



STAFF REPORT

TO: CDRA Board
FROM: JJ Allen, City Manager
MEETING DATE: December 14, 2021
SUBJECT: Former Davis County Library Property

RECOMMENDED ACTION

Discussion only, with potential action on January 11 (or possibly December 21).

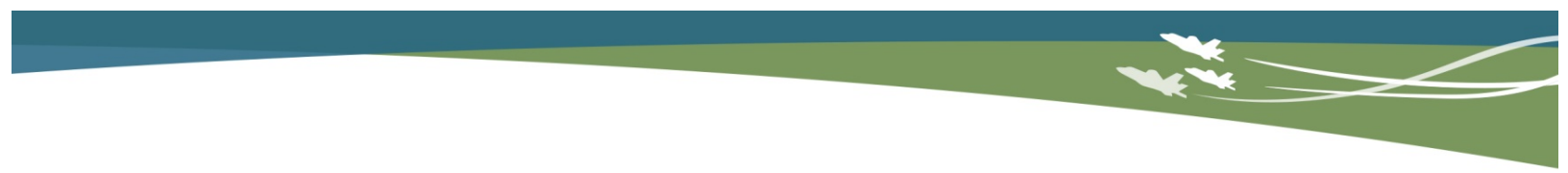
DESCRIPTION / BACKGROUND

In a work session on February 23, 2021, the Board discussed whether the CDRA should maintain ownership of the “old library” site (for future expansion of Bicentennial Park) or consider offers from interested buyers. The Board expressed an interest in exploring the potential for selling the property.

Since the “old library” building was contractually obligated to be demolished by Davis County as part of the contract that previously conveyed the entire site to the CDRA, Staff initiated dialogue with County officials seeking to modify the existing contract by releasing the County of their obligation to demolish the building. After considerable dialogue, the County is now willing to modify the existing contract and reap the cost savings benefit of being relieved of their obligation to demolish. During these conversations, Staff was made aware that the County intended to repurpose the relatively new boiler at the building, and would thus request the fair market value of 100k (confirmed by Eric Howes) from the CDRA for leaving the boiler in place.

Staff attempted to locate any internal records related to potential buyers of this property, and found only one persistent inquirer—Nations for Christ Church. Because the property is owned by the CDRA and not the City, the requirements regarding the disposition of property are not the same (i.e. it is not required to receive full market value as compensation). As such, Staff weighed the long standing valuable social services provided to the community by the Nations for Christ Church (as discussed in the February 23 work session), along with the desire to see this entity continue to provide and flourish within our community against maximizing profit from a potential sale of the property on the open market and determined that listing the property on the MLS service may not be in the best interest of the CDRA.

Staff then requested that Nations for Christ Church submit a formal offer to purchase the property, which they did for \$600k. The CDRA had previously received an appraisal for the property at 810k, and consequently counter offered at \$700k, which was accepted (keep in mind that the \$100k cost of the boiler would be paid to the County). As such, the property is currently under contract with Nations for Christ Church, contingent on (1) formal approval of the CDRA Board and (2) the formal



amendment of the contracts with Davis County releasing the County from their legal obligation to demolish the building.

All of this work has been done in order to accurately present to the Board an option for selling the property. However, no absolute or irreversible commitments have been made. See the “Alternatives” section for more discussion.

HEDGEHOG ANALYSIS

In a quick “hoglet” exercise, the option of selling the property to Nations for Christ Church gets a score of 20 points (out of 24 possible). The option of continuing with the original plan (wherein the County demolishes the building and Clearfield keeps the property for future City/CDRA use) scores around 15-16.

CORRESPONDING POLICY PRIORITY (OR PRIORITIES)

Providing Quality Municipal Services

Improving Clearfield’s Image, Livability, and Economy

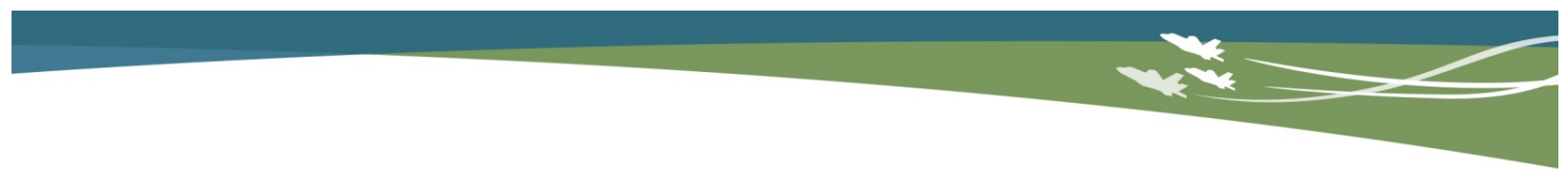
FISCAL IMPACT

If the property is sold, the proceeds could be used by the CDRA (or by the City, if transferred) for any number of purposes, such as capital projects (e.g. renovating the existing amphitheater), downtown redevelopment or beautification efforts (e.g. powerline undergrounding, streetscape improvements or Clearfield Station), or even to soften the blow of increasing operational costs (e.g. wage wars and inflationary impacts). That said, the revenue from the sale of property would be offset in part by the cost of the boiler.

If the property is kept, the pendulum swings the other way and there would not be any proceeds from a sale (obviously), but there would be new costs to account for. Until the property is improved, whether with a new amphitheater or otherwise, it would need to be maintained as open space. A concept plan for a new amphitheater has been created, but no budget has been planned for such a project.

ALTERNATIVES

- A. Proceed with the amendments to the agreements with Davis County to remove the demolition requirements (and establish a vacation deadline), and with the sale of the property to Nations for Christ Church.
- B. Proceed with the amendments to the agreements with Davis County to remove the demolition requirements but list the property for sale. This may cause a rift with the Nations



for Christ Church, as they are certainly making plans for their new location, even though the contract is contingent on CDRA Board approval, among other things.

- C. Continue with the original plan—the County demolishes the building and performs any necessary environmental remediation, and the CDRA holds onto the property for future CDRA or City use.

SCHEDULE / TIME CONSTRAINTS

Nations for Christ Church is anxious to purchase the property and establish their new home, but they have indicated that they don't intend to do so before spring. Davis County needs until the end of March to remove all of their furniture, fixtures, and equipment. Consequently, the proposed amendments establish March 31, 2022 as the end of the term of the lease between the County and CDRA, as well as the payment date for the boiler. We would anticipate closing on the sale of the property at about the same time.

If the Board would like to proceed with the amendments, we can schedule them for action at the January 11 meeting (or possibly December 21, if a special session is scheduled for other needs).

LIST OF ATTACHMENTS

- First Amendment to Purchase and Sale Agreement with Davis County
- First Amendment to Lease Agreement with Davis County
- Real Estate Purchase Contract with Nations for Christ Church

FIRST AMENDMENT TO THE PURCHASE AND SALE AGREEMENT

Properties Located at
562 South 1000 East, Clearfield, Utah
and
Approximately 1 North Main Street, Clearfield, Utah
Between
Davis County
and

Clearfield Community Development and Renewal Agency

This First Amendment to the Purchase and Sale Agreement (“First Amendment”) is made and entered into by and between Davis County, a public County (“County”) and Clearfield Community Development and Renewal Agency, a public entity, (“CDRA”). County and CDRA are sometimes collectively referred to herein as the “Parties” or individually as a “Party.”

WHEREAS, the Parties entered into a Purchase and Sale Agreement on December 18, 2018 (“Original Agreement”). See Exhibit A.

WHEREAS, paragraph 11.7 of the Original Agreement states that “this Agreement (Original Agreement) may be amended or supplemented only by a written instrument, executed by both County and CDRA.”

