

CITY OF AUBURN HILLS

LIBRARY LEASE/SERVICES AGREEMENT

THIS LIBRARY LEASE/SERVICES AGREEMENT (“Agreement”) is made this _____ day of _____, 2015, by and between the CITY OF AUBURN HILLS (“City”), whose address is 1827 North Squirrel Road, Auburn Hills, Michigan 48326, and the AUBURN HILLS PUBLIC LIBRARY (“Library”), whose address is 3400 E. Seyburn Drive, Auburn Hills, Michigan 48326.

(1) Premises: The City, in consideration of the fee to be paid and the covenants and agreements to be performed by the Library, does hereby lease unto the Library those certain premises and building situated on the City’s property located at 3400 E. Seyburn Drive, Auburn Hills, Michigan 48326, and more particularly described as the Auburn Hills Public Library (“Premises”).

(2) Length of Term: The City hereby leases the Premises to the Library for a term beginning July 1, 2015, and ending at midnight on December 31, 2020 (“Term”). During the term, the Library shall have and hold, together with appurtenances, the above described Premises subject to the terms and conditions as herein set forth.

(3) Rent/Service Charge: The Library shall pay to the City as rent to lease the premises and service charges for the services provided by the City to the Library as set forth in Section 4 of this Agreement, a total rent/service charge (“fee”) in the amount of One Hundred Twenty Six Thousand Dollars (\$126,000.00) for the period from July 1, 2015 through December 31, 2015, (which rent/service charge equates to \$12.60 psf) payable in monthly installments of Twenty One Thousand Dollars (\$21,000.00), with the monthly fee installments to commence on July 1, 2015 and said monthly fee installments shall be due on the 1st day of each subsequent month through December 31, 2015. Such monthly rent/service charge shall be automatically deducted from Library funds by the City’s Finance Department on or about the first day of each month.

The Library shall for the period from January 1, 2016 through December 31, 2016 pay to the City as annual rent to lease the premises and service charges for the services provided by the City to the Library as set forth in Section 4 of this Agreement, a total annual rent/service charge (“fee”) in the amount of Two Hundred Fifty Two Thousand Dollars (\$252,000.00), plus an additional amount equal to an increase in that amount by the inflation rate for the 2016 tax year as established by the City Assessor, payable in equal monthly installments, with the monthly fee installments to commence on January 1, 2016 and said monthly fee installments shall be due on the 1st day of each subsequent month and shall be automatically deducted from Library funds by the City’s Finance Department on or about the first day of each month.

For each subsequent year of the lease term after 2016, the annual fee amount to be paid by the Library to the City shall be the previous year’s annual fee amount increased by the inflation rate established by the City Assessor for each year, payable in the respective equal monthly fee installments in each year, and said monthly fee installments shall be due on the 1st day of each subsequent month during the term of this Agreement and shall be automatically deducted from Library funds by the City’s Finance Department on or about the first day of each month.

(4) Services: The City, in consideration of the fee to be paid to the City by the Library, shall provide to the Library during the term of the Agreement the following services:

- (a) Collection of taxes;
- (b) Accounting for the revenues and expenditures to the Library;
- (c) Preparing the payroll of the Library and processing the expense reimbursement requests of Library employees;
- (d) Maintaining the employee benefits of the Library employees;
- (e) Maintaining City insurance policies on Library real property and public liability;
- (f) Custodial services and maintaining the building, premises and appurtenances of the Auburn Hills Public Library as provided in Sections 6 and 8 of this Agreement;
- (g) Conducting Library elections if the Library elections are held on the same day as City elections (for Library elections that are not held on the same day as City elections, the cost of said elections shall be the sole responsibility of the Library and said cost for such elections shall be paid by the Library separately and in addition to the fee); and
- (h) Cable television service and telephone service at the levels and cost in existence at the time this Agreement is executed by both the City and Library

The City shall provide the above mentioned services and benefits in the same manner and quality as those provided to employees and for property of the City itself. The City's provision of the above-mentioned services and benefits shall be in accordance with established City policies, procedures and requirements and the Library and Library employees shall comply with the established City policies, procedures and requirements with respect to the above-mentioned service and benefits. At any time when a Library policy may be in conflict with those of the City as the policy relates to services provided by the City, the City's policy(ies) shall prevail. Nothing in this Agreement shall be construed and interpreted that Library employees are employees of the City and at all times during the term of this Agreement, Library employees shall be employees of the Library and not employees of the City.

