

**SERVICE AGREEMENT AND MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF WHITEFISH AND THE
WHITEFISH COMMUNITY LIBRARY BOARD OF TRUSTEES**

This Service Agreement and Memorandum of Understanding ("Agreement") is entered into on this 20th day of June, 2022, between the City of Whitefish, Montana, a municipal corporation of the State of Montana ("the City"), and the Whitefish Community Library Board of Trustees ("Library Board"), together referred to hereafter as "the parties."

RECITALS

WHEREAS, the City has established a free public library, the Whitefish Community Library ("Library"), for the use of the citizens under regulations as prescribed by the Library Board; and

WHEREAS, the Library Board has exclusive control of the expenditure of the public library funds subject to a budget approved by the City as well as other duties and authority set forth and governed by §§ 22-1-309 and -310 MCA, and § 2-14-2 of the Whitefish City Code; and

WHEREAS, to address the ability of the City to provide liability, workers' compensation, and health coverage for the Library, and to make clear the rights and obligations by and between the City and the Library Board, the parties desire to create this Agreement regarding the City's and the Library's respective rights and obligations, specifically as they relate to personnel management, to ensure that they are clearly defined and understood.

UNDERSTANDING OF THE PARTIES

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the parties agree as follows:

1. PURPOSE: The purpose of this Agreement is to provide stability and a framework of the roles, responsibilities, and relationships of the City and Library Board as it relates to the efficient operation and management of the Library for the benefit of the community.

2. TERM: This Agreement shall commence for the fiscal year beginning July 1, 2022 and shall continue through and include June 30, 2023. The Agreement will automatically renew for each subsequent fiscal year unless one party provides written notice to the other at least ninety (90) days prior to the end of the term, of its intention to not renew the same.

3. OBLIGATIONS OF THE CITY:

A. Insurance Coverage: The City will provide liability, workers' compensation, and health insurance to library employees.

B. Personnel Costs: The City will pay wages, FICA, Medicare, health insurance premiums, retirement (Montana PERS) and the City's wellness incentive for library employees.

C. Property Insurance: The City will provide property coverage for the Library building and for the contents of the building.

D. Payroll and Accounting: The City will handle the payroll and accounting for the Library.

4. OBLIGATIONS OF THE LIBRARY BOARD:

A. Annual Budget: The Library Board will prepare an annual budget for approval by the City in accordance with § 22-1-309(6), MCA.

B. Public Entity and Open Meetings Laws: The Library Board will comply with all laws pertaining to public entities, including open meetings.

5. OPERATION OF THE LIBRARY:

5.A. Library Board Authority: As set forth in § 22-1-309, MCA, the Library Board will have the authority to determine the policy for the operation and care of the Library, prepare budgets; authorize expenditures, and determine the selection of materials. The Library Board will provide the City with timely notice of all policy modifications or changes, including providing any written documentation which accompanies and/or supports such modifications or changes.

5.B. Execution of Contracts/Agreements: As set forth in § 22-1-309(3), MCA, the Library Board may contract for library services. The City Manager has the right to consult with the Library Board about any contracts and agreements for the Library.

5.C. Personnel Management: As set forth in § 22-1-310, MCA, the Library Board oversees employees at the Library. In recognition of library employees also being City employees, the Library Board agrees to the following:

5.C.1. Employee Status and Policy: Library employees are employees of the City. The parties acknowledge and understand that as employees of the City, all applicable City policies shall apply including but not limited to the City's personnel policies.

The Library must notify the City of any change in status of all library employees. This notification must be completed in a timely manner so that required timelines/deadlines can be met for completion of forms and notification of appropriate agencies.

5.C.2. Appointment and Hiring. The Library Board will have the authority and responsibility for hiring, appointment, termination, and disciplinary

proceedings of the Library Director and, in coordination with the Library Director, library employees. The Library Board and Library Director shall follow City personnel policies and procedures for hiring and appointment and shall seek the guidance of the City's Human Resources Department and/or Legal Department in ensuring that the hiring process is legal and follows City protocol.

5.C.2.a Administrative Status and Supervision of Library Director and Employees. The Library Director will have the administrative status of a City department head and will report to and be supervised by the Library Board. The Library Director will attend department head meetings and will communicate regularly with the City Manager.

The Library Board has the authority and responsibility for evaluating the performance of the Library Director. The Library Director will supervise any library employees and is responsible for library employees' performance evaluations.