WHEREAS, the Parties desire to amend the Original Agreement pursuant to paragraph 11.7 to relieve the County of their covenants, agreements, and associated costs relative to the legal obligations outlined in paragraphs 8.2.1 and 8.2.2 of the Original Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the Parties hereto agree as follows:

AGREEMENT

(1) Recitals. The foregoing recitals are incorporated and made an integral part of this First Amendment by this reference.

(2) Amended Language. Pursuant to paragraph 11.7 of the Original Agreement, the Parties agree in writing to amend the Original Agreement, as follows:

a. Paragraph 8.2.1 of the Original Agreement is struck in full.

- The Parties agree that County may remove the dedicatory plaque and the library shelving from the building. The County agrees to leave the boiler in the building, for which the CDRA will reimburse the County One Hundred Thousand Dollars (\$100,000.00), to be paid no later than March 31, 2022. County

will leave the remaining structures in place at the property described in Exhibit “A” of the Original Agreement (North Library Branch), and is relieved of the legal requirement to demolish said existing structures.

- The County is no longer legally required to perform remediation and remove any environmental contaminants required by the Utah Department of Environmental Quality at the property described in Exhibit “A” of the Original Agreement (“North Library Branch”).
- The CDRA is not entitled to any portion of the County’s economic savings resulting from the striking of paragraph 8.2.1 of the Original Agreement.

b. Paragraph 8.2.2 of the Original Agreement is struck in full.

- The County is no longer legally required to remove any environmental contaminants and to ensure that the property described in Exhibit “A” of the Original Agreement (“North Library Branch”) is environmentally clean, and that no further action is required by the Utah Department of Environmental Quality.
- The CDRA is not entitled to any portion of the County’s economic savings resulting from the striking of paragraph 8.2.2 of the Original Agreement.

(3) Original Agreement. Except for the changes reflected in paragraph 2 above, all other terms and conditions within the Original Agreement shall remain in place and applicable to the Parties.

(4) Binding Effect. The provisions of this First Amendment shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

(5) Severability. If any part or provision of this First Amendment shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this First Amendment except that condition, covenant, or other provision of this First Amendment shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(6) Miscellaneous.

- a. Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including

a reasonable attorney’s fee, which may arise or accrue from enforcing this First Amendment or in pursuing any remedy provided hereunder or any applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney’s fee, incurred on appeal and in bankruptcy proceedings.

- b. Survival. It is expressly agreed that the terms, covenants and conditions of this First Amendment shall survive any legal act or conveyance required under this First Amendment.
- c. Headings. The section and other headings contained in this First Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this First Amendment.

EXECUTED as of the ____ day of _____, 2021.

COUNTY:

DAVIS COUNTY

By _____
Chairperson
Davis County Board of County Commissioners

Approved as to form:

ATTEST:

Curtis Koch
Davis County Clerk/Auditor

CDRA:

By _____
Nike Peterson
Chairperson

Approved as to form:

ATTEST:

Nancy Dean
City Recorder

EXHIBIT A

**PURCHASE AND SALE AGREEMENT
December 18, 2018 - Fully Executed**

Please return to:

Clearfield City Recorder's Office
55 South State Street
Clearfield, Utah 84015

PURCHASE AND SALE AGREEMENT

Properties Located at
562 South 1000 East, Clearfield, Utah
and
Approximately 1 North Main Street, Clearfield, Utah

Between

Davis County

and

Clearfield Community Development and Renewal Agency

12/11/18
9:17AM

2018-609

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Exhibit A - Legal Description of Property

Exhibit B - Legal Description of Lot

Exhibit C – Clearfield Junction Site Plan and Plat

Exhibit D - CDRA Deed

Exhibit E - County Deed

Exhibit F – Covenants, Conditions and Restrictions

PURCHASE AND SALE AGREEMENT

(562 South 1000 East and 1 North Main Street, Clearfield, Utah)

This Purchase and Sale Agreement (this "Agreement") is made and entered into by and between Davis County, a public County, ("County") and Clearfield Community Development and Renewal Agency, a public entity, ("CDRA"). County and CDRA are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

ARTICLE I

Subject of Agreement

1.1 Purpose of Agreement. In furtherance of the objectives of the Davis County Library Board, and the Davis County Board of Commissioners, County has undertaken negotiations with CDRA in an effort to relocate the North Library Branch currently located at 562 South 1000 East, as indicated in the legal description found on Exhibit "A," (the "Property") in exchange for property located at 1 North Main Street (the "Lot") in Clearfield, Utah, as indicated in the legal description on Exhibit "B."

1.2 The Development Plan. Current proposals and development plans from Clearfield Junction LLC (the "Developer") have been prepared and submitted to Clearfield City for the development of a mixed-use project at approximately 1 North Main Street, known as Clearfield Junction, which includes property currently owned by CDRA. The Clearfield Junction Subdivision includes a corner lot (Lot #3, hereinafter referred to as the "Lot") that has been designated for the North Library Branch as the principal anchor for the Clearfield Junction project (Exhibit "C").

1.3 Defined Terms. As used herein, the following terms shall have the meanings respectively indicated:

1.3.1 "CDRA Deed" means the special warranty deed from CDRA to County conveying title to the Lot, a copy of which is attached hereto as Exhibit "D" and incorporated herein by this reference.

1.3.2 "Closing" means the transfer of title to the Property by County to CDRA, and the transfer of title to the Lot by CDRA to County, in accordance with the terms and provisions of Article IX hereof.

1.3.3 "Closing Date" means the date specified in Article IX hereof on which the Closing will be held.

1.3.4 "County" means Davis County, a body corporate and politic and a legal subdivision of the State of Utah.

1.3.5 "County Deed" means the special warranty deed from County to CDRA conveying title to the Property, a copy of which is attached hereto as Exhibit "E" and incorporated herein by this reference.

1.3.6 "Covenants" means Covenants, Conditions and Restrictions defining shared parking and cross access easements, a copy of which is attached hereto as Exhibit "F."

1.3.7 "Covered Parties" shall have the meaning set forth in Section 4.3.

1.3.8 "Developer" means Clearfield Junction LLC, who will be developing the project known as Clearfield Junction Subdivision.

1.3.9 "Development Agreement" means that certain agreement entered on May 22, 2018, and all written addendums made thereto between Clearfield City, CDRA, and the Developer, to which Developer is obligated to develop the Clearfield Junction project in accordance with the provisions therein.

1.3.10 "Developer Improvements" means the improvements to be constructed by Developer on the Lot as described and provided for in the Development Agreement (i.e. parking and utilities).

1.3.11 "Hazardous Material" means any substance or material which is defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous wastes," "restricted hazardous waste," "toxic substances," or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources.

1.3.12 "Library" means the Davis County Library, a public body, exercising its functions and powers and organized and existing under Utah Code with its principal office located at Headquarters Library, 133 South Main, Farmington, Utah 84025.

1.3.13 "Lot" means Lot #3 described on the Clearfield Junction Subdivision plat (included in Exhibit "C"), which is to be conveyed by CDRA to County.

1.3.14 "Permitted Exceptions" means those exceptions to title set forth in the Preliminary Report, together with the printed exceptions and exclusions

referred to therein, all matters of record, private, public and utility easements, covenants, conditions and restrictions, roads and highways, party wall rights and agreements, special taxes or assessments for improvements not yet completed, installments not due at the date hereof or at closing or any special tax or assessment for improvements heretofore completed, rights of way for drainage ditches, feeders and laterals, zoning laws and ordinances, all matters, including, but not limited to, encroachments which would be disclosed by an accurate survey and/or inspection of the Property or Lot, and all acts or omissions of CDRA or County and any governmental authority and those acting by, through or under such parties.

