

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

This Service Agreement and Memorandum of Understanding (“Agreement”) is entered into this 21<sup>st</sup> day of June, 2022 between the City of Lewistown, Montana, a municipal corporation of the State of Montana (hereafter, “City”), through its City Manager, and the Lewistown Library Board of Trustees (hereafter, “Library Board”), together referred to hereafter as “the parties”.

**RECITALS**

**WHEREAS**, the City has established a free public library, the Lewistown Public Library (“Library”) for the use of the citizens under regulations as prescribed by the Library Board, subject to approval of the City Commission (Lewistown City Code 2-6-2; § 22-1-309, MCA);

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

**WHEREAS**, on July 19, 2021, the City and the Montana Federation of Public Employees (“Association”) entered a Collective Bargaining Agreement (“CBA”), in which Library employees are considered member employees. The CBA is effective July 1, 2021 through June 30, 2024;

**WHEREAS**, said CBA was established through collective bargaining procedures as provided for under Montana law for “the promotion of harmonious relations” between the City and Association and “the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and fringe benefits, employee safety, and other conditions of employment”;

**WHEREAS**, pursuant to 22-1-309(3) MCA, the Library Board is empowered to enter into this agreement;

**WHEREAS**, to simplify annual budget appropriations to the Library, the parties desire to implement a procedure whereby the City funds all Library personnel costs, and the Library Board funds, or is responsible for funding, all other Library operations; and

**WHEREAS**, to address the ability of the City to provide liability, employment practices liability, workers’ compensation, health, and property and contents 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 Memorandum of Understanding regarding the City and the Library’s respective rights and obligations, specifically as they relate to personnel management, such as 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, 2025. 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:**

**3.A. Personnel Costs:** As the City's contribution to support the Library, the City agrees to budget for all Library personnel costs for up to 5.5 FTEs for position as described in the CBA.

#### **3.A.1. "Personnel costs" include:**

- Wages as provided by the current CBA and, in the case of the Library Director, the annual salary approved by the Library Board
- State and Federal withholding taxes;
- Workers' compensation contributions for employees, Board members, and volunteers;
- Overtime;
- Health insurance contributions;
- PERS contributions;
- Unemployment contributions;
- Retirement/termination buyout of accrued sick/vacation leave.

**3.A.2. FTE Positions:** The 5.5 FTE positions shall include the Library Director and those positions identified in the CBA. Any increase or decrease in working hours or changes in staffing levels for permanent employees must be mutually agreed upon.

**3.A.3. Hiring freeze.** In the event a Library employee retires, resigns, or is terminated, triggering a buyout of that employee's vacation and/ or sick leave, a hiring freeze for that position may be implemented for a period equivalent to offset the cost of such buyout, but not to exceed 6 months.

**3.A.4. Vacancy Savings:** To the extent the Library Board does not employ 5.5 FTEs, the personnel cost savings (see 3.A.1. above) to the City for each unfilled position will be set aside for use by the Library, subject to the approval of the Library Board. The City will keep record of these savings and provide reports on an annual basis to the Board and/or Director.

**3.B. Insurance Coverage:** The City agrees to provide property insurance coverage for the Carnegie Library and Book Station buildings and contents as well as liability and Employment Practices Liability Insurance coverage under the City's insurance policies with the Montana Municipal Interlocal Authority.

**3.C. Payroll and Accounting:** The City agrees to handle the payroll and accounting for the Library.

#### **4. OBLIGATIONS OF THE LIBRARY BOARD:**

**4.A. Funding Library Operations:** The Library Board agrees it will be responsible for providing funding for all Library operations and building maintenance through diversified funding, except for the personnel costs paid by the City.

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

**4.C. Open Meeting Laws:** The Library Board agrees to comply with all opening meeting laws when meeting. This obligation shall include, but is not limited to, making certain that proper meeting notice occurs and that minutes from such meetings are taken and properly maintained.

**4.D. Laws and Regulations:** As a tax-supported public library, the City and the Library Board must be aware of and ensure that all laws and regulations which relate to public libraries are properly followed.

#### **5. OPERATION OF THE LIBRARY:**

**5.A. Library Board Authority:** The Library Board shall have the authority to determine the policy for the operation and care of the Library; prepare budgets; authorize expenditures, including funding for employees above the 5.5 FTEs funded by the City; set the mission statement; determine the selection of materials; and negotiate contracts and agreements as set forth in § 22-1-309, MCA. The Library Board and the City agree to work cooperatively to discuss modifications or changes that will facilitate the efficient operation of the Library for the benefit of the public. The Library Board and City further agree to provide each other 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:** Per MCA 22-1-309 (3) 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:** Pursuant to § 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 personnel policies.

The Library must notify the City of any change in status of any/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 shall have the authority and responsibility for hiring, appointment, promotions, 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 City human resources (HR) in ensuring that the hiring process is legal and follows City protocol.

