

LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into as of the _____ day of _____, 20____, by and between the City of Longmont, a Colorado municipal corporation (the “City”) and Longmont Public Media, a Colorado nonprofit corporation exempt from taxation under 26 U.S.C. 501(c)(3) (the “Lessee”).

1. **RECITALS AND PURPOSES.** The City is the owner of property known as the Carnegie Library Building located at 457 Fourth Avenue, Longmont, Colorado (the “Premises”). The City has determined that the leasing of the Premises to Lessee for a nominal fee will serve an important public purpose by supporting and enhancing the Longmont community, creating awareness of civic initiatives, broadcasting City business, and promoting education. Lessee desires to lease the Premises for the purposes of providing local public access media. City has determined that lease of the Premises to Lessee will not presently interfere with municipal purposes. Therefore, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows.

2. **TERM.** The City leases the Premises to the Lessee for a term of one year, commencing January 1, 2022 and running through December 31, 2022, unless terminated sooner for breach of any covenant or condition of this Agreement. This Agreement shall terminate at the end of the term.

3. **LEASE RATE.** The rental rate shall be \$10.00 per year for the term of the Lease. The Lessee shall make the annual payment on or before March 1, 2022, to the City of Longmont, Treasury Division, 350 Kimbark Street, Longmont, Colorado, 80501.

4. **ASSIGNMENT AND SUBLEASE.** Lessee shall not assign this Agreement or sublet the Premises at any time during the term of the lease.

5. **USE OF PREMISES.** The Premises shall be used primarily for local public access media and related accessory uses. The City will allow KGUD use of 380 square feet of the leased space, as drawn in the attached building map and to be covered in a separate agreement. The Lessee shall provide on the Premises, at no expense to the City, a minimum of 100 square feet of space for City use as an editing bay and storage of editing equipment and tapes. The City Manager, or his designees, shall have 24 hour access to the editing bay for City use. The Lessee shall comply with all federal, state and local laws and ordinance prohibiting discrimination.

6. **STATUS OF LESSEE.** The Lessee shall perform all services under this Agreement as an independent contractor, and not as an agent or employee of the City. No City official or employee shall supervise the Lessee. The Lessee will exercise no supervision over any employee or official of the City. The Lessee shall not represent that Lessee is an employee or agent of the City in any capacity. The Lessee has no right to Workers’ Compensation benefits from the City or its insurance carriers or funds. Lessee shall pay any federal and state income tax on money earned under this Contract.

7. **CONDITION OF PREMISES.** The Lessee and the City agree the Lessee is accepting the Premises “as is” without warranty by the City for the fitness for or sufficiency of the Premises for the Lessee’s intended use.

8. **IMPROVEMENTS.** All alterations, additions, and improvements made in or to the Premises shall, unless otherwise provided by written agreements or by these terms, be the property of the City and remain and be surrendered with the Premises, and Lessee waives all claims against the City to damages or loss of any property belonging to the Lessee that may be in or upon the Premises. The Lessee shall use its best efforts not to change or use the Premises in a manner that would incur compliance costs under the Americans with Disabilities Act of 1990, as amended.

9. **EXTERIOR APPEARANCE.** The Premises shall be treated as a building of architectural or historical significance in its exterior appearance, and it was designated as a landmark on March 14, 1995, by Ordinance O-95-28.

10. **MAINTENANCE AND UTILITIES.** (a) **Lessee Maintenance and Utilities:** Lessee shall be responsible for routine daily maintenance and repair of the Premises, including, but not limited to sewer connections, plumbing, wiring, interior glass, gutter cleaning, carpet cleaning/sealing/waxing, touch up painting, HVAC (coil cleaning, filter changes, lubing motors, changing belts, cleaning out under equipment or sweeping utility rooms) and other equipment, all at the Lessee’s expense. Lessee shall incur the expense of or reimburse the City for the costs of required inspections and any associated repair bills that may result from them. The Lessee shall incur the expense of or reimburse the City for the cost of required inspections to the boiler and elevator and any associated repair bills that may result from them. The City shall be responsible for the cost of utilities furnished to the Premises with the exception of NextLight services. The Lessee shall be responsible for the cost of NextLight services, which Lessee shall pay as they become due and payable. Lessee shall keep the entire exterior of the Premises free from all litter, dirt, debris and obstructions, and maintain the Premises in a clean and sanitary condition. Lessee shall be responsible for keeping the interior of the Premises in good repair and condition and for repainting as necessary at the direction of the City, and shall yield the Premises back to the City upon termination of this Agreement in such condition and repair, wear and tear excepted. All such repairs shall be made by Lessee at its sole cost and expense. If the Premises are not kept in the required condition by the Lessee, the City may enter and do all work necessary to restore it to the condition required, charging the complete cost and expense to the Lessee. The Lessee shall be responsible for any damage to the Premises caused by negligence or intentional acts of its agents, employees, or clients.

