**LIBRARY FACILITY USE AGREEMENT**

**BETWEEN**

**MISSOULA PUBLIC LIBRARY**

**AND**

**MISSOULA COUNTY PUBLIC SCHOOLS**

This Agreement (hereafter Agreement) is between MISSOULA PUBLIC LIBRARY, of 455 East Main, Missoula, Montana 59802 (hereafter MPL), and MISSOULA COUNTY PUBLIC SCHOOLS (hereafter MCPS), 909 South Avenue, Missoula, Montana 59801 to provide public library services within a MCPS school library.

WHEREAS:

(a) MCPS desires to increase student achievement and further cultivate community involvement;

1. MPL desires to better serve library patrons on the west side of the community; and
2. MCPS and MPL agree to enter into a contract for the purpose of providing a basis for access to and use of MCPS’s facilities by MPL which will result in expanded library services at Big Sky High School for students and members of the community.

In consideration of the foregoing recitals and the following terms and conditions, it is agreed as follows:

**ARTICLE 1 THE AGREEMENT**

This Agreement represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral.

**ARTICLE 2 RELATIONSHIP OF PARTIES**

2.1 The parties intend that the relationship between them is that of separate entities that have created an arrangement for MCPS to provide MPL access to and space in the Big Sky High School Library for public library materials and resources and MPL to provide public library services to MCPS at the Big Sky High School Library.

2.2 No Partnership or Joint Venture. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between MCPS or MPL or their respective successors or assigns. This Agreement does not make a party an agent or legal representative of the other for any purpose whatsoever.

2.3 This Agreement does not make any of the parties’ employees an employee of the other for any purpose whatsoever. Each party shall hire, compensate, supervise, discipline and discharge its own employees, who shall be under the sole control and ultimate supervision of their own employer.

2.4 The MCPS Board of Trustees is the governing body responsible for the provision of school library services, which occur during regular school hours. The MPL Board of Trustees is the governing body responsible for the provision of public library services, which occur during after school or weekend hours.

**ARTICLE 3 SERVICES AND OBLIGATIONS**

3.1 MCPS will provide MPL with space within Big Sky High School Library. Provided the parties can agree upon the space and upon the schedule, MPL will use the space to provide public library materials and resources to students and members of the public during designated times. Such space shall be adequate in size and location to the materials and other resources provided by MPL. Further, employees of MPL shall have access to MCPS restroom during the time of the scheduled designated public library hours.

3.2 MPL shall employ a Library Technician who shall be responsible to provide public library services during the designated public library hours. This Library Technician shall report directly to the MPL Director. Vacation and sick leave shall be managed through the main library. The Library Technician shall provide statistics regarding the public library use at Big Sky High School at MPL Board of Trustees meetings. The Library Technician will be responsible for exchanging public library materials at Big Sky High School Library eight (8) times per year. MPL will pay the Library Technician mileage for the exchange. Four hours per trip can be claimed for the exchange.

3.3 MCPS shall employ School Librarians and Library Aides. MCPS retains the right to appoint a Chief Librarian. The Chief Librarian shall establish procedures and protocols for operation of the Big Sky High School Library during regular school hours. In consultation with the Chief Librarian, the MPL Library Technician shall develop procedures for providing the public library services and use of the facilities at Big Sky High School Library during the designated public library times.

3.4 Access to MCPS facilities during the public library hours shall be limited to the Big Sky High School Library. Public library patrons shall not be allowed to access any other area within Big Sky High School during public library hours, except for the bathroom facilities directly across from the Big Sky High School Library.

3.5 Public library patrons shall not be permitted to access public library services at Big Sky High School during regular school hours. Public library patrons may drop off public library materials at the designated receptacle outside of the school.

3.6 Authorized representatives of MPL and MCPS shall establish a regular schedule of public library services to be provided at Big Sky High School, which shall be for twenty hours per week. Public library hours shall occur when school is not in session, including but not limited to after regular school hours, weekends, and school vacations.

3.7 Public library services provided during the designated times at Big Sky High School will be operated under MPL current policies, subject to MCPS policies and procedures and local, state, and federal restrictions on use of school facilities. Library services provided during the school day shall be operated under MCPS policies and procedures.