1.3.15 "Preliminary Report" means that certain Preliminary Title Report or Commitment for Title Insurance issued by the Title Company, the subject matter of which is the Property or the Lot.

1.3.16 "Property" means that certain real property described with a legal description on Exhibit "A" attached hereto and incorporated herein by reference, which County will convey to CDRA.

1.3.17 "Site Plan" means the Clearfield Junction site plan which generally depicts the Lot and the improvements to be made to the Lot, which site plan is attached hereto as Exhibit "C" incorporated herein by this reference.

1.3.18 "Title Company" means Founders Title Company, 748 West Heritage Park Blvd, Layton, UT 84041.

ARTICLE II

Agreement of Purchase and Sale

2.1 Agreement of County and CDRA. In consideration of the terms and conditions contained herein, County hereby sells and agrees to convey the Property to CDRA, and CDRA hereby sells and agrees to convey the Lot to County; and the Parties hereby agree to pay the Purchase Price therefor in accordance with and subject to the terms, conditions and provisions hereof.

ARTICLE III

Purchase Price

3.1 Purchase Price. The Purchase Price to be paid by CDRA to County for the Property is the sum of ONE DOLLAR AND 00/100 CENTS (\$1.00), payable in full at the time of Closing.

The Purchase Price to be paid by County to CDRA in exchange for the Lot is the sum of ONE DOLLAR AND 00/100 CENTS (\$1.00), payable in full at the time of Closing.

3.2 Purchase Price is Net. The Purchase Price shall be net to the Parties, it being understood that the Parties shall have no right or remedy of offset, abatement, or deduction against the Purchase Price for any reason, including, but not limited to, any reason arising out of any facts or circumstances regarding the Property or the Lot, whether discovered in connection with investigation and inspection of the Property or the Lot or otherwise.

ARTICLE IV

Title; Condition; Use

4.1 Title. CDRA is purchasing the Property from County, subject to the Permitted Exceptions, and CDRA hereby approves the Preliminary Report and the Permitted Exceptions.

County is purchasing the Lot from CDRA, subject to the same Permitted Exceptions, and County hereby approves the Preliminary Report and the Permitted Exceptions.

4.2 Condition. Each Party acknowledges that it has conducted all necessary investigations and inspections of the Property or Lot it desires to purchase. Each Party hereby affirms that its agents, employees and/or attorneys have not made, nor has the entity itself relied upon any representation, warranty or promise with respect to the Property or Lot or any other subject matter of this Agreement except as expressly set forth in this Agreement, including, without limitation, any warranties or representations, express or implied, as to the general plan designation, zoning, value, use, tax status or physical condition of the Property or Lot, or improvements thereon, or any part thereof, including but not limited to the flood elevations, drainage patterns and soils and subsoils composition and compaction level, and other conditions at the Property or Lot, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or reports therefor. As to the existence or non-existence of Hazardous Material on or under the Property or Lot or adjacent property, the Parties hereby agree to share equally in all costs, remediation or otherwise, that are incurred as a result of a later discovery of Hazardous Material. Without limiting the generality of the foregoing, each Party's purchase of the Property or Lot is "AS IS", "WHERE IS" CONDITION, SUBJECT TO "ALL FAULTS", INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, EXCEPT FOR THE EXISTENCE OF HAZARDOUS MATERIAL AS NOTED ABOVE. EACH PARTY HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION AND USE OF THE PROPERTY OR LOT, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Each Party shall purchase the Property or Lot pursuant to this Article without adjustment to or offset against the Purchase Price. Neither County nor CDRA makes any representation or warranty, express or implied, as to the accuracy or completeness of any document produced by County/CDRA pursuant to this Agreement.

4.3 Release and Indemnity. To the fullest extent permitted by law, both CDRA and County agree, from and after Closing, to release, indemnify and hold harmless the other Party, its past, present and future directors, officers, managers, employees, representatives and agents ("Covered Parties"), from and against any and all judgments, claims, expenses (including defense costs and attorneys' and other consultants' reasonable fees and costs), causes of action, damages, and liability pertaining to the condition and use of the Property or Lot, including, without limitation: (i) all foreseeable and all unforeseeable consequential damages, personal injury and/or property damages, injunction, or other relief, directly or indirectly arising out of the condition and use of the Property or Lot, (ii) the costs of any necessary or appropriate investigation, repair, cleanup, remediation or detoxification of the Property or Lot and other affected property and the preparation of any corrective action, closure or other required plans or reports, to the full extent that such actions are alleged to be attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Material by any person (whenever occurring or having occurred) and relate to or involve the Property or Lot and adjacent property.

ARTICLE V

Conditions Precedent

Each Party's obligation to purchase the Property or Lot is subject to its satisfaction or written waiver of the following conditions, at no expense or liability to the respective Party, within the time periods specified. The conditions to be satisfied or waived are the following:

5.1 Inspection. Each Party shall have the opportunity to fully inspect the Property or Lot and approve the condition of the Property or Lot in all respects in its sole discretion. For the purposes set forth in this Section, both County and CDRA hereby grants the other Party a license to inspect the Property or Lot at reasonable times agreeable to County/CDRA. CDRA/County shall exercise its license in such a manner as to protect itself, County/CDRA and third parties, its and their employees, representatives, agents, and invitees from accidents and injury, exposure to asbestos containing materials and other Hazardous Material and hazardous conditions. Each Party shall be solely responsible for the acts and omissions of its employees and other persons entering the Property or Lot in connection with the license and for initiating, maintaining and supervising all appropriate safety precautions in connection with its exercise of the license. To the fullest extent permitted by law, each Party shall release, indemnify, defend and hold harmless the Covered Parties from any cost, expense, including defense cost, damage, liability or claim arising out of or in connection with the exercise by CDRA/County of the rights conferred under, or a violation of the provisions of this Section, whether or not such cost, expense, damage, liability or claim results from (i) property damage or injury to person or (ii) the negligence or omission to act of the Covered Parties. If a Party desires to have the Property or Lot inspected for the presence of Hazardous Material, it shall first inform the other Party in writing of such desire. Thereafter, the Parties shall meet to discuss how and when such inspection shall be undertaken. This condition shall be waived or satisfied by mutual agreement or at the time of execution of agreements.

5.2 Developer's Permits and Approvals. Prior to Closing on the Lot, Developer shall have received all permits and approvals required by all applicable governmental authorities for the construction of the Developer Improvements in accordance with the requirements of the construction documents (including, without limitation, building permits). County shall coordinate with Developer on the design, engineering and extent of the Developer Improvements. Developer and County shall exercise due diligence to satisfy this condition in a timely manner.

5.3 Right to Convey. On or before the Closing Date, County has legal authority to convey the Property to CDRA at Closing, and CDRA has legal authority to convey the Lot to County at Closing. This condition shall be satisfied by Closing.

5.4 Performance. Parties are not in material breach of their obligations under this Agreement.

5.5 Litigation. No litigation, arbitration, governmental administrative proceeding or investigation prohibiting County from conveying the Property to CDRA or restricting County's ability to perform its obligations under this Agreement, shall be pending or threatened as of the Closing Date. No litigation, arbitration, governmental administrative proceeding or investigation prohibiting CDRA from conveying the Lot to County or restricting CDRA's ability to perform its obligations under this Agreement, shall be pending or threatened as of the Closing Date. This condition shall be satisfied by Closing.