(b) **City Maintenance:** The City shall be responsible for repairs of defects that compromise structural integrity of the building, including, for example, collapse or threatened collapse of roof, foundation, walls or other load-bearing members. The City shall maintain the exterior roof, exterior walls, exterior entrances and surrounding walkways of the Premises. The City shall replace all building fixtures and equipment at the end of their reasonable service life, but has no obligation to replace or repair fixtures or equipment installed by Lessee. Except as stated in this subsection, the Lessee agrees that the City shall be under no obligation of any kind or nature whatsoever to maintain the Premises in any particular conditions, and the Lessee hereby agrees that the Lessee waives all claims for damages of any kind or nature resulting therefrom.

(c) Hazardous Materials: (a) as used in this Agreement, the term “hazardous materials” means any hazardous or toxic substance, material or waste which is governed or becomes regulated by any federal, state, political subdivision or local government entity or agency. The term “hazardous materials” includes, without limitation, any material or substance that is (i) defined as a “hazardous substance” under Colorado law, (ii) petroleum, (iii) asbestos, (iv) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1321), (v) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6903), (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601), or (vii) defined as a “regulated substance” pursuant to Subchapter XI, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. Section 6991). (b) The Lessee shall not cause or permit any new or additional use, storage, placement or release of any Hazardous Material on or about the Premises by the Lessee, Lessee’s agents, employees, contractors, subcontractors, or invitees (including users permitted by paragraph 4, above), without the prior written consent of the City’s Fire Chief, or designee, and the City Manager. To the extent allowed by law and the Longmont Municipal Charter, all Hazardous Materials that exist in, on or under the Premises on the date the City presents the Premises to the Lessee for occupancy shall be the sole responsibility and liability of the City. If the Lessee breaches its obligation regarding Hazardous Materials, then the Lessee shall indemnify, defend and hold the City harmless from all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of Premises, damages for the loss or restriction on use of the Premises or of any amenity of the Premises, sums paid in settlement of claims, attorneys’ fees, consultants’ fees and experts’ fees) which arise during or after the Lease term as a result of such contamination. This indemnification of the City by the Lessee includes, without limitation, all costs the City incurs with any investigation of site conditions or any cleanup, remedial, removal, or restoration work any federal, state, political subdivision or local government entity or agency requires because of Hazardous Materials present in the soil or groundwater on or under the Premises. Without limiting the above, if the Lessee permits the presence of any Hazardous Material that results in any contamination of the Premises, the Lessee shall promptly take all actions, at Lessee’s sole expense, necessary to return the Premises to the condition existing before the introduction of any such Hazardous Material. (c) Lessee shall be responsible for installation and maintenance of an appropriate trapping system in any and all areas where the risk of disposal paints, chemicals and other mixtures used by artists and/or students participating in activities held on the Premises into the City sewer exists.

11. LIABILITY. (a) Indemnification: The Lessee shall fully indemnify and hold the City harmless from all claims, actions, suits, liability, loss, costs, expense or damages of any kind whatsoever which may occur to or be suffered by any person (including, but not limited to, the Lessee, its agents, employees, contractors, tenants, invitees, licensees, successors or assigns) arising out of or in connection with its use and occupation of the Premises and/or any of its activities undertaken pursuant to this Agreement, except only for those losses resulting solely from the negligence of the City. Upon commencement of any such suit or action against the City, the Lessee, upon notice given by the City, shall defend the same at its own cost and expense, and in case judgment shall be rendered against the City in such an action or suit, shall fully satisfy the judgment within ninety (90) days after the same has been finally determined.

(b) Personal Property: The placement and storage of any and all personal property on the Premises shall be the complete responsibility, and at the sole risk, of the Lessee.

(c) Without limiting the foregoing, the Lessee further agrees to hold the City harmless for any injury or damage occasioned by defective electric wiring, or the breakage or stoppage of plumbing or sewerage upon the Premises or upon adjacent property, whether breakage or stoppage results from freezing or otherwise.

