



## CITY COUNCIL ACTION FORM

| DEPARTMENT           | PRESENTED BY                                | DATE             |
|----------------------|---|------------------|
| Parks and Recreation | Diesel Post - Parks and Recreation Director | December 7, 2021 |

### **ITEM**

Consent Agenda

Council Action: Approve lease for FIBArk boathouse building

### **BACKGROUND**

Currently, the Department of Parks and Recreation occupies 2 offices in the Touber building. As the City population grows, the City administration organization grows. At this point the Department of Parks and Recreation needs a headquarters and office space. FIBArk and the Department of P&R are critical partners in offering the FIBArk festival, youth paddling programs and other water sport events throughout the year. During meetings with FIBArk the idea of P&R using the FIBArk building for administration space was brought up and explored. Both organizations feel that this use mirrors each organization's mission and would bring life to the building as staff and the community come and go for business and to sign up for recreation programs.

### **FISCAL NOTE**

|  |                |
|--|----------------|
| Monthly rent   | \$2400         |
| <u>Sublease offset</u>                                       | <u>-\$1058</u> |
| Monthly total  | \$1342         |
| Maintenance and one-time costs approx.                       | \$30000        |
| (Upgrading sewer, fixing deck, retro fitting interior, etc.) |                |

### **STAFF RECOMMENDATION**

To approve entering in a lease agreement with the FIBArk organization for an annual lease of the FIBArk boathouse building.

### **SUGGESTED MOTION**

A Council person should move to "combine and approve the items on the consent agenda."

## LEASE

This Lease is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between FIBArk Community Paddling Center ("Landlord") and the City of Salida, Colorado ("Tenant").

## BACKGROUND

Landlord is the owner of the following real property: the building located at 240 North F Street, Salida, Colorado; and Landlord desires to lease to Tenant and Tenant desires to lease from Landlord for purposes of City of Salida Parks and Recreation Department administration and programming, space located within the real property, as described more fully below, subject to the terms and conditions contained in this Lease.

## AGREEMENT

In consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the real property consisting of the building at 240 North F Street, Salida, Colorado, subject to all easements, reservations and restrictions of record, including all city, county, state and federal zoning laws and other use regulations (the "Premises"). The Premises are rented AS IS. Landlord shall furnish Tenant, free of charge, with two (2) keys or the applicable codes for each necessary corridor door entering the Premises. Additional keys will be furnished at a charge by Landlord equal to the cost plus 15% on an order signed by Tenant. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises, and Tenant shall not make, or permit to be made, any duplicate keys, except those furnished by Landlord. Upon termination of this Lease, Tenant shall surrender to Landlord all keys to the Premises.
2. Term. The term of the Lease and Tenant's obligation to pay rent is for twelve (12) months beginning on January 1, 2022 and expiring on December 31, 2022, unless terminated sooner as provided in the Lease.
3. Option to Renew. At the end of the Term as described above, should Tenant remain in whole or partial possession of the Premises for any reason, this Lease will renew on a month-to-month basis unless otherwise agreed-upon. Tenant shall be required to provide Landlord thirty (30) days' written notice that Tenant is vacating the Premises either at the end of the Lease Term or during any extension thereafter.
4. Rent. During the term of the Lease, Tenant shall pay to Landlord rent as follows:
  - a. **Starting on December 1, 2021 and on or before the 1st day of each month thereafter, Tenant shall owe to Landlord monthly rent of \$2,400.00**, for a total obligation of \$28,800.00 over the specified term of the Lease.
  - b. Rent shall be considered late and a default shall enter if rent is not received by the close of business (5:00pm MT) on the 6th calendar day of the month. Any late rent payment or amount

due under this Lease shall bear interest at six percent (6%) per annum from the due date until paid in full.

5. Lease Break Fee. In the event Tenant fails to fulfill the Lease Term, Tenant shall pay to Landlord an additional fee equivalent to one (1) month's rent. This fee is incurred for work taken on by Landlord in finding a new tenant for the unit. The Lease Break Fee shall be paid at the time the Lease is broken and shall be in addition to the security deposit. Additionally, Tenant shall be responsible for any other charges and/or damages to which Landlord may be entitled pursuant to this Lease or applicable law. In the event of a lease break, Tenant shall be responsible for paying the monthly rental rate until the property is rented or until the Lease Term expires, whichever is sooner.

6. Smoke Detectors. **TENANT WAIVES ANY DUTY OF LANDLORD TO INSPECT AND REPAIR SMOKE DETECTORS LOCATED ON THE PREMISES.**

7. Quiet Enjoyment. Landlord covenants that on paying the rent and performing the covenants herein contained, Tenant shall peacefully and quietly have, hold, and enjoy the demised premises for the agreed term.