5.6 Failure of a Condition; No Obligation of Other Party. The Parties do not guarantee, warrant or represent that any of the conditions set forth in this Article shall be or can be satisfied. Furthermore, the Parties shall incur no liability or expense in connection with the ability or inability to satisfy any of such conditions, nor shall the Parties be obligated to take any action. The Parties agree that any expenditure, commitment or other action taken by them pursuant to this Agreement or prior to its execution of this Agreement, or otherwise in contemplation of the Closing, is taken at their own risk, and no such expenditure, commitment or action shall obligate the other Party to incur any liability to them or any third party, which Parties expressly indemnify and save and hold harmless the Covered Parties from and against such loss. In the event either of the transactions contemplated herein fails to close for any reason, Parties shall deliver to each other all studies and reports prepared in connection with this transaction or otherwise pertaining to the Property or Lot whether such studies and reports were prepared for or on behalf of CDRA, County or any third party.

5.7 Representations and Warranties. All representations and warranties of the Parties shall be true and correct as of the date made and as of the Closing Date with the same effect as if though the representations and warranties were made as of the Closing Date.

ARTICLE VI

Covenants Regarding Future Development (Clearfield Junction)

6.1 Development Documents. The Parties acknowledge and agree that as a material inducement to County to sell the Property to CDRA and consistent with County's statutory purpose, after Closing on the Lot, CDRA agrees to facilitate the redevelopment of the properties adjacent to the Lot pursuant to the terms of the Development Agreement. In the event that the current proposal for Clearfield Junction is not completed in accordance with the Development Agreement, the approved Covenants, Conditions and Restrictions set forth in Exhibit "F" will remain in full force with adjacent parcels.

6.2 Developer Improvements. If Developer is unable to perform as required by the Development Agreement, CDRA shall endeavor to exercise the provisions at its disposal from the Development Agreement (lien, bond, or escrow) and/or Purchase and Sale Agreement (right of first refusal) in an effort to facilitate the completion of the Developer Improvements.

ARTICLE VII

Representations, Covenants and Agreements of CDRA

7.1 Representations of CDRA. CDRA represents and warrants, as of the date this Agreement is fully executed and as of the Closing Date, that CDRA has taken all action required by law, and all required action under its governing documents necessary to authorize CDRA to enter into this Agreement and to carry out its obligations hereunder.

7.2 Covenants and Agreements of CDRA. CDRA covenants and agrees with County as follows:

7.2.1 CDRA agrees to allow County to continue to pursue, plan and construct a new North Library Branch to be operated on the Lot indicated in Exhibit "C" and that if the planned Clearfield Junction development does not commence, County can continue to modify and adjust boundary lines as needed (in accordance with Title 12 of the Clearfield City Code, and in keeping with the understanding that the North Library Branch needs 1.5 acres) to commence, complete and operate a functioning branch at this site.

7.2.2 CDRA agrees that designs, colors, and fixtures of adjacent structures and parking lots for the Clearfield Junction project and for the North Library Branch will be governed by Clearfield City's form-based code.

7.2.3 CDRA agrees to allow County to continue to operate the existing North Library Branch until the completion and opening of the new North Library Branch, as described in 7.2.1, which arrangement shall be formalized by the

Parties in a separate lease agreement, the term of which lease shall extend for one year from the date that the new North Library Branch is given certificate of occupancy (in order to allow time for demolition and environmental remediation).

ARTICLE VIII

Representations, Covenants and Agreements of County

8.1 Representations of County. County represents and warrants, as of the date this Agreement is fully executed and as of the Closing Date, that County has taken all action required by law, and all required action under its governing documents necessary to authorize County to enter into this Agreement and to carry out its obligations hereunder.

8.2 Covenants and Agreements of County. County covenants and agrees with CDRA as follows:

8.2.1 County will demolish the existing structures, and provide a clean developable site on the Property indicated on Exhibit "A" within one year after the closure of the North Library Branch and proper remediation as may be required by the Utah Department of Environmental Quality has taken place.

8.2.2 County will remove any environmental contaminants and ensure that the property indicated on Exhibit "A" is environmentally clean, with no further action required by the Utah Department of Environmental Quality.

8.2.3 In support of Clearfield's downtown redevelopment efforts, County will design and seek all necessary land use approvals and permits, in accordance with all applicable codes and ordinances, for a new North Library Branch to be constructed on the Lot, and commence said construction in a timely manner no later than the year 2020.

ARTICLE IX

Closing; Extension

9.1 Closing. The Closing hereunder shall take place on _____, provided all conditions specified in Article 5 have been satisfied or waived. Each Party shall provide the other Party written notice of its satisfaction or written waiver of the condition set forth in Section 5.1 on or before _____. If either CDRA or County fails to so deliver such notice, such condition shall be deemed satisfied. If for any reason other than a Party's default hereunder, Closing does not occur on or before the Closing Date, this Agreement shall automatically terminate on such date, unless the Parties agree otherwise. At Closing, each Party shall convey (or cause the conveyance of) title to the other Party by a Warranty Deed subject to Permitted Exceptions.

9.2 Title Company. Following the execution of this Agreement, County shall open an escrow with the Title Company. A copy of this Agreement shall be provided to the Title Company to advise the Title Company of the terms and conditions hereof. Prior to Closing, CDRA and County shall give separate written closing instructions to the Title Company (with a copy sent concurrently to the other Party) which instructions shall be consistent with the provisions of this Agreement.

9.3 Closing Costs. The costs associated with Closing for the respective transactions shall be allocated as follows:

9.3.1 Closing on the Lot. CDRA shall pay the cost of recording the CDRA Deed conveying the Lot from CDRA to County. Any escrow fees and additional recording fees shall be paid equally by the Parties. If County elects to obtain title insurance on the Lot, the title insurance premium for the portion of such policy of title insurance constituting standard coverage shall be paid by CDRA. If County elects extended coverage, County shall pay the difference between the title insurance premium for standard coverage and the title insurance premium for extended coverage. In addition, if the Closing does not occur as a result of any reason other than CDRA's failure to perform, County shall pay cancellation charges in connection with the title insurance commitment. County shall pay all excise taxes, and all other costs, charges or expenses incurred in connection with the escrow and/or Closing of the transaction contemplated herein.

9.3.2 Closing on the Property. County shall pay the cost of recording the County Deed conveying the Property from County to CDRA. Any escrow fees and additional recording fees shall be paid equally by the Parties. If CDRA elects to obtain title insurance on the Property, the title insurance premium for the portion of such policy of title insurance constituting standard coverage shall be paid by County. If CDRA elects extended coverage, CDRA shall pay the difference between the title insurance premium for standard coverage and the title insurance premium for extended coverage. In addition, if the Closing does not occur as a result of any reason other than County's failure to perform, CDRA shall pay cancellation charges in connection with the title insurance commitment. CDRA shall pay all excise taxes, and all other costs, charges or expenses incurred in connection with the escrow and/or Closing of the transaction contemplated herein.

9.4 Items to be Delivered at the Closing for the Property. At the Closing for the Property, the following items shall be delivered:

9.4.1 By County to CDRA:

- i. The County Deed, duly executed and acknowledged by County, and in form for recording, conveying, fee simple title to the Property to CDRA, subject only to the Permitted Exceptions.

- ii. A standard owner's title policy.
- iii. Such other documents as County has executed at or prior to the Closing Date in accordance with this Agreement.

9.4.2 By CDRA to County:

- i. The Purchase Price in immediately available funds as provided in this Article less all costs, expenses and prorations to be paid by CDRA.

9.5 Items to be Delivered at the Closing for the Lot. At the Closing for the Lot, the following items shall be delivered:

9.5.1 By CDRA to County:

- i. The CDRA Deed, duly executed and acknowledged by CDRA, and in form for recording, conveying, fee simple title to the Lot to County, subject only to the Permitted Exceptions.
- ii. A standard owner's title policy.
- iii. The Development Agreement.
- iv. The Covenants.
- v. Such other documents as CDRA has executed at or prior to the Closing Date in accordance with this Agreement.

9.5.2 By County to CDRA:

- i. The Purchase Price in immediately available funds as provided in this Article less all costs, expenses and prorations to be paid by County.