* + 1. MCPS shall:
    2. Provide space for the public library materials to be shelved and displayed in the Big Sky High School Library, which includes utilities, janitorial and maintenance care of the library on a year round basis.
    3. Provide funds within its budget for general operation of the library as well as the materials related to school services and meeting the needs of the student population.
    4. Provide appropriate property, liability, and workers compensation insurance coverage to MCPS employees.
    5. Allow public access to the Big Sky High School Library during the public library designated hours.
    6. Provide space for a receptacle outside of Big Sky High School for public library patrons to drop off books during regular school hours.
    7. Provide access to a computer for use by the Library Technician for public library services, including cataloging, with the MPL Library Technician using a MPL login and a printer for public use.
    8. Provide use of the school phones and copiers for public library business;
    9. Allow public library patrons to checkout school library materials, subject to reasonable and appropriate regulations established by the Chief Librarian.
    10. Provide Internet access to MCPS students during all library hours on MCPS computers subject to MCPS policies and procedures regarding use of district networks and computer systems.

3.9 MPL shall:

3.9.1 Provide 2,000 to 2,500 books and library materials on a rotating basis for use at the Big Sky High School Branch Library.

3.9.2 Hire, manage, and provide the salary and benefits of a Library Technician to operate the public library services during designated public library hours.

3.9.3 Catalogue new titles provided by MPL to the Big Sky High School Library and add to MPL database.

3.9.4 Provide an MPL email account for the Library Technician.

3.9.5 Provide postage for inter-library loans and correspondence.

3.9.6 Provide computers for public access to MPL database and Internet.

3.9.7 Provide ongoing management, advice, support and training to Library Technician.

3.9.8 Abide by local, federal, and state restrictions on the use of public school property.

3.9.9 Provide appropriate property, liability, and workers compensation insurance coverage to MPL employees.

3.9.10 Communicate and cooperate with MCPS library staff on matters of policies and procedures to ensure smooth operation of the public library services at Big Sky High School during the school year.

3.9.11 Communicate and cooperate with the Big Sky administrators on matters of policies and procedures to ensure smooth operation of the public library services at Big Sky High School during the summer months (starting the day school ends for the school year through the day before school starts for the next school year).

3.9.12 Provide a dedicated Internet service line for patrons during public library hours.

3.9.13 Notify MCPS and provide copies of all agreements with community groups permitting access and library programming at Big Sky High School (“MPL Partners”).

3.9.14 Provide a schedule of activities or events planned for the library at Big Sky High School by MPL or a MPL partner during public library hours, including but not limited to summer months.

3.10 MPL shall provide a separate Internet service and dedicated line for use by patrons during public library hours. Access to MPL computers and the Internet through MPL’s dedicated line shall only be during public library hours. During school hours, MPL computers shall be turned off and password-protected. MPL computers may only be turned on immediately prior to the start of the public library hours. The MPL computers shall be password-protected only on initial start-up; no password protection is needed for individual users during public library hours.

3.11 The MPL Board of Trustees shall have the power to contract and receive or deliver library services and to accept gifts, grants, donations, devices and bequests not subject to reversion at the end of the fiscal year.

3.12 MPL shall ensure that any programming by an MPL Partner is subject to MCPS policies as applicable under this Agreement.

**ARTICLE 4 PAYMENT AND FINANCE**

4.1 MCPS is not obligated to pay MPL for any public library services provided on MCPS property.

4.2 No charge shall be assessed MPL for MPL’s use of the Big Sky High School Public Library. MCPS shall determine where to provide the space to make available for MPL to perform services.

4.3 The MPL Director will include the necessary budget items for the Big Sky High School public library services in the yearly library budget submitted to the Missoula County Chief Financial Officer. All requests from the Big Sky Library Technician must be submitted to the Library Director by January 15th of each year. The proposed budget will be approved by the MPL Board of Trustees prior to the submission to the Missoula County Chief Financial Officer.

**ARTICLE 5 TERM OF THE CONTRACT AND TERMINATION**

5.1 This Agreement shall be for an initial term of three years with the option to renew the Agreement for an additional three years with the consent of the MCPS and MPL Boards.