8. Use. Tenant shall only use the Premises for the purpose of administration and programming for City of Salida Parks and Recreation operations, and related services. Such services shall be consistent with all applicable laws, codes, ordinances, orders, restrictions and other regulations, including, but not limited to, city, county, state and federal laws and regulations. Tenant shall comply with all laws, ordinances, rules, and orders of appropriate governmental authorities affecting the operation and occupancy of the Premises. Tenant shall not keep or have on the Premises anything of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

9. Hours of Operation and Non-Exclusive Use. Tenant shall not conduct business in or on the Premises between the hours of 6:00 P.M. and 6:00 A.M. (mountain time) without the written consent of Landlord. Tenant acknowledges that Landlord retains the right to and in fact intends to use, at times undisclosed to Tenant, the Premises for its routine meetings and programming, and to administer youth paddling events held in the Salida Whitewater Park. Tenant understands that Tenant's use of the Premises as described herein is not intended to be exclusive. Tenant shall not have access to the basement without written consent of Landlord.

10. Condition of the Premises. Tenant acknowledges that it has examined and knows the condition of the Premises. Landlord has made no representations or warranties as to the condition or repair of the Premises or its suitability for Tenant's operations, and Tenant accepts the same in an "AS IS" condition. Tenant understands that the Premises may not currently be compliant with the most current requirements of the Americans with Disabilities Act ("ADA"). Landlord shall not be responsible for the cost of any necessary updates to the Premises to make it ADA-compliant. Should any ADA-compliance-related improvements be necessary on the Premises within the Term of this Lease, Tenant shall be responsible for paying for such improvements. Tenant further agrees that Landlord shall not be responsible for any latent defect or change of condition in the Premises, and the rent hereunder shall in no case be withheld or diminished on account of any defect, change in condition or damage to the Premises unless otherwise expressly provided by law. Upon vacation by the Tenant, Tenant shall ensure

the Premises is in clean condition. Should the Premises not be left in clean condition, Landlord shall be entitled to have the Premises professionally cleaned at Tenant's expense.

Tenant is aware that the plumbing system in the Premises is currently inoperable and that Landlord makes no representations or guarantees that the plumbing will be operable at any time during the Term of this Lease. Tenant has represented that working plumbing is not a necessary fixture to achieve their purpose, and thus Tenant waives any expectation or requirement that Landlord provide working plumbing in the Premises.

11. Licenses, Taxes and Ordinances. Except for property taxes relating to the Premises (other than possessory interest taxes), Tenant shall be responsible for and promptly pay to the proper authorities when due, all applicable licenses and taxes, including, without limitation all unemployment, social security, Medicare, federal, state and local taxes (including possessory interests, if any), assessments, installments of assessments and public charges, both general and special, and occupational licenses accruing during the lease term against the Tenant or its operations. Tenant is responsible for compliance with all city, state and federal ordinances in connection with the conduct of its services and the Premises.

12. Utilities. Landlord will pay utility charges attributable to the Premises, including, and limited to charges for water, heat, electricity, sewage, waste and trash removal. Tenant shall bear the cost of any high consumption electrical machines, including air conditioners and other high or unusual electrical usages.

13. Alterations and Improvements. Tenant shall not make or permit any alterations, additions or improvements to or of any part of the Premises without the written consent of Landlord. Any alterations, additions or improvements to or of said Premises, excepting movable furniture and equipment, whether or not consented to by Landlord, shall on the expiration of the lease term become a part of the realty and belong to Landlord and shall be surrendered with the Premises. This includes specifically but is not limited to window shades, blinds, light fixtures, traverse and curtain rods, locks, towel bars, racks, attached floor covering (including wall-to-wall carpeting), built-in cases and cabinets and equipment or fixtures of a similar nature. If Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the Term, Tenant shall, upon written demand by Landlord given at least sixty days prior to the end of the lease term, at Tenant's sole cost and expense, forthwith and with all due diligence remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, at its sole cost and expense, repair any damage to the Premises caused by such removal.

Tenant shall obtain all certificates, permits, licenses and other authorizations of governmental bodies or authorities which are necessary to permit the construction of the improvements on the demised premises and shall keep the same in full force and effect at Tenant's cost.

Tenant shall negotiate, let, and supervise all contracts for the furnishing of services, labor, and materials for the construction of the improvements on the demised premises at its cost. All such contracts shall require the contractor to guarantee performance and all workmanship and materials installed by it for a period of one year following the date of completion of construction. It is Tenants responsibility to advise the contracted party of this provision prior to any work being commenced on the property.

Tenant shall cause all contracts to be fully and completely performed in a good and workman like manner, all to the effect that the improvements shall be fully and completely constructed and installed in accordance with good engineering and construction practice.

During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance in a sum equal, from time to time, to three times the amount expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Landlord.