9.6 Possession. Possession of the Lot shall be delivered to County by CDRA at Closing. Possession of the Property shall be delivered to CDRA by County at Closing.

ARTICLE X

Commissions

County and CDRA represent that neither Party has entered into any written contracts with any brokers or finders nor obligated themselves to pay any real estate commissions or

finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby. Based on such representations, CDRA and County hereby agree to indemnify and hold each other harmless from any claims, damages, expenses, liabilities, liens or judgments (including costs, expenses and attorneys' fees in defending the same) which arise on account of any claim made against the indemnifying party that real estate commissions or finders' fees (including those identified above) are payable and have not been discharged in their entirety.

ARTICLE XI

Notices

All notices, requests, demands and other communications hereunder shall be in writing and shall be given by (i) Federal Express (or other established express delivery service which maintains delivery records), (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or such other addresses as the Parties may designate from time to time by written notice in the above manner:

To County:	Davis County Library 61 South Main, PO Box 618 Farmington, Utah 84025 Attn: Chris Safford
with copies to:	Davis County Facilities Management Attn: Facilities Director 28 East State Street, PO Box 618 Farmington, Utah 84025 Attn: Mack McDonald
To CDRA:	Clearfield CDRA Attn: City Manager / CDRA Executive Director 55 South State Street Clearfield, UT 84015
with copies to:	Clearfield City Attn: City Recorder 55 South State Street Clearfield, UT 84015

The Parties may also agree to exchange communications through electronic mail. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

ARTICLE XII

Confidentiality

County is concerned about the confidentiality of any environmental inspections and resulting reports. The results of CDRA's inspections relating to Hazardous Material, shall be initially orally reported to CDRA and County or their respective attorneys by CDRA's consultants. Such reports shall be reduced to writing and marked "draft." CDRA shall deliver to County as soon as they are made available to CDRA, copies of all reports and analyses prepared or used in connection with CDRA's environmental inspection of the Property. No information or contents of any environmental reports or analyses (verbal or written), nor the results of any inspection of the Property for Hazardous Material shall be disclosed by CDRA or its agents, consultants or employees to any third party without County's prior written approval, unless and until CDRA is legally compelled to make such disclosure under applicable law, or until CDRA completes its purchase of the Property pursuant to this Agreement. In the event CDRA determines that it is legally compelled to disclose such information, it shall first notify County of the circumstances requiring such disclosure and, to the extent CDRA believes it may do so without liability or damage to reputation, refrain from such disclosure for the maximum period of time allowed by law so that County may procure a protective order or take other action to protect the confidentiality of the information. CDRA shall notify its agents, employees and consultants of the need to comply with the terms of this Article. If this Agreement is terminated for any reason, CDRA shall immediately deliver to County any and all documents, plans and other items furnished to CDRA, CDRA's consultants or County or any reports or analyses obtained pursuant to this Article, without retaining copies thereof. All studies, data, reports, analyses, writings and communications, including any environmental studies or reports, shall be generated by any consultant for the use of CDRA's and County's attorneys and, to the fullest extent permitted by law, shall be the work product of both CDRA's and County's respective attorneys and shall constitute confidential attorney-client communications and each Party shall use its best efforts to ensure that such confidence and privilege is maintained.

Nothing in Article XII shall be interpreted in a manner to restrict or expand those rights articulated in the Utah Government Records Access and Management Act.

ARTICLE XIII

Indemnity

The Parties, for themselves, and on behalf of their officers, officials, owners, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of Party (collectively, the "Parties' Representatives"), agree and promise to indemnify, defend, save and hold harmless each other, as well as each other's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "Parties' Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, fee, or otherwise

(collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to this Agreement and/or the acts or omissions, negligent or otherwise, of the other Party and that Party's Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise. The Parties, for themselves, and on behalf of the other Parties' Representatives, agree and promise that all costs, expenses, or otherwise relating to the Claims and incurred by the other Party or the other Party's Representatives or which the other Party or the other Party's Representatives would otherwise be obligated to pay, shall be paid in full within thirty (30) calendar days after one Party provides the other Party with documents evidencing such costs, expenses, or otherwise. No term or condition of this Agreement, including, but not limited to, insurance required under this Agreement, shall limit or waive any liability the Parties may have arising from, in connection with, or relating to this Agreement and/or acts or omissions of the Parties or Parties' Representatives, negligent or otherwise. The Parties acknowledge, understand, agree, and state that no provision of this Agreement shall be, or shall be construed as, a waiver of any applicable provision of the Governmental Immunity Act of Utah.

ARTICLE XIV

General Provisions

11.1 References. All references to "Article," "Articles," "Section," or "Sections" contained herein are, unless specifically indicated otherwise, references to Articles and Sections of this Agreement.

11.2 Exhibits. All references to "Exhibits" contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes.

11.3 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

11.4 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

11.5 Attorney's Fees. In the event a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party to be fixed by the court in the same action. The term "legal proceedings" as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

11.6 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of such State shall govern the validity, construction, enforcement, and interpretation of this Agreement, unless otherwise specified herein.

11.7 Amendments. This Agreement may be amended or supplemented only by an instrument in writing, executed by both County and CDRA.

11.8 Invalid Provisions. If any provision of this Agreement (except the provisions relating to County's obligation to convey the Property and CDRA's obligation to pay the Purchase Price, or CDRA's obligation to convey the Lot and County's obligation to pay the Purchase Price, the invalidity of either of which shall cause this Agreement to be null and void) is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement, but the parties shall equitably resolve and negotiate the effect of such deletion.

11.9 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

11.10 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by County and CDRA, County and CDRA agree to perform, execute and deliver or cause to be performed, executed, and delivered at the Closing or after the Closing any and all such further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

11.11 Survival. All indemnities, covenants, representations and warranties contained herein shall survive the termination of this Agreement, Closing, the delivery of the County Deed, the delivery of the Special Warranty Deed, the acquisition of the Lot by County, and the acquisition of the Property by CDRA.

11.12 Conflict of Interests. No member, official or employee of County or CDRA shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

11.13 Warranty Against Payment of Consideration for Agreement. The Parties warrant they have not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

11.14 Non-liability of Officials and Employees. No member, official or employee of either Party shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach or for any amount which may become due to the or successor or on any obligation under the terms of this Agreement.

EXECUTED as of the 18th day of December, 2018.



Approved as to form:

Neal Jeddles

COUNTY:

DAVIS COUNTY

By: Randy Elmore
Chairperson
Davis County Board of County Commissioners

ATTEST:

Curtis Koch
Curtis Koch
Davis County Clerk/Auditor

CDRA:



By: Kent Bush
Kent Bush
Chairperson

ATTEST:

By: Wendy Page
Wendy Page
Deputy Recorder

Approved as to form:

[Signature]

FIRST AMENDMENT TO THE LIBRARY LEASE AGREEMENT

Between

Davis County

and

Clearfield Community Development and Renewal Agency

This First Amendment to the Library Lease Agreement ("First Amendment") is made and entered into by and between Clearfield Community Development and Renewal Agency, a public entity, ("CDRA"), located at 55 South State Street, Clearfield, State of Utah, hereinafter referred to as "Lessor," and Davis County, a public County located at 61 South Main, Farmington, State of Utah, hereinafter referred to as "Lessee," collectively referred to as the "Parties," agree as follows:

WHEREAS, the Parties entered into a Library Lease Agreement December 11, 2018 ("Original Agreement"). See Exhibit A.

WHEREAS, paragraph 22 of the Original Agreement states that "no amendment of this Lease shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original."

