

STATE OF ALABAMA        )

COUNTY OF BALDWIN        )

**AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into between THE BALDWIN COUNTY LIBRARY COOPERATIVE, INC., an Alabama non-profit corporation (hereinafter referred to as the “COUNTY LIBRARY COOPERATIVE”), and the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama (hereinafter referred to as “COMMISSION”), and is effective the date last executed below.

WHEREAS, the COUNTY LIBRARY COOPERATIVE is an Alabama nonprofit corporation organized to, among other things enumerated in its governing Articles of Incorporation, provide quality library service to every individual in Baldwin County through the provision of general library services including, but not limited to, the Bookmobile, outreach services and support and encouragement for the county’s many municipal libraries; and

WHEREAS, the COMMISSION remains the honorable county governing body of Baldwin County, Alabama, and a political subdivision of the State of Alabama; and

WHEREAS, while the COUNTY LIBRARY COOPERATIVE remains organized as an Alabama nonprofit corporation, its governing By-laws provide that it shall have those duties and responsibilities authorized by Section 11-90-1, et seq., of the Code of Alabama (1975), which Alabama law authorizes the formation of Free Public Libraries, both municipal and county, and that said Alabama law is utilized in the appointment of its 5 member Board of Trustees, which the COMMISSION is authorized to seat by appointment; and

WHEREAS, specifically, Section 11-90-1 of the Code of Alabama (1975) provides as follows: “The county commissions of the counties of this state and municipalities, through their governing bodies, may establish and maintain or aid in establishing and maintaining free public libraries for the use of the citizens of the respective counties or municipalities, either separately or in connection with public schools, and to that end may accept gifts, donations, and bequests of land, buildings or money therefor and may make appropriations from the county or municipal treasury in support thereof in such sums as they may deem proper. . .;” and

WHEREAS, to accomplish its general mission of aiding the network of Free Public Libraries throughout all Baldwin County, Alabama, both municipal and county, the COUNTY LIBRARY COOPERATIVE remains a recipient of local county public video entertainment device taxes as authorized by Section 45-2-244.160 of the Code of Alabama (1975) and as further approved by the COMMISSION; and

WHEREAS, the COUNTY LIBRARY COOPERATIVE receives supplemental state aid by the Alabama Public Library Service to support and improve the COUNTY LIBRARY COOPERATIVE’s public pursuits in Baldwin County, Alabama; and

WHEREAS, as authorized by Section 11-90-1 of the Code of Alabama (1975), the COMMISSION, by and through its Baldwin County Fiscal Year 2020-2021 Budget, approved a one-time total funding appropriation of One-hundred Thousand Dollars (\$100,000.00), to match funds appropriated to the COUNTY LIBRARY COOPERATIVE by the Alabama Public Library Service related to supplemental state aid enjoyed by said COUNTY LIBRARY COOPERATIVE; and

WHEREAS, further, as authorized by Section 11-90-1 of the Code of Alabama (1975), the COMMISSION, by and through its Baldwin County Fiscal Year 2021-2022 Budget, set aside as non-transferable and non-conveyable Four Thousand Five Hundred Dollars and 00/100 (\$4,500.00) to pay for costs related to the use of the county postage meter at the Baldwin County Central Annex Building in Robertsdale, Alabama, by the COUNTY LIBRARY COOPERATIVE, Five Thousand Dollars and 00/100 (\$5,000.00) to pay for costs related to the use of the county telephone system by the COUNTY LIBRARY COOPERATIVE, and One Thousand One Hundred Dollars and 00/100 (\$1,100.00) to pay for costs related to the provision of gas and oil for the COUNTY LIBRARY COOPERATIVE's Bookmobile, said provision of gas and oil provided by the COMMISSION at its Baldwin Regional Area Transit System maintenance facility in Robertsdale, Alabama; and

WHEREAS, as authorized by Section 11-90-1 of the Code of Alabama (1975), the COMMISSION further desires to aid the COUNTY LIBRARY COOPERATIVE with the provision of free-of-charge routine and regular maintenance services of the COUNTY LIBRARY COOPERATIVE's Bookmobile, said provision of routine and regular maintenance services provided by the COMMISSION by and through its Baldwin County Highway Department and as expressly provided for herein; and

WHEREAS, the COMMISSION makes the aforesaid collective funding assistance and other assistance to aid the COUNTY LIBRARY COOPERATIVE in providing quality library service to every individual in Baldwin County through the provision of general library services including, but not limited to, the Bookmobile, outreach services and support and encouragement for the county's many municipal libraries, and to continue its general mission to aid the network of Free Public Libraries throughout all Baldwin County, Alabama, both municipal and county; and