Upon completion of construction, Tenant shall, at its cost, obtain an occupancy permit and all other permits or license necessary for the occupancy of the improvements and the operation of the same as set out herein and shall keep the same in force.

Should a lien be filed against the Premises or Landlord as a result of Tenant's lease or repairs, Tenant shall cause the lien to be released within 30 days either by payment, settlement, or bonding around the lien. If Tenant fails to have the lien released in 30 days, Tenant shall be in default of the Lease and Landlord may post and charge the premium to Tenant as additional rent. Tenant shall hold harmless and indemnify Landlord, including for Landlord's attorneys' fees incurred in any lien collection process and foreclosure lawsuit or to remove any liens caused by the acts or omissions of Tenant.

All repairs, alterations or additions to said premises made during the term of this Lease shall be and become the property of Landlord and Landlord shall be under no obligation to reimburse Tenant for any sums of money so expended or for value realized in making repairs, alterations, improvements, or other remodeling of the interior or exterior of the Premises, except as agreed by Landlord in writing.

14. Maintenance and Repair. Responsibility to maintain the Premises in good order, condition, and repair are as follows:

**As to Landlord:** All of Landlord's personal property, exterior roof, exterior walls, foundations and structural portions of the Premises (excluding the plumbing, the condition of which has been outlined above). Electrical systems will be limited to any area outside the heated area of the leased premises.

**As to Tenant:** All of Tenant's trade fixtures and interior or exterior improvements and signage, floor coverings, interior surface of the ceilings, windows, doors, lights, skylights, interior walls, the interior surfaces of exterior walls, and to the extent located within the Premises - the plumbing fixtures, telecommunications equipment, network cabling, and lighting fixtures. Any items that are the responsibility of Landlord, but damaged by Tenant or Tenant's invitees or guests due to misuse or reckless or intentional acts or omissions, including to notify Landlord of any defect, damage or need for repair. Should any electrical work be necessary, the Tenant, at Tenant's expense, will pay for any electrical work located within the heated area of the leased premises.

In the event that repairs or replacements are needed to be made by Tenant, Tenant shall provide written notice to Landlord who first shall approve the manner of such repair, including the contractor and materials used. In the event of emergency repairs, Tenant shall provide immediate notice to Landlord

of the emergency. If Tenant authorizes emergency repairs without the pre-approval of Landlord, the repair and replacement of such repairs shall be at the expense of Tenant if such repairs are incongruous and non-conforming to the mechanic's and aesthetics of the Premises.

Landlord provides no security against criminal conduct for the Premises, or Tenant, Tenant's guests, invitees, and licensees. Tenant may install a security system on the Premises at Tenant's sole cost and liability. Landlord will not be required to maintain such system and its functionality and usefulness will be solely up to the Tenant. Should any damage, vandalism, and or theft occur on the Premises, it will be up to the Tenant to provide any relative details to any and all police departments and/or insurance companies.

All repairs, alteration or additions to said premises made during the term of this Lease shall be and become the property of Landlord and Landlord shall be under no obligation to reimburse Tenant for any sums of money so expended in making repairs; alteration or other remodeling of the interior or exterior of said premises shall not be made without consent of the Landlord being first obtained.

15. Indemnity. Landlord shall not be liable to Tenant or any other person for any damage from any cause whatsoever to any real or personal property, irrespective of its ownership, located in or about the Premises, or for any personal injury, damage or death suffered by any person whomsoever in or about the Premises. Tenant agrees to exercise all reasonable care and diligence in the occupation, use, repair and maintenance of the Premises, so as to avoid the causing of any injury or damage to any person or property. To the extent permissible by law, Tenant shall protect and indemnify Landlord and hold Landlord harmless from all claims, demands, damages and liability (including without limitation, attorneys' fees and expenses) to any and all persons arising from damage to property or personal injury occasioned to or sustained in or about the Premises.

16. Insurance.

a. Liability. Tenant shall at its sole cost and expense procure and maintain in force a policy of general public liability insurance insuring the Premises against loss or injury to any person or property arising from Tenant's use and/or occupancy of the Premises and any improvements thereon. Such insurance policy shall be issued by a company authorized to do business in Colorado and shall be in an amount not less than those limits of liability established from time to time for governmental entities under the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-114. Landlord, at Tenant's sole expense, shall be named insured or additional insured on all insurance policies required under this lease, and such insurance shall act as primary insurance with respect to all claims, injuries or casualties occurring on or to, or arising from, Tenant's occupancy and/or use of the Premises. Tenant shall promptly increase its coverage, if necessary, as required by law and Landlord's failure to inform Tenant of any increased coverage requirements shall not affect Tenant's obligation.