WHEREAS, the Parties desire to amend the Original Agreement pursuant to paragraph 22 to change the term of the lease outlined in paragraph 3 of the Original Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations contained herein, the Parties hereto agree as follows:

AGREEMENT

(1) Recitals. The foregoing recitals are incorporated and made an integral part of this First Amendment by this reference.

(2) Amended Language. Pursuant to paragraph 22 of the Original Agreement, the Parties agree in writing to amend the Original Agreement as follows:

1. Strike the following language from paragraph 2 of the Original Agreement,

~~Lessee shall complete demolition and environmental remediation of Premises, as described in the Purchase and Sale Agreement dated 12/11/18, within 12 months from the date that the new library to be constructed at 1 North Main Street receives certificate of occupancy.~~

2. Strike paragraph 3 of the Original Agreement,

~~**3. TERM OF LEASE:** The term of this Lease shall expire at the earlier of a) exactly one year from the date the new library to be constructed at 1 North Main Street receives certificate of occupancy, or b) the date that demolition and environmental remediation is complete, with formal acceptance of such by the CDRA Board.~~

3. Replace paragraph 3 of the Original Agreement with,

3. TERM OF LEASE: The term of Lease shall expire on March 31, 2022.

- (3) Original Agreement. Except for the changes reflected in paragraph 2 above, all other terms and conditions within the Original Agreement shall remain in place and applicable to the Parties.
- (4) Binding Effect. The provisions of this First Amendment shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- (5) Severability. If any part or provision of this First Amendment shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this First Amendment except that condition, covenant, or other provision of this First Amendment shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- (6) Miscellaneous.
 - a. Legal Fees. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this First Amendment or in pursuing any remedy provided hereunder or any applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.
 - b. Survival. It is expressly agreed that the terms, covenants and conditions of this First Amendment shall survive any legal act or conveyance required under this First Amendment.
 - c. Headings. The section and other headings contained in this First Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this First Amendment.

EXECUTED as of the ____ day of _____, 2021.

COUNTY:

DAVIS COUNTY

By _____
Chairperson
Davis County Board of County Commissioners

Approved as to form:

ATTEST:

Curtis Koch
Davis County Clerk/Auditor

CDRA:

By _____
Nike Peterson
Chairperson

Approved as to form:

ATTEST:

Nancy Dean
City Recorder

EXHIBIT A

**LIBRARY LEASE AGREEMENT
December 11, 2018 - Fully Executed**

RETURNED LIBRARY LEASE AGREEMENT

NOV 12 2019

12-004-0153

Between

Davis County

and

Clearfield Community Development and Renewal Agency

E 3202951 B 7387 P 2506-2513
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/12/2019 03:43 PM
FEE \$0.00 Pgs: 8
DEP RT REC'D FOR DAVIS COUNTY

This Lease Agreement made the 11th day of December, 2018, by and between the Clearfield Community Development and Renewal Agency ("CDRA"), located at 55 South State Street, Clearfield, State of Utah, hereinafter referred to as "Lessor," and Davis County, a public County, located at 61 South Main, Farmington, State of Utah, hereinafter referred to as "Lessee," collectively referred to herein as the "Parties," agree as follows:

1. **DESCRIPTION OF LEASED PREMISES:** The Lessor agrees to lease to the Lessee the Property, as defined in the Purchase and Sale Agreement entered into between the Parties, as that certain real property described with a legal description on Exhibit "A" attached hereto and incorporated herein by reference, located at 562 South 1000 East, Clearfield, Utah.

Additional Description: The term Property shall include, but is not limited to the existing building, parking lot, improvements, and all land located at 562 South 1000 East, Clearfield, Utah.

Hereinafter known as the "Premises."

2. **USE OF LEASED PREMISES:** The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the following use and purpose:

Lessee shall continue to provide library services in a manner consistent with those services previously provided by the Lessee at this location.

Lessee shall discontinue library services within one month from the date that the new library to be constructed at 1 North Main Street receives certificate of occupancy.

Lessee shall also complete demolition and environmental remediation of the Premises, as described in the Purchase and Sale Agreement dated 12/11/10, within 12 months from the date that the new library to be constructed at 1 North Main Street receives certificate of occupancy.

Any change in use or purpose to the Premises other than as described above shall be upon prior written consent of Lessor only.

3. **TERM OF LEASE:** The term of this Lease shall expire at the earlier of a) exactly one year from the date that the new library to be constructed at 1 North Main Street receives certificate of occupancy, or b) the date that demolition and environmental

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2018-610

remediation is completed, with formal acceptance of such by the CDRA Board.

4. **BASE RENT:** The net payment shall be one-dollar (\$1.00), payable once for the entire term, due within 1 month from the commencement of the Lease. Said net payment is hereafter referred to as the "Base Rent."

5. **OPTION TO RENEW:** There is no automatic option to renew this lease. Any additional lease agreement between Lessee and Lessor must be entered in writing between the Parties.

6. **TRIPLE NET (NNN):** It is the intention of the Parties that this Lease shall be considered a "Triple Net Lease."

I. **Operating Expenses.** The Lessor shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations or costs of any kind whatsoever with respect to the Premises. The Lessee hereby agrees to provide for itself and/or pay one-hundred percent (100%) of any and all Operating Expenses as hereafter defined for the entire term of the Lease and any extensions thereof in accordance with specific provisions hereinafter set forth. The term "Operating Expenses" shall include all costs to the Lessor of operating and maintaining the Premises, and shall include, without limitation, real estate and personal property taxes and assessments, management fee(s), heating, air conditioning, HVAC, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, restriping, repairs, repaving, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating costs of operating and maintaining the Premises and related parking areas, unless expressly excluded from operating expenses.

II. **Insurance.** Lessee shall maintain, at all times during the Term of this Lease, comprehensive general liability coverage that is satisfactory to Lessor. During the Term of this Lease, Lessee shall, upon request, certify to Lessor the limits of indemnification available under Lessee's self-insurance plan.

7. **SECURITY DEPOSIT:** There shall be no security deposit made by Lessee to Lessor.

8. **LEASEHOLD IMPROVEMENTS:** The Lessee agrees that no leasehold improvements, alterations or changes of any nature shall be made to the leasehold premises or the exterior of the building without first obtaining the consent of the Lessor in writing, which consent shall not be unreasonably withheld, if determined by Lessor that said improvements, alterations or changes are necessary to continue to provide library services in a manner consistent with those services previously provided by the Lessee at this location. Furthermore, any leasehold improvements shall be made only in accordance with applicable federal, state or local codes, ordinances or regulations, having due regard for the type of construction of the building housing the subject leasehold Premises. If the Lessee makes any improvements to the Premises the Lessee shall be responsible payment.

9. **LICENSES AND PERMITS:** A copy of any and all local, state or federal permits acquired by the Lessee which are required for the use of the Premises shall be kept on site at all times and shall be readily accessible and produced to the Lessor and/or their agents or any local, state, or federal officials upon demand.

10. **OBLIGATIONS OF LESSEE:** The Lessee shall be solely responsible whenever needed for the maintenance and general upkeep of the entranceway leading into the Premises, so that this is kept in a neat, safe and presentable condition. The Lessee shall also be responsible for all repairs and maintenance of the leasehold Premises, particularly those items which need immediate attention and which the Lessees, or their employees, can do and perform on their own, including but not limited to, the replacement of light bulbs, as well as the normal repair and cleaning of windows, cleaning and clearing of toilets, etc., and the Lessee shall properly maintain the Premises in a good, safe, and clean condition. The Lessee shall properly and promptly remove all rubbish and hazardous wastes and see that the same are properly disposed of according to all local, state or federal laws, rules regulations or ordinances.

