

**Recording Requested By And When
Recorded Mail To:**

Truckee Library Joint Powers Authority
Nevada County Executive Office
950 Maidu Avenue
Nevada City, CA 95959
Attention: County Counsel

No Recording Fees – Gov't Code §27283

SPACE ABOVE FOR RECORDER'S USE

LEASE OPTION AGREEMENT

THIS LEASE OPTION AGREEMENT (hereafter "Option" or "Agreement") is entered into on the ____ day of October, 2024, by and between the Truckee Library Joint Powers Authority, ("JPA"), the Truckee Donner Public Utility District ("TDPUD"), and the Truckee-Donner Recreation and Park District ("TDRPD") for the future right to lease a three (3) acre +/- property located on Brockway Road, APN 019-450-076, Truckee, Nevada County, California and more particularly described in Exhibit A attached hereto ("Property").

WHEREAS, TDPUD owns the Property, and the Property is currently leased to the Truckee Donner Recreation and Park District ("TDRPD"); and

WHEREAS, JPA is in the process of evaluating the construction of a new public library ("Library") to be located on the Property; and

WHEREAS, JPA and TDPUD have a mutual interest in establishing the terms and conditions under which TDPUD would be willing to enter into a 99-year lease of the Property to JPA for purposes of constructing and operating the Library; and

WHEREAS, JPA and TDPUD recognize that it is not necessary or desirable for JPA to lease the Property from TDPUD until and unless it appears that JPA has secured significant funding for the Library and is committed to constructing the Library; and

WHEREAS, JPA and TDPUD wish to provide for an option for JPA to lease the Property, exercisable for a period of years as set forth herein and upon satisfaction of certain conditions as set forth herein ("Option"); and

WHEREAS, TDPUD is in the process of amending its lease with TDRPD to exclude the Property, which would allow the Property to be leased to JPA, and the parties wish to memorialize the intent of TDPUD and TDRPD to complete this amendment;

NOW, THEREFORE, IT IS AGREED by JPA, TDPUD, and TDRPD as follows:

1. **TERM**: The term of this Option shall be from the effective date noted above through

October 31, 2029 ("Option Term").

2. **OPTION PAYMENT:** Consideration for this Option to lease the Property shall be One Dollar (\$1.00).

3. **OPTION TO LEASE:** JPA may, prior to the expiration of the Option Term, notify TDPUD and TDRPD of its intent to enter into a lease agreement with TDPUD to lease the Property for a term of 99 years for a lease payment of One Dollar (\$1) per year and to thereafter construct and operate the Library on the Property. Notice to exercise this Option must be made in writing and delivered to TDPUD and TDRPD prior to the expiration of the Option Term. As a prerequisite to JPA's exercise of the Option, JPA shall provide documentation to TDPUD and TDRPD demonstrating that JPA has funds available comprising not less than fifty percent (50%) of the estimated cost of construction of the Library ("Funding Condition") and that the JPA is committed to move forward with constructing the Library. Such funds may comprise proceeds from the sale of bonds, other revenues committed to the Library by JPA members, funds held by (or pledged to in a written pledge agreement) the Friends of the Truckee Library or any similar or successor organization, and/or any other source of funding. If JPA shall timely exercise this Option: (i) TDPUD and TDRPD shall promptly and expeditiously work amend the lease to exclude the Property, (ii) JPA and TDPUD shall enter into good faith negotiations for a Lease Agreement, with the mutual goal and intent to enter into a Lease Agreement within 90 days of JPA's notice to TDPUD, that incorporates the terms of this Option as well as such other terms and conditions that are mutually agreeable; and (iii) JPA shall be responsible for preparation of a plat map and legal description of the Property, and preparation of a plat map and legal description of the remaining portion of the parcel of which the Property is a part. JPA acknowledges that TDPUD will require the Lease Agreement to: (i) call for JPA to construct the Library in accordance with a schedule of performance to be included in or attached to the Purchase Agreement, which shall allow for not less than five years from the effective date of the Lease Agreement for construction to be commenced; and (ii) include the right for TDPUD to terminate the Lease Agreement and this Agreement, if it is still in effect, if construction of the Library has not commenced within such time. TDPUD acknowledges that although certain terms and conditions of the Lease Agreement shall be subject to negotiation, the term, lease price, and use of the Property, shall be as set forth herein. The Lease Agreement shall provide for the provision of insurance or self-insurance by JPA in scope and amounts acceptable to TDPUD in connection with the construction and operation of the Library. The Lease Agreement shall contain defense and indemnity obligations for JPA acceptable to and in favor of TDPUD in connection with the construction and operation of the Library. The Lease Agreement shall include terms and conditions that address liens, signage, operations, maintenance, utilities and services, taxes, assessments and possessory interests, destruction by fire or other casualty, sale, assignment and subleasing, events of default, remedies, dispute resolution, among others, as mutually agreed to by the parties. Neither TDPUD nor TDRPD shall require financial consideration or other consideration for consenting to the amendment of the TDPUD/TDRPD lease to exclude the Property.