(5) Use of Premises: It is understood and agreed between the parties hereto that the said premises during the continuance of this term may be used and occupied only for Library purposes and for no other purpose or purposes, without the written consent of the City. It is further understood that all common areas, including, but not limited to, storage areas, parking areas and grounds, shall be owned by the City, and the parties shall share the use of the same during the term of this Agreement. The City shall retain the right to limited access to the use of meeting rooms for whatever purposes it deems appropriate, at no charge to the City, which is not in conflict with those meetings/events scheduled by the Library.

The Library shall promptly comply with all laws, ordinances, lawful orders, policies, procedures and regulations of the City and other applicable governmental entities affecting the premises hereby rented, in the cleanliness, safety, occupation and use of same. In effecting such compliance, the Library may require the cooperation and consent of the City, which cooperation and consent shall not be unreasonably withheld.

(6) Care of Premises: The City shall keep the premises, including the sidewalks and landscaped areas adjacent to the premises, clean and free from trash, garbage, rubbish and dirt and shall store all trash, rubbish and garbage within the premises and arrange for the regular pick-up of such trash, rubbish and garbage at the City's expense. As part of its regular maintenance of its grounds, the City shall remove ice and snow from sidewalks adjacent to the premises. The Library agrees not to perform any acts or carry on any practices which may injure the building or be a nuisance or menace to other occupants of the City's Municipal Campus.

(7) Utility Services: The City agrees to provide and maintain the necessary mains and conduits in order that water and sewer facilities, gas and electricity may be available to the premises,

and the City shall promptly pay any charges for the use of such utilities by the Library, and the City shall, on a monthly basis, bill the Library for the actual amount of the utilities, which billed amount the Library shall timely pay to the City monthly. The amount that the Library pays to the City for the use of utilities shall be in addition to the fee that the Library pays to the City. Utility charges shall be automatically deducted from Library funds by the City's Finance Department promptly upon receipt of said utility bills. Any cost increases associated with cable and telephone services, either by upgrade directed by the Library or through service provider increases, shall be borne by the Library. Any dispute arising out of any utility, cable or telephone charge is between the Library and the provider.

(8) Maintenance of Premises: The City agrees to provide regular custodial and other repair and maintenance services in order that the building, premises and appurtenances shall be kept in good order, maintenance, condition and repair, and shall also be kept in a clean, sanitary and safe condition in accordance with all directions, rules and regulations of the City and the health officer, fire marshal, building inspector or other proper officers of governmental agencies having jurisdiction. Special cleaning of fixtures and furnishings outside of normal cleaning and maintenance shall be at the sole expense of the Library. Carpet and exterior window cleaning shall be conducted one time each year. Additional building maintenance services outside of those regularly performed shall be at the expense of the tenant.

The cost of the maintenance, repair and/or replacement of any tenant/leasehold improvements and fixtures made and/or installed by the Library to and/or upon the premises and/or any floor coverings, interior wall coverings and painting, furniture and personal property of the Library on the premises shall be the responsibility of the Library and the Library agrees to pay for the same.

In the event that an interior modification/renovation is required to be made to the premises, the City shall arrange to have the modification/renovation completed and then shall bill the Library for the cost of the modification/renovation, said amount to be in addition to the fee(s) required to be paid in this Agreement. The Library shall not cause, permit and/or allow any waste, damage or injury to occur to said premises, and shall promptly advise the City of the occurrence and need for replacement of any glass windows, doors, door hardware and frames in the premises which may be broken.

(9) Abuse of Premises: The plumbing facilities and adjoining or connecting sewer lines or mains shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown and/or deposited therein, and the cost and/or expenses of any breakage, stoppage or damage resulting from the violation of this section shall be borne by the Library. The Library, its employees, agents and/or representatives shall not paint, alter or deface any walls, ceilings, partitions, floors, carpeting, wood, stone or metalwork at the premises without the City's written consent being first obtained.

(10) Signs: The Library shall not erect or install any signs without the previous written consent of the City. The Library shall not install at and/or on the premises any exterior lighting or plumbing, fixtures, shades or awnings, or any exterior decorations or painting, or build any fences or structures or make any changes to the building's exterior without the previous consent of the City.