WHEREAS, the COMMISSION makes the aforesaid funding assistance and other assistance to the COUNTY LIBRARY COOPERATIVE respecting that the Supreme Court of the State of Alabama has ruled that Section 94 of the Constitution of Alabama 1901, as amended, is not violated when a public entity donates money or other thing of value in aid of a private individual or corporation if a public purpose is served. *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto AGREE as follows:

1. The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.
2. The COUNTY LIBRARY COOPERATIVE shall continue the public purpose of providing quality library service to every individual in Baldwin County through the provision of general library services including, but not limited to, the Bookmobile, outreach services and support and encouragement for the county's many municipal libraries which collectively accomplishes its general mission of aiding the network of Free Public Libraries throughout all Baldwin County, Alabama, both municipal and county.
3. All COUNTY LIBRARY COOPERATIVE facilities, services, membership and activities shall be made available to the general public.

4. The COUNTY LIBRARY COOPERATIVE shall have a nondiscriminatory policy, and its facilities, services, membership and activities shall be available to the general public regardless of race, age, sex, disability or religion.
5.
  - (a) The COMMISSION shall assist the COUNTY LIBRARY COOPERATIVE by providing a one-time total funding appropriation to the COUNTY LIBRARY COOPERATIVE of One-hundred Thousand Dollars (\$100,000.00), to be used by the COUNTY LIBRARY COOPERATIVE to match funds appropriated to the COUNTY LIBRARY COOPERATIVE by the Alabama Public Library Service related to supplemental state aid enjoyed by said COUNTY LIBRARY COOPERATIVE.
  - (b) The COMMISSION shall set aside Four Thousand Five Hundred Dollars and 00/100 (\$4,500.00) to pay for costs related to the use of the county postage meter at the Baldwin County Central Annex Building in Robertsedale, Alabama, by the COUNTY LIBRARY COOPERATIVE. Said Four Thousand Five Hundred Dollars and 00/100 (\$4,500.00) shall be separate and apart from the one-time total funding appropriation provided in Section 5 (a) of this Agreement and shall not be transferred/conveyed to the COUNTY LIBRARY COOPERATIVE.
  - (c) The COMMISSION shall set aside Five Thousand Dollars and 00/100 (\$5,000.00) to pay for costs related to the use of the county telephone system by the COUNTY LIBRARY COOPERATIVE. Said Five Thousand Dollars (\$5,000.00) shall be separate and apart from the one-time total funding appropriation provided in Section 5 (a) of this Agreement and shall not be transferred/conveyed to the COUNTY LIBRARY COOPERATIVE.
  - (d) The COMMISSION shall set aside One Thousand One Hundred Dollars and 00/100 (\$1,100.00) to pay for costs related to the provision of gas and oil for the COUNTY LIBRARY COOPERATIVE's Bookmobile. Said One Thousand One Hundred Dollars and 00/100 (\$1,100.00) shall be separate and apart from the one-time total funding appropriation provided in Section 5 (a) of this Agreement and shall not be transferred/conveyed to the COUNTY LIBRARY COOPERATIVE.
  - (e) The COMMISSION shall provide free-of-charge routine and regular maintenance services of the COUNTY LIBRARY COOPERATIVE's Bookmobile, said provision of routine and regular maintenance services shall be provided by the COMMISSION by and through its Baldwin County Highway Department subject to the approval of the County Engineer as to the scope of services, cost of repair or maintenance and necessity of the same, in his discretion. It is expressly agreed to by the COUNTY LIBRARY COOPERATIVE and COMMISSION that the provision of free-of-charge routine and regular maintenance services by the COMMISSION shall in no way extend to any significant or unusually expensive maintenance services of the COUNTY LIBRARY COOPERATIVE's Bookmobile without the express approval of the COMMISSION as authorized in regular or special session, and the COMMISSION shall have the unilateral right, with or without cause or hearing, to discontinue the repair and maintenance services provided pursuant to this Section 5 (e) at any time by providing written notice of the same to the COUNTY LIBRARY COOPERATIVE.
6. The COUNTY LIBRARY COOPERATIVE expressly agrees not to use the one-time total funding appropriation set forth at Section 5 (a) of this Agreement, or any funding or other assistance set forth in Section 5 (b), (c), (d) and (e) of this Agreement, outside the specific purposes set forth in this Agreement, and the COUNTY LIBRARY COOPERATIVE further agrees not to use the one-time total

funding appropriation set forth in Section 5 (a) of this Agreement or any funding or other assistance set forth in Sections 5 (b), (c), (d) and (e) of this Agreement, to aid any private or individual benefit. It being expressly understood that the one-time total funding appropriation set forth in Section 5 (a) of this Agreement and the funding or other assistance set forth in Sections 5 (b), (c), (d) and (e) of this Agreement, as provided by the COMMISSION, shall be utilized by the COUNTY LIBRARY COOPERATIVE in a manner consistent with this Agreement.