4. **USE OF THE PROPERTY:** The Lease Agreement shall provide that JPA shall use the Property only for construction and operation of the Library, including ancillary facilities such as one or more parking lots. The Lease Agreement shall further provide that JPA shall be solely responsible for the construction and operation of the Library and the maintenance and repair of the Property and all facilities constructed thereon. All other uses are prohibited. TDPUD shall not be responsible for any costs incurred in connection with the development of the Property or the operation, maintenance, or repair of any facilities or improvements constructed by JPA. The Lease Agreement shall further provide that JPA shall obtain TDPUD approval prior to commencement of construction of improvements on the Property, provided that such approval shall not be unreasonably withheld, conditioned, or delayed if the improvements comprise the Library and/or related facilities

such as parking lots.

5. **LIENS**: JPA covenants not to allow any liens or encumbrance to attach to the Property during the Option Term. If any are made or attached against the Property due to JPA's investigation or due diligence efforts, TDPUD may revoke this Option, and JPA agrees to defend, indemnify, and save and hold TDPUD and TDRPD harmless from all costs or expenses incurred because of any such liens, levies or encumbrances, including but not limited to attorneys' fees, court costs, costs of suit, or otherwise. In the event any such liens, encumbrances, or otherwise are entered, made or levied against the Property, JPA will in a timely and reasonable manner contest or cause the removal of the same; and, if JPA fails to do so, TDPUD may do so and all such costs shall be the responsibility of JPA and recoverable by TDPUD.

6. **ACCESS**: Between the date of execution of this Option and entry into a Lease Agreement, JPA and its members, agents, contractors, subcontractors, and employees shall have the right to enter on the Property, at reasonable times during regular business hours and upon no less than 72 hours advance notice to TDPUD (and TDRPD, if the Property is still leased to TDRPD at the time of the planned entry upon the Property) to make any and all inspections and tests as may be necessary or desirable in JPA's discretion, including without limitation for the purposes of undertaking Library design, planning, and studies, but shall not have the right to make any physical modifications to the Property prior to the effective date of the Lease Agreement. Prior to entry onto the Property, JPA shall provide TDPUD (and TDRPD, if the Property is still leased to TDRPD immediately prior to the initial entry upon the Property by JPA or its members, agents, contractors, subcontractors and/or employees) with certificates of insurance and endorsements to policies evidencing insurance as required in Section 7 below. JPA shall restore the Property to its original condition or better following any entry. No destructive testing shall be performed. JPA shall provide a copy of all inspections, test results, inspection reports, and other reports and documents that describe the inspections, tests, and findings thereof at no cost to TDPUD, and to TDRPD if the Property is still leased to TDRPD at the time such inspections, results, reports and documents are received by JPA.