(11) Alterations: All alterations, additions, improvements and fixtures (other than trade fixtures) which may be made or installed by either of the parties hereto upon and/or at the premises in which in any manner are attached to the floors, walls or ceilings or any extension thereof shall be the property of the City, and at the termination of this Agreement shall remain upon and be surrendered with the premises as a part thereof, without disturbance, molestation or injury, and the City shall not have to reimburse and/or pay the Library for the cost of any of said alterations, additions, improvements

and/or fixtures which were installed by the Library. Any floor covering, irrespective as to the manner affixed, shall be and become the property of the City absolutely, and the City shall not be responsible for reimbursing and/or paying the Library for the cost of the same; provided, however, that the City may designate by written notice to the Library those alterations, additions, improvements and fixtures which shall be removed by Library at the expiration or termination of this Agreement, and the Library shall, at its own cost, promptly remove the same and repair any damage to the premises caused by such removal of any of the foregoing to the condition as when originally received by the Library, reasonable wear and tear excepted.

(12) Insurance and Indemnity: The Library shall defend, hold harmless and indemnify the City and its elected and appointed officials, officers, employees, representatives, agents and assigns from any and all liability for injuries and/or damages, costs, expenses and attorney fees that the City may incur as a result of claims, demands, lawsuits, causes of action or judgments against the City and/or its elected and appointed officials, officers, employees, representatives, agents and assigns arising from the negligent and/or wrongful acts of the Library and/or the Library's officers, employees, representatives, agents, tenants and invitees in the Library's occupancy and use of the premises.

The City shall keep in effect at its own cost during the term of this Agreement its public liability and property damage insurance covering the premises in an amount sufficient to provide replacement value, and, if requested, the City shall deliver a copy of said policy to the Library. In addition, the Library will, at its own cost, keep in effect during the term of this Agreement those policies presently provided to the Library by the Michigan Township Participating Plan, the specific policies covering contents and the Library's personal property and furniture and policy amounts to be kept in effect by the Library during the term of this Agreement to be those which are specifically set forth in the Michigan Participating Plan Master Certificate, which is attached hereto, incorporated herein by reference and designated Attachment A. In addition, the Library will name the City as an additional insured on the insurance policy described in Attachment A, hereto. If requested by the City, the Library shall deliver a copy of said policies to the City. The Library shall not carry and/or locate any stock or goods at the premises or do anything in or about said premises which will in any way tend to increase the insurance rates on said premises and the building of which it is a part. The Library agrees to pay, in addition to all insurance costs as described in this Agreement, the total of any increase in premiums for insurance against loss by fire that may be charged during the term of this Agreement on the amount of insurance to be carried by the City on said premises and the building of which they are a part, resulting from the operation of the Library on and in the premises by the Library, whether or not the City has consented to the same. If the Library installs any electrical equipment that overloads the lines in and/or at the premises, the Library shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.

(13) Assignment and Subletting: The Library agrees not to assign or in any manner transfer this Agreement or any estate or interest therein and/or sublet any portion of the building or premises without the previous written consent of the City, and the Library shall not allow concessionaires and/or vendors upon said premises or any part or parts thereof without the previous written consent of the City. The consent by the City to one (1) or more subletting of said premises shall not operate to exhaust the City's rights of approval under this paragraph.

(14) Destruction or Damage to Premises: In case the premises shall be partially or totally destroyed by fire or other casualty which is insurable under the full standard extended coverage insurance, as to become partially or totally untenable, the same shall be repaired as speedily as

possible using the proceeds of such insurance, unless the City shall elect not to rebuild and an adjustment in a proportionate part of the fee shall be abated until so repaired.

(15) Notice by Library: The Library shall give immediate notice to the City in case of fire or accidents in the premises or defects therein or in any fixtures or equipment.

(16) Condemnation: Upon the whole or any part of the premises and property hereby leased being taken by any public authority under the power of eminent domain, the term of the Agreement shall cease for that part of the premises and property so taken from the date of possession of that part shall be required for a public purpose, and this Agreement shall continue pursuant to the terms and provisions contained herein unless that portion of the property and premises taken results in a substantial interference of the Library's use of the premises to the extent that the premises cannot be effectively used for the Library purposes for which it is being leased. In said event, the Library shall have the right, by written notice to the City, to cancel this Agreement and declare the same null and void, and if the Library does not so cancel this Agreement, the Library shall continue in possession of the remainder of the premises under the terms of this Agreement. Any and all damages and/or compensation awarded for such taking shall belong to and be the property of the City.