7. This Agreement and the relationship created hereby does not in any manner create, imply or otherwise vest any authority in the COUNTY LIBRARY COOPERATIVE on behalf of the COMMISSION. Furthermore, this Agreement hereby expressly forbids the creation of an agency relationship or any action that would create or imply that the COUNTY LIBRARY COOPERATIVE is an agent of the COMMISSION.
8. To the fullest extent allowed by law, the COUNTY LIBRARY COOPERATIVE shall fully indemnify and hold the COMMISSION, its County Commissioners, departments, employees, supervisors, insurer, agents, representatives and attorneys (for purposes of this Section 8 referred to collectively as "COMMISSION") completely harmless from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind or character which may arise from, or which are in any way related to, the work done and duties or obligations performed by the COUNTY LIBRARY COOPERATIVE or the COMMISSION pursuant to this Agreement, including, without limitation, attorney fees and legal expenses and costs incurred as a result of the COMMISSION enforcing, defending or complying with this Agreement, or otherwise addressing or defending any actions or claims related in any way to this Agreement. The provisions of this Section 8 and the rights, duties and obligations set forth herein shall survive the expiration or termination of this Agreement.
9. The COUNTY LIBRARY COOPERATIVE shall ensure that all materials publicizing or resulting from the funding assistance as provided for by this Agreement shall contain an acknowledgment of the COMMISSION's assistance, with said acknowledgment of support made through the use of the following comparable footnote: "This activity was supported by the Baldwin County Commission."
10. Notwithstanding anything written herein to the contrary, all commitments made herein by the COMMISSION are subject to the availability of funds. If at any time prior to the conveyance of the one-time funding appropriation, or any quarterly installment thereof, the COMMISSION determines that the subject funds are not available, then the COMMISSION shall no longer be obligated or required to provide such one-time funding appropriation, or any quarterly installment thereof.
11. The COUNTY LIBRARY COOPERATIVE agrees, as a condition of receiving the one-time funding appropriation referenced in Section 5 (a) of this Agreement, and the funding or other assistance referenced in Sections 5 (b), (c), (d) and (e) of this Agreement, to:
  - (a) Supply to the COMMISSION, within 30 days from a written request to do so, all applicable data that is necessary for the COMMISSION to ensure the proper expenditure of the subject funding appropriation and funding assistance.

- (b) File with the COMMISSION no later than June 10, 2022, a written report of its activities for the preceding period which commenced on October 1, 2021, a copy of an annual report that includes the appropriation period, and a copy of the most recently audited financial statements (audited financial statements must be from within the last two years, i.e. year 2020 or 2021, and should include an independent auditor's report, statement of financial position, statement of activities, statement of cash flows, and notes to the financial statements) to ensure the proper expenditure of the subject funding appropriation.
- 12. This Agreement, provided in the form as one (1) original instrument for the records of the COUNTY LIBRARY COOPERATIVE and one (1) original instrument for the records of the COMMISSION, represents the entire terms and conditions of the Agreement between the COMMISSION and the COUNTY LIBRARY COOPERATIVE. It shall be necessary to account for only one (1) such instrument or counterpart in proving this Agreement.
- 13. This Agreement shall be in effect for a period of twelve (12) months, or such shorter time as may be determined by the COMMISSION, commencing October 1, 2021, and expiring September 30, 2022, and may be amended by written amendment executed by the COMMISSION and the COUNTY LIBRARY COOPERATIVE. The COMMISSION shall have the right to terminate this Agreement, with or without cause or reason, by giving thirty (30) days written notice to the COUNTY LIBRARY COOPERATIVE.
- 14. This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.
- 15. Should the COMMISSION employ an attorney or attorneys to enforce any of the terms and conditions hereof, the COMMISSION shall be entitled to recover ARC all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
- 16. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have affixed their hands and seals this date as set forth by their respective signatures.

**BALDWIN COUNTY COMMISSION**

\_\_\_\_\_  
JOE DAVIS, III  
As Its: Chairman  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
WAYNE DYESS  
County Administrator

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN                )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that JOE DAVIS, III, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, they, as such Chairman and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Commission.

Given under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA  
My Commission expires: \_\_\_\_\_

**BALDWIN COUNTY LIBRARY COOPERATIVE, INC.**  
**Post Office Box 399**  
**Robertsdale, Alabama 36567**

\_\_\_\_\_  
By:  
As Its: Chairman  
Date: \_\_\_\_\_

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN                )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that \_\_\_\_\_, as Chairman of the Board of Trustees of the Baldwin County Library Cooperative, Inc., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, he, as such Chairman of the Board of Trustees of the Baldwin County Library Cooperative, Inc., and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Library Cooperative, Inc.

GIVEN under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_