The Library Board and/or Director shall develop job descriptions for all Library positions to best meet the needs of the Library. All positions will be submitted for review to the Union and City HR.

**5.C.2.a. Administrative status and supervision of Library Director and employees.** The Library Director shall have the administrative status of a City department head and shall 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 and the most current CBA for supervision, handling grievances, discipline and/or termination. The Library Director and/or Library Board agrees to confer with City HR and/or 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 HR professional. 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 shall 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.** Library staff salaries will be fixed in negotiations between the City and Union. The Director's salary and any annual adjustments will be set by the Board in consultation with the City Manager. Yearly longevity increases will be calculated on the basis of one-half (1/2) of one (1) percent of the Library Director's current salary.

**5.C.2.d. Volunteers.** Library volunteers will be approved at the discretion of the Director and will be provided worker's compensation coverage through the City's insurance with the MMIA. The Library Director and/or Library Board will consult with the City Attorney when developing requirements and applications for volunteers. Volunteers will be subject to the same background and reference checks as regular employees.

**5.D. Library Building.** The Library building is owned by the City of Lewistown as per Warranty Deed 561. The Library Board sets policy and works with the Library Director and staff on the use of the space. The Library Board agrees to confer with the City Manager when any major changes or building fixes are planned.

**5.E. Depreciation Fund.** The City agrees to match contributions made by the Library Board up to \$5,000 to be placed in a Library building depreciation account to offset maintenance, expansion, remodeling or other approved building costs.

## **6. ADDITIONAL OBLIGATIONS:**

**6.A. Consistency in Operation:** The City and Board agree that City Policies & Procedures, as well as the CBA negotiated between the City and City Union, will reflect the Board responsibilities and authorities outlined in this agreement, including those listed in § 22-1-309, MCA and § 22-1-310, MCA.

**7. INDEMNIFICATION/HOLD HARMLESS:** The City and Library Board agree to a mutual indemnification in which each party will indemnify the other for the negligent acts of its employees, board members, agents and/or subcontractors. Each party shall indemnify, hold harmless and defend the other party, at that party's own expense, against any and all claims made for any accident, injury, or damage that occurs in, on, or about the Library that is caused by an act or omission of that party's employee, board member, agent and/or subcontractors.

**8. 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.

**9. 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 Lewistown  
City Manager  
305 West Watson  
Lewistown, MT 59457

Lewistown Public Library  
Library Board of Trustees  
701 West Main Street  
Lewistown, MT 59457

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.

**10. 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.

**11. 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.

**12. 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 defeats the manifest intent and purpose of this agreement.

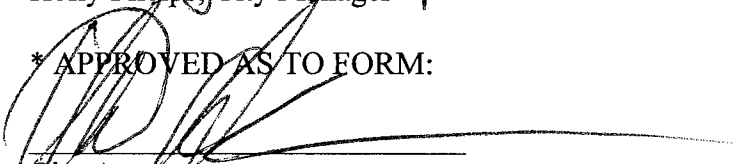
**13. BINDING:** This Agreement shall be binding upon the successors and assigns of the parties hereto.

**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 LEWISTOWN**


  
Holly Phelps, City Manager

\* APPROVED AS TO FORM:

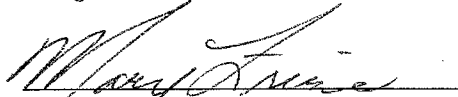
  
City Attorney

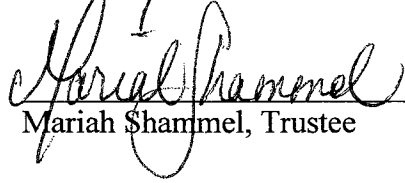
\* The City Attorney has provided advice and approval of the foregoing document language on behalf of the City of Lewistown, and not on behalf of other parties or entities. Review and approval of this document by the City Attorney was conducted solely from a legal perspective and for the exclusive benefit of the City of Lewistown. Other parties should not rely on this approval and should seek review and approval by their own respective counsel.

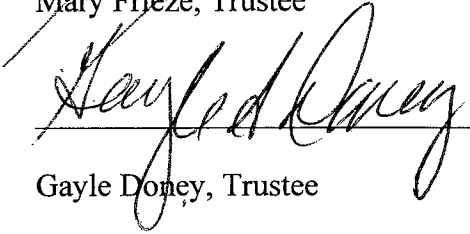
**LEWISTOWN LIBRARY BOARD OF TRUSTEES**

  
\_\_\_\_\_  
Jean Collins, Chairperson

  
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Cathy Moser, Trustee

  
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Mary Frieze, Trustee

  
\_\_\_\_\_  
Mariah Shammel, Trustee

  
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Gayle Doney, Trustee