruita, Colorado**, a Colorado home-rule municipality (the "City")  
Address: 325 East Aspen, Fruita, Colorado 81521,

and

**Mesa County Public Library District**, a public library district and political subdivision of the State of Colorado organized and operated in accordance with Colo. Rev. Stat. §24-90-101 *et seq.* (the "Library")  
Address: 530 Grand Avenue, Grand Junction, Colorado, 81501.

The parties enter into this Lease Commencement Certificate pursuant to Section 3.2 of the Intergovernmental Agreement Between the City of Fruita, Colorado and the Mesa County Public Library District for the Design, Construction, and Operation of a Public Library in Fruita, Colorado (the "Agreement").

**Completion of Design and Construction Phases:** The parties acknowledge completion of the design and construction of the Fruita Community Center in substantial conformity to the plans developed by the parties. Any remaining issues between the parties relating to Part 2 of the Agreement have been separately documented. Except as separately documented, each party acknowledges that the other party has substantially performed all of its obligations under Part 2.

**Lease Commencement Date:** The City and the Library confirm that the Lease Commencement Date is \_\_\_\_\_. The 99-year term of the tenancy will therefore end on \_\_\_\_\_, subject to the provisions for early termination contained in Part 3 of the Agreement.

**Acknowledgment of Rent:** The City acknowledges receipt of the sum of \$1.00 from the Library, for the first year's rent.

**Acceptance of Premises:** The Library acknowledges and agrees that the Premises are suitable for its purposes. The Library acknowledges that the Premises are in substantial conformity with the plans and specifications for construction of the Premises, are in sanitary condition.

**Rentable Square Feet:** The architect has determined the rentable square feet as follows:

Community Center as a whole: \_\_\_\_\_  
Premises: \_\_\_\_\_

The City and the Library accept this determination as binding. The City and the Library therefore agree that the Library's proportionate share of expenses under Section 3.6 of the Agreement will be \_\_\_\_\_%.

**Insurance Certificates:** Each party acknowledges receipt from the other party of certificates evidencing the insurance coverages required by Section 3.12 of the Agreement.

**Authority:** The individuals executing this Certificate represent that they are expressly authorized to enter into this Certificate on behalf of the City of Fruita and the Mesa County Public Library District and to bind their respective entities.

**City of Fruita, Colorado**

**Mesa County Public Library District**

By: 

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

Clinton M. Kinney  
Print name and title:

\_\_\_\_\_  
Print name and title

Date Approved: 12/9/09

Date Approved: \_\_\_\_\_