7. **INSURANCE AND INDEMNITY**:

(a) JPA shall indemnify, defend and hold TDPUD and the Property, and TDRPD, harmless from any and all claims, actions, damages and liabilities arising out of or resulting from the access, inspection, testing, and related activities of and on the Property by JPA or JPA's, consultants, contractors and agents in connection with such entry and/or activities upon or about the Property. JPA's indemnification and defense obligations shall survive any termination of this Option. .

(b) JPA and its consultants, contractors and agents shall maintain, at their expense: (a) commercial general liability insurance in the amounts of at least \$2,000,000 as single coverage and property damage insurance in the amount of at least \$1,000,000; (b) comprehensive automobile liability insurance in the amount of \$1,000,000 per accident for bodily injury and property damage, insuring against all liability, claims, damages, costs, demands, or losses arising out of or in connection with JPA's access, inspection, testing, and related activities of and on the Property; and (c) workers' compensation insurance as required by law.

(c) The commercial general liability and comprehensive automobile liability insurance policies shall be endorsed to name TDPUD and TDRPD, and their respective directors, officers, officials, employees, agents, and volunteers as additional insureds regarding liability arising out

of the access, inspection, testing, and related activities of and on the Property under this Agreement by JPA and its consultants, contractors and agents. JPA shall provide TDPUD and TDRPD with ISO CG 2010 endorsement forms or equivalent. The coverage shall contain no special limitations on the scope of protection afforded to TDPUD and TDRPD and their respective directors, officers, officials, employees, agents, and volunteers. The coverage shall be primary and shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. TDPUD's and TDRPD's insurance, if any, shall be excess and shall not contribute with the insurance required in this Section.

(d) JPA may satisfy its insurance requirements with self-insurance and/or insurance. The insurance required by this Agreement is to be placed with insurers admitted to transact business in the State of California. Prior to entering the Property or performing any inspection, testing, or related activities under this Agreement, JPA shall provide to TDPUD, and TDRPD if the Property is still leased to TDRPD at that time, original endorsements evidencing the insurance required by this Section signed by persons authorized to bind coverage on behalf of the insurers. The certificates and policies shall provide that 30 days' written notice of any material change, reduction of coverage or cancellation of the insurance policies will be provided to TDPUD and to TDRPD.

8. **ATTORNEY'S FEES:** In the event of default or breach under this Option, the party found to be the defaulting party shall be responsible for and pay the non-defaulting party's reasonable attorney's fees, expenses, court costs, costs of suit and any other reasonable expenses incurred in the maintenance and enforcement of the terms of this Option.

9. **TERMINATION:** This Agreement may be terminated as hereinabove provided or by mutual written consent of the parties.

10. **NOTICE:** All notices, statements, reports, inspections., approvals, or requests or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States post office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown below:

Truckee Donner Public Utility District
11570 Donner Pass Road
Truckee, CA 96161
Attn: General Manager

Truckee-Donner Recreation and Park District
10981 Truckee Way
Truckee, CA 96161
Attn: General Manager

Truckee Library Joint Powers Authority
950 Maidu Avenue
Nevada City, CA 95959
Attn: Chair

11. **MISCELLANEOUS:**

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

(b) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

(c) Survival of Representations. All covenants, representations, warranties, hold harmless and indemnification obligations made by each party herein shall survive (1) the exercise of this Option; and/or (2) the termination and/or cancellation of this Agreement.

(d) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and permitted transferees, successors, and assigns of the parties. No party may transfer or assign this Agreement, or any rights under this Agreement, without the prior written consent of the other parties, which consent may be granted, conditioned, or withheld in a party's sole discretion.

(e) Entire Agreement. This Agreement (including all Exhibits attached hereto), is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(f) Time of Essence. JPA, TDPUD, and TDRPD hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by any party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

(g) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent, a partnership, joint venture or any other association between JPA, TDPUD, and TDRPD.

(h) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(i) Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

Truckee Library Joint Powers Authority

Truckee Donner Public Utility District

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Truckee-Donner Recreation and Park District

By: _____

Name: _____

Title: _____