In the event the structure of the Premises is damaged as a result of any neglect or negligence of Lessee, their employees, agents, business invitees, or any independent contractors serving the Lessee or in any way as a result of Lessee's use and occupancy of the Premises, then the Lessee shall be responsible for seeing that the proper claims are placed with the Lessee's insurance company, or the damaging party's insurance company, and shall furthermore be responsible for seeing that the building is safeguarded with respect to said damage and that all proper notices with respect to said damage, are made in a timely fashion, including notice to the Lessor, and the party or parties causing said damage. Any damage that is not covered by an insurance company will be the liability of the Lessee. Lessee agrees that Lessor is not responsible for any liability arising at the Premises during the terms of this lease.

The Lessee shall, during the term of this Lease, at its sole expense, keep the interior of the Premises in as good a condition and repair as it is at the date of this Lease, reasonable wear and use excepted. This obligation would include the obligation to replace any plate glass damaged as a result of the neglect or acts of Lessee or her guests or invitees. Furthermore, the Lessee shall not knowingly commit nor permit to be committed any act or thing contrary to the rules and regulations prescribed from time to time by any federal, state or local authorities and shall expressly not be allowed to keep or maintain any hazardous waste materials or contaminates on the Premises. Lessee shall also be responsible for the cost, if any, which would be incurred to bring the contemplated operation and business activity into compliance with any law or regulation of a federal, state or local authority.

11. **INSURANCE:** In the event the Lessee shall fail to obtain insurance coverage required hereunder and fails to maintain the same in force continuously during the term, Lessor may, but shall not be required to, obtain the same and charge the Lessee for same as additional rent. Furthermore, Lessee agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy, and in the

event the insurance rates applicable to fire and extended coverage covering the Premises shall be increased by reason of any use of the Premises made by Lessee, then Lessee shall pay to Lessor, upon demand, such increase in insurance premium as shall be caused by said use or Lessee's proportionate share of any such increase.

12. SUBLET/ASSIGNMENT: The Lessee may not transfer or assign this Lease, or any right or interest hereunder or sublet said leased Premises or any part thereof without first obtaining the prior written consent and approval of the Lessor.

13. DAMAGE TO LEASED PREMISES: In the event the building on the Premises shall be destroyed or damaged as a result of any fire or other casualty which is not the result of the intentional acts or neglect of Lessee and which precludes or adversely affects the Lessee's occupancy of the Premises, then in every such cause, the rent herein set forth shall be abated or adjusted according to the extent to which the leased Premises have been rendered unfit for use and occupation by the Lessee. It is understood, in the event of total or substantial destruction to the Premises that in no event shall Lessor have the obligation to restore, replace or engage in the reconstruction with respect to said damage.

14. ENFORCEMENT:

In the event any legal action has to be instituted to enforce any terms or provisions under this Lease, then the prevailing party in said action shall be entitled to recover a reasonable attorney's fee in addition to all costs of said action.

15. INDEMNIFICATION: The Lessee hereby covenants and agrees to indemnify, defend and hold the Lessor harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Lessee's use and occupancy of the Premises, and further shall indemnify the Lessor for any losses which the Lessor may suffer in connection with the Lessee's use and occupancy or care, custody and control of the Premises. Lessee is a governmental entity under the Utah Governmental Immunity Act of the Utah Code, Section 63G-7-101 et seq. 1953 (as amended) (hereinafter the "Act"). Nothing in this Agreement shall be construed to be a waiver by Lessee of any of the protections, rights, or defenses applicable under the Act.

16. MISCELLANEOUS TERMS:

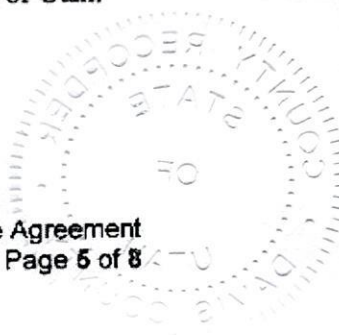
- I. **Usage by Lessee:** Lessee shall comply with all rules, regulations and laws of any governmental authority with respect to use and occupancy. Lessee shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules or regulations and requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Lessee allow the Premises to be used in any way which will invalidate or be in conflict with any insurance policies applicable to the building. In no event shall explosives or extra hazardous materials be taken onto or retained on the Premises. Furthermore, Lessee shall not install or use any equipment that will cause undue interference with the peaceable and quiet enjoyment of the Premises by other tenants of the building.

- II. **Signs:** Lessee shall not place on any exterior door, wall or window of the Premises any sign or advertising in a manner not consistent with the library services previously provided by the Lessee at this location without Lessor's prior written consent. Thereafter, Lessee agrees to maintain such sign or advertising matter as first approved by Lessor in good condition and repair. Furthermore, Lessee shall conform to any uniform reasonable sign plan or policy that the Lessor may introduce with respect to the building.
- III. **Pets:** Unless otherwise stated in this Lease Agreement, the only pets that shall be allowed on the Premises are those needed legally allowed by accessibility standards.
- IV. **Condition of Premises/Inspection by Lessee:** The Lessee has had the opportunity to inspect the Premises and acknowledges with its signature on this lease that the Premises are in good condition and comply in all respects with the requirements of this Lease. Furthermore, the Lessor makes no representation or warranty with respect to the condition of the Premises or its fitness or availability for any particular use, and the Lessor shall not be liable for any latent or patent defect therein. Furthermore, the Lessee represents that Lessee has inspected the Premises and is leasing and will take possession of the Premises with all current fixtures present in their "as is" condition as of the date hereof.
17. **ESTOPPEL CERTIFICATE:** Lessee at any time and from time to time, upon at least ten (10) days prior notice by Lessor, shall execute, acknowledge and deliver to Lessor, and/or to any other person, firm or corporation specified by Lessor, a statement certifying that the Lease is unmodified and in full force and effect, or if the Lease has been modified, then that the same is in full force and effect except as modified and stating the modifications, stating the dates to which the fixed rent and additional rent have been paid, and stating whether or not there exists any default by Lessor under this Lease and, if so, specifying each such default.
18. **HOLDOVER:** Should Lessee remain in possession of the Premises after the cancellation, expiration or sooner termination of the Lease, or any renewal thereof, without the execution of a new Lease or addendum, such holding over in the absence of a written agreement to the contrary shall be deemed, if Lessor so elects, to have created and be construed to be a tenancy from month to month, at a rate of one-dollar (\$1.00) per month, terminable upon thirty (30) days' notice by either party.
19. **WAIVER:** Waiver by Lessor of a default under this Lease shall not constitute a waiver of a subsequent default of any nature.
20. **GOVERNING LAW:** This Lease shall be governed by the laws of the State of Utah.
21. **NOTICES:** Payments and notices shall be addressed to the following:

Lessor

To CDRA: Clearfield CDRA

Library Lease Agreement
Page 5 of 8



Attn: City Manager / CDRA Executive Director
55 South State Street
Clearfield, UT 84015

with copies to: Clearfield City
Attn: City Recorder
55 South State Street
Clearfield, UT 84015

Lessee

To County: Davis County Library
61 South Main, PO Box 618
Farmington, Utah 84025
Attn: Chris Safford

with copies to: Davis County Facilities Management
Attn: Mack McDonald
28 East State Street, PO Box 618
Farmington, Utah 84025

22. **AMENDMENT:** No amendment of this Lease shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original.

23. **BINDING EFFECT:** This Lease and any amendments thereto shall be binding upon the Lessor and the Lessees and/or their respective successors, heirs, assigns, executors and administrators.



IN WITNESS WHEREOF, the parties hereto execute the Library Lease Agreement this 11th day of December, 2018.