(17) Default: In the event a default is made to any of the covenants herein contained by one of the parties, the non-defaulting party shall give written notice to the defaulting party of the nature of the default and the defaulting party shall have 30 days to correct and/or cure the default unless a longer period of time is mutually agreed to in writing by the parties to cure the default, and, in the event that the default is not corrected and/or cured by the defaulting party within the aforementioned period of time, a non-defaulting party may terminate this Agreement by written notice to the defaulting party, with the written notice to the defaulting party containing the date that the Agreement is to be terminated on, which termination date shall be at least sixty (60) days from the date of the written termination notice to the defaulting party. In the event that the City terminates this Agreement pursuant to the provisions contained herein, the Library must, subject to the terms and conditions contained in this Agreement, physically leave, move from and vacate the subject property, building and premises, but will still be responsible for the fee payments provided for in Section 3 and shall continue to pay the fee payments contained and described in Section 3 to the City pursuant to the scheduled contained therein. In the event that the Library terminates this Library Lease Agreement pursuant to the provisions contained herein, the Library shall, within sixty (60) days from the date of termination of the Agreement, physically leave, move from and vacate the subject property, building and premises, and from the date it moves and physically vacates the premises shall have no further responsibility to the City for the fee provided for in Section 3 of this Agreement.

(18) Successors: All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the parties' heirs, executors, administrators, successors and assigns.

(19) Notices: Whenever under this Agreement provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if such notice to the Library is in writing, addressed to the President of the Auburn Hills Public Library at the Auburn Hills Library, 3400 E. Seyburn Drive, Auburn Hills, Michigan 48326, and sent by registered or certified mail with postage prepaid, and if such notice to the City is in writing, addressed to the City Manager at the address of the Auburn Hills City Hall, 1827 North Squirrel Road, Auburn Hills, Michigan 48326, and sent by registered or certified mail with postage prepaid.

(20) Captions and Section Numbers: The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit or construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect the Agreement.

(21) Partial Invalidity: If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(22) Recording: The Library shall not record this Agreement without the written consent of the City.

(23) Laws of the State of Michigan: This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

(24) Consent Not Unreasonably Withheld: The City agrees that whenever, under this Agreement, provision is made for the Library securing the written consent of the City, such consent shall not be unreasonably withheld.

(25) Option to Renew Agreement: Provided the Library shall not be in default of the terms of this Agreement, the Library may, by giving the City written notice not later than one (1) year prior to the expiration of this Agreement and/or one (1) year prior to the expiration of any renewal, exercise its option to renew this Agreement for a period of five (5) years, with only two (2) five (5) year renewals by the Library being permitted, said renewals being under the same terms and conditions as contained in this Agreement, except that for any renewal periods, the fee to be paid by the Library to the City shall be modified to an amount mutually agreeable to the parties, and in the event the parties are not able to agree to a new fee amount, the renewal will not become effective and this Agreement will terminate as provided herein.

(26) Remedies: It is agreed that each and every one of the rights, remedies and benefits provided for by and in this Agreement shall be cumulative and shall not be exclusive of any other of said rights, remedies or benefits or any other rights, remedies and benefits allowed by law.

(27) Waiver: One or more waivers of any covenants or conditions of this Agreement by the parties shall not be construed as a waiver of a further breach of the same covenant or condition.

(28) Expansion: It is not contemplated by and between the parties hereto that there will be any physical expansion of the building and/or premises being rented, and, as a result, no such expansion may take place by the Library without the Library first obtaining the written consent of the City.

(29) This Agreement supersedes and replaces the Amended Library Lease Agreement between the City and the Library, if any, the Library Lease Agreement between the City and the Library dated June 6, 1989, and the Amendment thereto dated August 7, 1989, and the Library Service Agreement between the City and Library dated June 6, 1989 and any amendments thereto, including but not limited to any Amended Library Service Agreements.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS Library Lease/Services Agreement as of the day and year first above written. By affixing signatures below,

the City and Library represent that these individuals are duly authorized to bind the parties to the terms and conditions contained herein and to act on behalf of the representative entities.

CITY OF AUBURN HILLS

By: _____
Kevin R. McDaniel, Mayor

By: _____
Terri Kowal, City Clerk

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Kevin R. McDaniel, as Mayor, and Terri Kowal, as Clerk, on behalf of the City of Auburn Hills, a Michigan municipal corporation, on behalf of the corporation.

_____, Notary Public
_____ County, Michigan
My Commission Expires: _____

AUBURN HILLS PUBLIC LIBRARY

By: _____

Its: _____

By: _____

Its: _____

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of the Auburn Hills Public Library, on behalf of the Auburn Hills Public Library.

_____, Notary Public
_____ County, Michigan
My Commission Expires: _____

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