12. INSURANCE. Within 10 days of the date stated in the preamble, the Lessee shall provide all certificates of insurance and endorsements to the City's Assistant City Manager, Sandra Seader. The Lessee shall purchase and maintain for the full period of the Lease, at the Lessee's sole expense, insurance policies providing minimum coverage as follows: (a) Commercial general liability insurance with occurrence form coverage for personal injury, bodily injury, and fire damage from liability arising out of use, occupancy or maintenance of the Premises, and all areas appurtenant thereto, with minimum coverage of \$1,000,000.

(b) Workers' Compensation Insurance with an authorized insurance company in the State of Colorado.

(c) All liability insurance policies shall contain an endorsement naming the City of Longmont, Colorado, a municipal corporation, its Council members, officers, agents, employees and volunteers, as additional insured parties with respect to all activities the Lessee may perform under this Agreement. All insurance policies shall be primary coverage, non-contributory by the City, and include a notice provision requiring 30 days written notice to the City before cancellation or a material change.

(d) Only insurance companies with authority to issue policies in Colorado shall provide insurance coverage under the Lease.

(e) For the term of this Agreement, the Lessee shall not cancel, materially change, or fail to renew the insurance coverage and agrees to notify the Director of Community Services of any material reduction or exhaustion of aggregate policy limits.

(f) Failure of the Lessee to fully comply with any and all of the terms of the foregoing insurance provisions shall be considered a material breach of this Agreement and cause for its immediate termination.

13. LIENS. The Lessee shall at all times indemnify, save and hold harmless the City and keep the Premises free and clear from any claims, liens, charges, encumbrances or litigation, arising directly or indirectly out of the occupancy or use of the Premises by the Lessee, or of any work performed, material furnished, or obligations incurred by the Lessee, and shall keep the Premises free and clear of all mechanics or materialmens liens.

14. NOTICES. Written notices, requests, and grievances shall be made to the City at the following address:

City of Longmont
350 Kimbark Street
Longmont, CO 80501
Attn: Public Information Officer

Written notices to the Lessee shall be made at the following address:

General Manager
Longmont Public Media
457 Fourth Avenue
Longmont, CO 80501

Either party may change its address by giving the other five day's notice in writing.

15. SIGNS. The Lessee shall not erect, paint or maintain any signs on the Premises without first securing the written consent of the City. Any such signs shall comply with all regulations of the City of Longmont.

16. SURRENDER AND HOLDING OVER. The Lessee covenants and warrants that at the expiration, termination or cancellation of the Lease, the Lessee will quit and surrender the Premises in a good state and condition, reasonable wear and tear excepted. The City shall have the right on such expiration, termination or cancellation to enter upon and take possession of the Premises, with or without process of law, and without liability for trespass. Should the Lessee hold over or continue to occupy the Premises after the expiration, termination or cancellation of the Lease, such holding over may be deemed by the City merely a tenancy for successive monthly terms upon the same conditions as provided in the Lease.

17. DEFAULT. Upon termination or in the event of default of any covenant or condition of this Agreement, Lessee shall surrender the Premises upon demand of the City.

18. PROVISIONS CONSTRUED AS TO FAIR MEANING. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question.

19. COMPLIANCE WITH ORDINANCES AND REGULATIONS. The Lessee shall perform all obligations under this Agreement in strict compliance with all applicable federal, state, and City laws, rules, statutes, charter provisions, ordinances, and regulations.

20. NO THIRD PARTY BENEFICIARIES. None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the Lessee receiving services or benefits under this Agreement shall be only an incidental beneficiary.

21. FINANCIAL OBLIGATIONS OF CITY. All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of the City's credit, or a payment guarantee by the City to Lessee.

22. INTEGRATED AGREEMENT AND AMENDMENTS. This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.

23. WAIVER. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default. Nothing in this Lease shall be construed as a waiver by the City of any rights, immunities, privileges, monetary limitations to judgements and defenses available to the City under common law or the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.

24. SEVERABILITY. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.

25. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

CITY OF LONGMONT:

MAYOR

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO INSURANCE:

RISK MANAGER

DATE

CA File: 21-001512

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, as the Mayor of the City of Longmont.

Witness my hand and official seal.

CITY CLERK, Notary Public

My commission expires: _____