Lessee's Signature

Kandy B. Elliott

Printed Name

Kandy B. Elliott

Lessor's Signature

Kent Bush
Attest: Granny B. Dean
City Recorder

Printed Name

Kent Bush

ATTEST

Curtis Koch
Curtis Koch
Davis County Clerk/Auditor

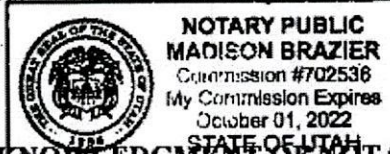


ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF UTAH

Davis County, ss.

On this 14 day of December, 2018, before me appeared Kent Bush, as LESSOR of this Library Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



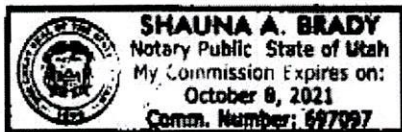
Madison Brazier
Notary Public
My commission expires: 10/1/22

ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF UTAH

Davis County, ss.

On this 15th day of December, 2018, before me appeared Randy B. Elliott, as LESSEE of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.



Shauna A. Brady
Notary Public
My commission expires: Oct 8 2021

Exhibit "A"

LEGAL DESCRIPTION:

BEG AT APT N ALG TH SEC LN 532 FT FR SE COR OF SEC 1, T4N-R2W; SLM: TH S $89^{\circ}50'$ W 229.5 FT; TH W'LY 59.9 FT ALG THE ARC OF A 424.29 FT RAD CUR TO THE LEFT; TH S $81^{\circ}44'40''$ W 11.21 FT; TH W'LY 29.9 FT ALG THE ARC OF A 421.53 FT RAD CUR TO THE RIGHT; TH N 9.28 FT PARALLELING E SEC LN OF SEC 1; TH S $89^{\circ}53'10''$ W 27 FT ALG N LN OF CHURCH PPTY; TH N 353.37 FT TO S LN OF A 50 FT ROAD; TH ALG ARC OF A 524.24 FT RAD CUR TO RIGHT 234.80 FT, SD CUR HAS A CENTRAL ANGLE OF $25^{\circ}39'45''$ & A LONG CHORD BEARS S $87^{\circ}14'52''$ E 232.85 FT; TH S $74^{\circ}25'$ E 54.61 FT; TH S $27^{\circ}58'$ E 82.78 FT; TH E 33 FT TO SEC LN; TH S ALG SEC LN 253.72 FT TO POB. CONT 2.768 AC. LESS TO 600 SOUTH STR TOTAL 2.279 ACRES



STATE OF UTAH)
COUNTY OF DAVIS) ss.

I, THE UNDERSIGNED, RECORDER OF DAVIS COUNTY, UTAH, DO
HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND
FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH
RECORDER.

WITNESS MY HAND AND SEAL OF SAID OFFICE

THIS 18th DAY OF November, 20 19
RICHARD T. MAUGHAN, RECORDER

Janet Wright DEPUTY

Consists of pages 2506 thru
2513

TERMINATION OF FIRST RIGHT OF REFUSAL FOR THE SALE AND PURCHASE OR LEASE OF REAL
PROPERTY

Under date of November 5, 2018, Clearfield Junction, LLC, a Utah limited liability company was granted a First Right of Refusal for the Sale and Purchase or Lease of Real Property which was recorded on December 17, 2018 as Entry Number 3134407 in Book 7161 at Page 1207 of official Records in the Davis County Recorder's office.

RETURNED
NOV 12 2019

Said property being more particularly described as follows:

All of Lot 3, CLEARFIELD JUNCTION SUBDIVISION, Clearfield City, Davis County, Utah, according to the official plat thereof. 12-930-0003.

This document shall serve as official notice that Clearfield Junction, LLC, a Utah limited liability company hereby terminates its interest in the First Right of Refusal for the Sale and Purchase or Lease of Real Property and the undersigned further relinquishes all right, title and interest in the above described property as referred to in the above described document.

Dated this 25 day of OCTOBER ~~September~~, 2019

Clearfield Junction, LLC, a Utah limited liability company

E 3202948 B 7387 P 2485
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/12/2019 03:40 PM
FEE \$0.00 Pgs: 1
DEP RT REC'D FOR DAVIS COUNTY

By: DONOVAN GILLILAND
Its: MANAGER

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF Davis)

On the 25 day of OCTOBER ~~September~~, 2019, before me ANTHONY O. THOMPSON, the undersigned Notary Public, personally appeared DONOVAN GILLILAND, known to me to be the member(s) or designated agents of the limited liability company that executed the above and acknowledged to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and an oath stated that they are authorized to execute said instrument freely and voluntarily for the purposes and use herein mentioned on behalf of the limited liability company.

Anthony O. Thompson
NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____



2018-609



STATE OF UTAH)
COUNTY OF DAVIS) ss.

I, THE UNDERSIGNED, RECORDER OF DAVIS COUNTY, UTAH, DO
HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND
FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH
RECORDER.

WITNESS MY HAND AND SEAL OF SAID OFFICE

THIS 18th DAY OF November, 2019
RICHARD T. MAUGHAN, RECORDER

Jane Wright DEPUTY
1 page

NATIONS FOR CHRIST CHURCH

295e 200s Clearfield Utah

Date. : June 9, 2021

Subject: Offer for this property, 562S 1000E #A, Clearfield UT 84015
Davis County Library North Branch

To : Clearfield City Mayor, MARK SHEPHERD and
Clearfield City Council
C/O Clearfield City Manager, JJ Allen

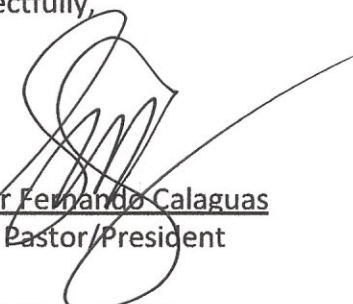
I, Fernando Calaguas, Head Pastor and President of Nations for Christ Church would like to express my utmost appreciation for your time and consideration for my request to possibly procure the above mentioned property. The place suits perfectly as we continue to serve our community.

The Church is offering \$600,000 for the property. I am willing to negotiate for what the entire City Council would agree on and I understand other terms and conditions will follow after the agreement is made.

I am willing to put any earnest money to show my commitment.

God bless you for what you all do for our beloved City of Clearfield.

Respectfully,



Pastor Fernando Calaguas
Head Pastor/President

Tel # 801 309 0478

Date : June 9, 2021

RECEIVED BY: Marnie GinklesDATE/TIME: 7-9-21 3:15pm

**ADDENDUM NO. 1
TO
REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ☐ **ADDENDUM** ☒ **COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of June 9, 2021, including all prior addenda and counteroffers, between Nations for Christ Church as Buyer, and Clearfield CDRA as Seller, regarding the Property located at 562 South 1000 East, Clearfield, UT 84015 - Tax ID# 12-004-0153. The following terms are hereby incorporated as part of the REPC:

1. Purchase price shall be \$700,000.00.
2. Sale contingent on formal approval by the Board of Directors of the Clearfield CDRA.
3. Sale contingent on amendment of the existing agreement that requires Davis County to demolish the building (removing that requirement).
4. Earnest money of \$5,000.00 shall be due upon mutual acceptance of this Real Estate Purchase Contract, and deposited with Founders Title - 748 Heritage Park Blvd #202, Layton, UT 84041.
5. Property is sold "as-is" with no warranty as to its condition, and Buyer's obligation to purchase the Property is NOT conditioned upon Buyer's due diligence.
6. Settlement shall occur no later than 60 days after the property is vacated by the Davis County Library North Branch.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☐ Seller ☒ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time on Monday, July 12, 2021 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

[Signature] 7/7/21 4:00pm
☐ Buyer ☒ Seller Signature (Date) (Time) ☐ Buyer ☐ Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ **ACCEPTANCE:** ☐ Seller ☒ Buyer hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

[Signature] 7/8/21 1:30pm
 (Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)