b. Peril. Tenant also shall at its sole cost and expense keep Tenant's personal property located on the Premises insured against loss or damage by reason of fire, vandalism and malicious mischief and such other risks as may be included in the standard form of fire and extended coverage insurance from time to time available in an amount equal to 100% of the replacement value thereof. (Landlord is not providing any insurance for damage or destruction of personal property on or contents of the Premises.) If the Premises are destroyed or substantially damaged by a casualty not covered by Landlord's

insurance, or the Premises are destroyed or rendered untenable to an extent in excess of 25% of the floor area by a casualty covered by Landlord's insurance, then Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Premises. Landlord shall give written notice to Tenant of such election within 60 days after the occurrence of such casualty. If Landlord elects to rebuild and repair, Landlord shall proceed to do so with reasonable diligence at its sole cost and expense. Landlord's obligation to rebuild and repair shall in any event be limited to restoring the Premises to substantially the condition which existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures and equipment installed by Tenant.

c. Certificates. Tenant shall annually furnish the Landlord with copies or company-issued certificates of insurance policies obtained by Tenant in compliance with this paragraph, and Tenant shall ensure that Landlord is notified in writing and at least thirty (30) days in advance of any amendment or cancellation of such policy or policies.

17. Remedies In Default. Upon the occurrence of any event of default, and (i) if such default is the failure to pay money due hereunder and the same is not paid within five days after notice thereof from Landlord to Tenant, or (ii) if such default is any event other than the nonpayment of money and the same is not cured within ten days after notice thereof from Landlord to Tenant, Landlord at its option may at any time terminate the Lease and Tenant's rights to possession of the Premises shall cease, and Landlord shall have the right to re-enter and take possession of the Premises, including all improvements. As an alternative remedy, Landlord may at its election, and without terminating the Lease, re-enter the Premises and take possession thereof and shall thereafter have the right to relet the Premises, or parts thereof, for such rental and upon such other terms and conditions as Landlord may deem advisable, with the right to make alterations and repairs to the Premises, and no such reentry or taking of possession shall be construed as an election on Landlord's part to terminate the Lease. In such event, Tenant shall continue to pay all sums due hereunder until the end of the lease term, whether or not the Premises have been relet, reduced by the net proceeds received by Landlord from the reletting of the Premises, after deducting all expenses incurred by Landlord, including all repossession costs, attorneys' fees, real estate commissions, alteration costs and other expenses incurred in preparation for reletting. The rights and remedies reserved by Landlord hereunder shall be construed as cumulative and as continuing rights. No right or remedy shall be exhausted by the exercise thereof or of another on one or more occasions.

18. Assignment and Subletting. Tenant shall neither voluntarily nor by operation of law assign, transfer, hypothecate or encumber the Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, and shall not permit any other person to occupy or use the Premises or any Portion thereof without the prior written consent of Landlord, and a consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person.

19. Subordination. Landlord shall have the right to sell, assign, transfer, convey, mortgage and/or pledge in whole or in part the Premises, the Lease and all rights existing and to exist hereunder. The Lease and the rights of the Tenant hereunder shall be subject and subordinate to all instruments executed and to be executed in connection with the exercise of such rights by Landlord, including without limitation the lien of any mortgage, deed of trust or security agreement now or hereafter placed upon the Premises.

20. Notices. All notices shall be in writing and shall be delivered personally, mailed by United States registered or certified mail (return receipt requested and postage prepaid), or sent by courier confirmed by receipt, addressed to the party at the addresses set forth below, or at such other address as the applicable party has designated to the other in accordance with this Section.

**If to Landlord:**

**FIBArk Community Paddling Center  
P.O. Box 762  
Salida, CO 81201**

**If to Tenant:**

**City of Salida  
448 East 1st Street  
Salida, CO 81201**

Notices shall be deemed to be given on the date of receipt, except that if delivery is refused, such notice shall be deemed given on the fifth day after it is sent.

21. Inspection. Landlord and persons authorized by Landlord shall have the right to enter and inspect the Premises at all reasonable times, and shall have the additional right, but not the obligation, to enter for the purpose of protecting their interest in the Premises, including making repairs, replacements and performing maintenance work. During the last 180 days prior to the expiration of the Lease, Landlord shall have the right to post "For Rent" signs, and at reasonable hours, to enter upon the Premises and exhibit the same to prospective Tenants.

22. Signs. Tenant shall not place upon nor permit to be placed upon any part of the Premises any signs, billboards or advertisements without the written consent of Landlord, except those already installed and in place.

23. Waiver. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of the Lease.

24. Prior and Subsequent Agreements. The Lease contains all of the agreements of the parties hereto with respect to any matter in connection with the lease of the Premises and Tenant's use of the Premises. No provision of the Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

25. Severability. Any provision of the Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed the Lease as of the date first appearing above.

{Signature Page follows}

Landlord:

FIBARK COMMUNITY PADDLING CENTER

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

FIBArk Community Paddling Center

Board of Directors

Tenant:

CITY OF SALIDA

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

Name:

Title: