

LIBRARY USE AGREEMENT BETWEEN IDAHO FALLS PUBLIC LIBRARY  
AND BONNEVILLE COUNTY LIBRARY DISTRICT

THIS LIBRARY USE AGREEMENT BETWEEN IDAHO FALLS PUBLIC LIBRARY AND BONNEVILLE COUNTY LIBRARY DISTRICT (“Agreement”) is made by and between the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho acting by and through the Board of Trustees of the Idaho Falls Public Library, a board appointed by the Mayor and Council of the City of Idaho Falls, pursuant to the provisions of Chapter 26, Title 33, Idaho Code (the “Library”), and the Bonneville County Library District, a public corporation organized pursuant to the provisions of Chapter 27, Title 33, Idaho Code, (the “District”) (collectively “the Parties”).

WHEREAS, the Library and the District are governed by their respective chapters in Idaho Code Title 33; and

WHEREAS, the Library cannot legally subsidize the District for library services; and

WHEREAS, the District cannot legally subsidize the Library for library services; and

WHEREAS, the District is willing to purchase Library services and use of Library facilities from the Library pursuant to authority granted to the District in Idaho Code Title 33, Chapter 27 at the actual cost of such library services and use of facilities; and

WHEREAS, the Parties agreed in October 1, 2019, in paragraph 7 of the Library Use Agreement Between Idaho Falls Public Library and Bonneville County Library District, that the Library would collect library data and send such library data to the District on a monthly basis throughout the term of that agreement; and

WHEREAS, the Library has, pursuant such October 1, 2019 agreement, provided such data to the District; and

WHEREAS, the Parties agree that the data gathered by the Library and shared with the District pursuant to the October 1, 2019 agreement represents the actual cost of library services and, as such, shall be the Base Fee to be paid by the District to the Library in this Agreement; and

WHEREAS, the Parties agree that the fees contained in this current Agreement reflect the Library’s actual cost of providing services and/or facilities to the District without profit or excess charge; and

WHEREAS, this Agreement is entered into by the Parties pursuant to respective laws applicable to the Library and the District; and

WHEREAS, the Parties confirm that this Agreement contains all elements required by Idaho Code Section 33-2727; and

WHEREAS, the Parties agree that any fees paid to the Library by the District are to be spent for services and shall not grant, give, or convey to the District any ownership interest in the Library's real or personal property; and

WHEREAS, the District is willing to purchase library services and facilities from the Library for a period of one (1) Library fiscal year with terms of renewal; and

WHEREAS, the Library is willing to provide agreed-upon library services and facilities at a fair cost for such services; and

WHEREAS, such library services and facilities provided to the District, including the Swan Valley and Iona library branches, shall be the equivalent in character and quality to those library services and facilities provided to Library patrons who live within Idaho Falls City limits and as set out in this Agreement; and

WHEREAS, the fiscal year of the Library is October 1, through September 30; and

WHEREAS, the Parties agree that this Agreement does not and shall not create a joint powers agreement provided for by Title 67, Chapter 27 of the Idaho Code.

NOW WHEREFORE, in consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

**1. Services and Facilities.** The Library agrees to make available to all residents of Bonneville County, Idaho, including branches in Swan Valley, Iona and other library branches that may be established during the term of this Agreement, and to permit the use of (in the same manner as residents of the City of Idaho Falls and with no distinction), all public services and facilities of the main Idaho Falls Public Library located at 457 W. Broadway, Idaho, including, but not limited to, the books, reference services, collections, maps, audiovisual equipment and aids, computers, conference and meeting rooms, online services, and all other services, facilities, and equipment at the same character and quality generally made available for public use by City of Idaho Falls patrons.

**2. Term.** The initial term of this Agreement shall commence on October 1, 2022, and shall end on September 30, 2027 and thereafter shall continue for up to a total of two (3) additional terms

of one (1) year each commencing on the first day of October and ending on the 30<sup>th</sup> of September of the immediately subsequent following year of the term, unless terminated as herein provided. At least one hundred twenty (120) days prior to the expiration or termination of this Agreement, the Parties agree to negotiate in good faith to continue a contractual relationship for continued library services based upon relevant factors, including but not limited to, the actual cost of providing services and/or facilities, the scope and type of services, and the usage of facilities and services.

**3 Consideration.** In consideration of the delivery of the services and facilities set forth above in Paragraph 1, the District agrees to pay an Annual Fee of for each fiscal year as described.

Payment of the Annual Fee by the District shall be due and payable in four (4) equal installments on October 1 and February 1, May 1, and August 1, of each fiscal year during the term of this Agreement.

The Annual Fee shall be established, as described below, on October 1 of each year commencing October 1, 2022, (“Adjustment Date”) during the term of this Agreement:

In July of every year of this Agreement, the Annual Fee for the subsequent year of this Agreement shall be calculated by dividing the City of Idaho Falls preliminary property tax revenue allocation to the Library Fund by the City Percentage of the “All Libraries Combined & Electronic Circulation by Residence” for August of the previous year through July of the current year of this Agreement.

**4 Rules and Regulations.** The services, facilities, and equipment described in this Agreement shall be provided and made available, subject to all reasonable public rules, regulations and policies promulgated by the Library Director or the Board of Trustees of Idaho Falls Public Library (“IF Board”). Also, such rules must be in accordance with Paragraph 1 of this Agreement and with applicable provisions of the Idaho Code.