5.2 Performance of this Agreement shall commence within thirty (30) days of the approval of the MCPS and MPL Boards.

5.3 The Agreement may be terminated by MCPS or by MPL for convenience or for cause upon written notice of sixty (60) days to the other party. The termination shall become effective at the beginning of the next fiscal year or sixty (60) days, whichever is shorter.

5.4 Notwithstanding the 60-day notice period provided for in Paragraph 5.3, this Agreement may be modified or terminated at the written option of either party if there is a change in the law or regulatory structure, including the E-Rate program, which significantly impacts the operation of this Agreement.

5.5 Upon termination of the Agreement by either party, MPL materials and resources shall be returned to the MPL main library unless otherwise agreed to by the parties. MCPS materials shall remain in the Big Sky High School Library.

**ARTICLE 6 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION**

6.1 MPL agrees to indemnify, defend, and hold harmless MCPS, its employees and agents, their heirs, successors, and assigns, from all claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney's fees, and including loss of use, economic loss, or otherwise, due in any manner to the negligence or intentional act or omission of MPL as a result of providing public library services or otherwise as a result of MPL’s performance of the Agreement. MPL agrees that its obligation to indemnify, defend, and hold MCPS harmless extends to claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney’s fees, due in any manner to the negligence or intentional acts or omissions of MPL Partners and their employees, agents, invitees, and representatives. MPL agrees that it shall indemnify and hold harmless MCPS, its employees and agents, their heirs, successors, and assigns, from all claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney’s fees, due in any manner to the use of MPL computers and MPL’s dedicated Internet line during all hours in which public library services are provided by MPL at an MCPS school library, including Big Sky High School.

MCPS agrees to indemnify and hold harmless MPL, its employees and agents, their heirs, successors, and assigns, from all claims, demands, liabilities, suits, causes of actions, judgments, costs and expenses, including attorney's fees, and including loss of use, economic loss, or otherwise, due in any manner to the negligence or intentional act of MCPS’ staff or otherwise as a result of MCPS’ performance of the Agreement.

6.2 Each party represents that it maintains comprehensive general liability and errors and omissions insurance coverage for injuries to or death of any person or damage to or loss of property arising out of or in any way resulting from performance of the Agreement. Each party further represents that its insurance provides for amounts not less than $1,000,000 per occurrence and $2,000,000 general aggregate and $1,000,000 for property damage in any one accident, or the policy may provide a combined single limit for bodily injury and property damage of $1,000,000.

6.3 MCPS warrants that it maintains sufficient workers compensation insurance coverage for its employees.

MPL warrants that it maintains sufficient workers compensation insurance coverage for its employees.

6.4 Each party shall provide the other party with a copy of its Certificate of Insurance.

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

7.1 Amendments. The parties may only amend or supplement the Agreement only by written amendment and with mutual agreement of both parties.

7.2 Further Assurances. Each party will take such actions as any other party may reasonably request or as may be necessary or appropriate to consummate or implement the services contemplated by this Agreement.

7.3 Governing Law. This Agreement and the legal relations between the parties will be governed by and construed in accordance with the laws of the State of Montana applicable to contracts made and performed in Montana and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

7.4 Successors and Assigns. No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person or governmental entity rights or remedies of any nature whatsoever under this Agreement.

7.5 This Agreement may not be assigned by one party without the prior written consent of the other party.

7.6 Waiver. No failure on the part of a party to exercise or delay in exercising a right hereunder will be deemed a waiver thereof, nor will a single or partial exercise preclude a further or other exercise of such or any other right.

7.7 Severability. If a provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

7.8 Nonexclusively. This Agreement is nonexclusive and the parties may enter into similar agreements with other parties without restriction as to number, location and application.

**ARTICLE 8 ATTORNEY FEE**

If any legal action or any arbitration or other proceedings is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, or default in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney fees incurred in an action or proceeding in addition to any other relief to which it may be entitled.

This Agreement shall be executed in at least two original copies; one for delivery to MCPS, and one for delivery to MPL.

**MISSOULA PUBLIC LIBRARY MISSOULA COUNTY PUBLIC SCHOOLS**

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Neal Leathers Date Denise Williams Date

Chair, MPL Board of Trustees Executive Director of Business and Operations