The Library Board and Library Director shall follow City policy and procedures for supervision, handling grievances, discipline, and/or termination. The Library Director and/or Library Board agree to confer with the City's Human Resources Department and the City Manager during a grievance or termination process. The City may contact the City's coverage provider and/or legal counsel for guidance and will report back to the Library Director and/or Library Board on appropriate action. The Library Director and Library Board agree to follow the recommendations of the coverage provider and/or legal counsel.

If there is a disagreement about the handling of a personnel management issue, the City, Library Board, and Library Director agree to follow the recommendations of the City Attorney and/or Human Resources Director. All parties agree to act in good faith and in the best interests of the Library and citizens of the City in resolving any disagreements.

5.C.2.b. Execution of Library Operation and Policies. The Library Director will manage the operations of the Library and be responsible to the Library Board for the execution of the Library Board's policies. The Library Director and employees agree to follow the payroll and accounting procedures of the City.

5.C.2.c. Salary. The Library Board will fix library employee salary and any annual adjustments within the approved budget. The Library Board will work with the City to determine a salary structure.

5.D. Building. The Library building is owned by the City. The Library Board will set policy and work with the Library Director and staff on the use of the space. The Library Board will confer with the City when any major changes or building modifications are planned.

6. **MODIFICATIONS:** Any modifications sought to be made to this Agreement shall be agreed to by both parties and will be memorialized in writing, signed by both parties.

7. **NOTICE:** Any notice required or permitted under this Agreement shall be deemed sufficiently given or serviced if sent by mail or hand delivered to:

City of Whitefish
PO Box 158
Whitefish, MT 59937

Library Board of Trustees
9 Spokane Avenue
Whitefish, MT 59937

Either party may, by written notice at any time during the term of this Agreement, designate a different address to which notices hereunder shall subsequently be sent. Written notice hereunder shall be deemed to have been given as of the time the same is deposited in the United States mail.

8. **TIME OF ESSENCE:** Time shall be of the essence of this Agreement and all the terms, covenants, and conditions hereof shall be performed at or before the times herein set forth. Any forbearance on the part of either party in the enforcement of the terms and conditions of this Agreement shall in no way be construed as a waiver of default thereof or waiver of the obligatory effect of such provision.

9. **CONSTRUCTION AND BINDING EFFECT:** This Agreement shall be construed under the laws of the State of Montana and shall be binding upon and inure to the benefit of the respective parties, their heirs, executors, successors and assigns.

10. **SEVERABILITY:** If any term of this Agreement should hereafter be declared or becomes void or unenforceable by judicial decree or operation of law, all other terms of this Agreement shall continue to be effective unless the void or unenforceable terms materially defeat the manifest intent and purpose of this agreement.

IN WITNESS WHEREOF, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this Agreement, and the parties hereto approve and execute this Agreement.

CITY OF WHITEFISH



Dana Smith, City Manager

LIBRARY BOARD OF TRUSTEES



Sarah Ericson, Board Chair

APPROVED AS TO FORM:



Angela Jacobs, City Attorney

RESOLUTION NO. 22-13

A Resolution of the City Council of the City of Whitefish, Montana, approving a Service Agreement and Memorandum of Understanding between the City of Whitefish and the Whitefish Community Library Board of Trustees.

WHEREAS, Montana Municipal Interlocal Authority notified the City that it will exclude coverage for libraries and library boards in its liability, workers' compensation, and employee benefits programs beginning July 1, 2022; and

WHEREAS, Montana Municipal Interlocal Authority will continue to provide coverage to a library if it enters into an agreement with a city or town incorporating certain underwriting criteria; and

WHEREAS, the Whitefish Community Library wishes to continue being covered by Montana Municipal Interlocal Authority's programs; and

WHEREAS, the Whitefish Community Library Board of Trustees approved the Service Agreement and Memorandum of Understanding Between the City of Whitefish and the Whitefish Community Library Board of Trustees attached as Exhibit A; and

WHEREAS it is in the best interests of the City of Whitefish and its inhabitants for the City to approve the Service Agreement and Memorandum of Understanding Between the City of Whitefish and the Whitefish Community Library Board of Trustees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:


Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The Service Agreement and Memorandum of Understanding Between the City of Whitefish and the Whitefish Community Library Board of Trustees, attached hereto as Exhibit A, is hereby approved.

Section 3: The Whitefish City Manager is authorized to execute the Service Agreement and Memorandum of Understanding Between the City of Whitefish and the Whitefish Community Library Board of Trustees on behalf of the City of Whitefish.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor, or Deputy Mayor, thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
WHITEFISH, MONTANA, ON THIS 20TH DAY OF JUNE 2022.


Francis J. Sweeney, Deputy Mayor

ATTEST:


Michelle Howke, City Clerk