**5 Board of Trustees Participation.** One (1) member of the Board of Trustees of the Bonneville County Library District or its designee shall be entitled to attend all regular or special meetings of the IF Board, and shall be entitled to participate as a non-voting *ex officio* member of the IF Board. One (1) member of the IF Board or its designee shall be entitled to attend all regular or special meetings of the Board of Trustees of the Bonneville County Library District, and shall be entitled to participate as a non-voting *ex officio* member of the Board of Trustees of the Bonneville County Library District.

**6 Annual Report.** The Library shall deliver in writing to the District a copy of the City of Idaho Falls year-end Library financial audit when received by the Library. The Library shall deliver to the District in writing a copy of the annual report submitted to the Idaho State Library

upon its completion. Likewise, the District shall provide a copy of its annual financial audit to the Library.

**7. Library Data Collection and Retention.** The Library agrees to collect monthly and to retain during the term of this Agreement the following data:

- a. Physical materials circulated through the Idaho Falls Library, the Iona Branch Library, Swan Valley Library, as well as other branches that may be established.

This data will be further categorized into the following groups:

1. City Residents, comprised of library patrons who live in or own property within City limits or work for the City of Idaho Falls and who do not live in Bonneville County.
  2. District Residents, comprised of library patrons who are not City Residents, as defined in 7.a.1 above, and who live in Bonneville County, Idaho
  3. Temporary City Resident card holders, comprised of library patrons who hold temporary City Resident library cards
  4. Temporary District Resident card holders, comprised of library patrons who hold temporary District Resident library cards.
  5. Non-Residents, comprised of library patrons who are not City Residents, County Residents, Temporary City Resident card holders, or Temporary District Resident card holders, and who pay the Non-Resident fee for borrowing privileges (excluding Overdrive)
- b. The Library shall make available to the District Library monthly financial information (presented to the Library Board of Trustees as part of the Library Director's monthly presentation to the Board) or as otherwise available upon the District's reasonable request, in compliance with Idaho Code Section 33-2727, requiring that annual budget procedures and accounting for District funds be contained in any District agreement for library services. In addition, the Parties agree that the Library shall comply with all Federal, State, and local disclosure, budgeting (including annual), and accounting procedures applicable to the Library throughout the term of this Agreement.

**8 Default.** Time and strict faithful performance of each and every covenant and condition set forth herein are expressly made the essence of this Agreement. If the District defaults in the payment of any portion of the Consideration set forth in paragraph 3 of this Agreement, or defaults in the performance of any covenant, obligation or condition hereof, and if such default shall not be cured within a period of thirty (30) days after written notice shall have been sent by mail or hand-delivered to the District by the Library, the Library may, at its sole option, declare this Agreement to be immediately terminated and the Library may immediately cease to deliver

and/or provide the services and facilities set forth in this Agreement, and may also, at its sole election, pursue any other remedy at law or in equity for the breach of this Agreement.

**9. Notices.** All notices required by this Agreement shall be mailed to the following addresses:

Board of Trustees  
Idaho Falls Public Library  
District 457 W. Broadway  
Idaho Falls, ID 83402

Board of Trustees  
Bonneville County Library  
PO Box 51282  
Idaho Falls, ID 93405

Delivery of any notice permitted or required herein shall be deemed to be complete upon its deposit in the United States Mail addressed to the other party at the address set forth.

**10. Interpretation.** This Agreement shall be governed, construed, interpreted and enforced in accordance with the laws of the State of Idaho.

**11. Merger.** This Agreement contains the complete and final agreement between the Parties on this subject matter.

**12. Indemnification.** The District agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Library against damages, liabilities and costs arising from the negligent acts of the District in execution of the terms of this Agreement. The Library agrees to indemnify and hold harmless the District against damages, liabilities and costs arising from the negligent acts of the Library in execution of the terms of this Agreement.

**13. Amendment.** No amendment, alteration or modification of this Agreement (including any change in the amount of the Annual Fee or scope or type of services or levels of usage which the Annual Fee represents) shall be effective unless made in writing, duly executed by the parties hereto and in accordance with requirements of Idaho Code.

**14. Dispute Resolution.** The Library and the District mutually endorse the use of partnering, negotiation, and mediation for the prevention and resolution of disagreements that may occur during the term of this Agreement. The Parties, through their respective staffs, commit to attempt, in good faith, to negotiate any disagreement quickly, fairly, and amicably. If such attempts fail to resolve the matter within fifteen (15) days of the first attempt to resolve the disagreement, the Idaho Falls Public Library's Department Director and the Bonneville County Library District's Board of Trustee's Chair, and no more than two (2) Board members from each Party shall meet to discuss and resolve the disagreement within fifteen (15) days of such failure to resolve the disagreement. If that fails to resolve the matter, the dispute shall be submitted to

mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be considered by the parties for submission to binding arbitration.

**15. Jurisdiction and Venue.** It is agreed that this Agreement shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville.

**16. Termination.** In the event that the County of Bonneville, Idaho, declines to include the District household fee on the annual tax notice sent to residents of the District or in the event that the District fails to comply with Idaho Code Section 33-2703(5), either party may terminate this Agreement. All payment of sums owing by the District shall be prorated to the date of such termination.

**17. Non-discrimination.** The Parties shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical or mental handicap, gender identity/expression, sexual orientation, veteran's status, or national origin.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first written.

IDAHO FALLS PUBLIC LIBRARY

Date: \_\_\_\_\_

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

Chair, Board of Trustees

BONNEVILLE COUNTY LIBRARY DISTRICT

Date: \_\_\_\_\_

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

Chair, Board of Trustees