

**LICENSE AGREEMENT FOR BRANCH LIBRARY**

This Agreement is entered between the Cochise County Library District, a political taxing subdivision of the state of Arizona, hereafter referred to as “LIBRARY DISTRICT”, and the Elfrida Citizens Alliance, Inc., a non-profit corporation, hereafter referred to as “ECA”. The LIBRARY DISCTRICT and ECA may each be referred to as “party” or jointly as “parties” in this Agreement.

**RECITALS**

**WHEREAS**, pursuant to A.R.S. 11-901 *et seq.* and A.R.S. 48-3901 *et seq.*, the LIBRARY DISTRICT is a county-free library district; and

**WHEREAS**, pursuant to A.R.S. 11-909(A), the LIBRARY DISTRICT may establish branch libraries throughout Cochise County; and

**WHEREAS**, the LIBRARY DISTRICT has operated a branch library since 2006 within a building currently owned by ECA since 2016; and

**WHEREAS**, said building is located at 10550 N. Highway 191; and

**WHEREAS**, the parties wish to enter into this license agreement to permit the LIBRARY DISTRICT’s continued use of ECA’s building as a library branch.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein, LIBRARY DISTRICT and ECA agree to the following:

**AGREEMENT**

**I. LICENSE**

ECA grants to the LIBRARY DISTRICT the right to use the above identified building for a branch library, which shall be open to all residents of Cochise County.

**II. SPACE ALLOTTED**

The LIBRARY DISTRICT shall have exclusive use of the annex building owned by

ECA and located at 10550 N. Highway 191 for the operation of the branch library.

Library customers, staff, and volunteers will have continuous access to the adjacent Community Center restrooms during the hours the branch library is open. The LIBRARY DISTRICT will be able to use the Community Center for special library events upon scheduling such use with the ECA and assuming the Community Center is available for use.

### **III. UTILITIES AND FIXTURES**

The LIBRARY DISTRICT will be responsible for the electrical bill payment. ECA will provide the LIBRARY DISTRICT with all other necessary utilities to operate the branch library. In addition, ECA may provide the LIBRARY DISTRICT with the necessary furniture, fixtures and equipment needed for the operation of the branch library, but it is expressly understood that ECA is not obligated to provide these items.

### **IV. HOURS OF OPERATION**

The branch library shall be open on such days and times as agreed upon by the LIBRARY DISTRICT and ECA.

### **V. VOLUNTEERS**

It is expressly understood that the branch library will be staffed by volunteers, who will be under the direction and supervision of a Branch Coordinator hired by the LIBRARY DISTRICT. In this regard, the Branch Coordinator will provide ECA and LIBRARY DISTRICT with a list of volunteers who will be working in the branch library and a list of individuals who have been issued keys. In operating the branch library, neither the LIBRARY DISTRICT, nor any LIBRARY DISTRICT volunteer shall be considered an employee of ECA. However, both the LIBRARY DISTRICT and any LIBRARY DISTRICT volunteer will conform to all ECA rules and regulations pertaining to the use and occupancy of ECA's premises. ECA shall have the right to require the removal from ECA's premises any volunteer whose conduct shall be unsatisfactory to ECA.

### **VI. BRANCH COORDINATOR**

The LIBRARY DISTRICT will continue to retain a qualified person to perform the functions of Branch Coordinator. The Branch Coordinator will arrange for the library to be open to the public at all regularly scheduled hours, recruit, train, and assign tasks to

volunteer staff, provide general supervision and direction to them in the daily operation of the branch library, and act as liaison with ECA. Should the LIBRARY DISTRICT ever need to hire a new Branch Coordinator, it will invite the ECA president or his/her delegate to participate on the interview panel.

## **VII. CONSIDERATION**

In consideration for this Agreement the LIBRARY DISTRICT shall provide, through the branch library, books and other materials for the residents of the branch library community and Cochise County, as well as library services such as reference, interlibrary loan, and access to online resources. In addition, the LIBRARY DISTRICT will provide in-service training for volunteer staff and assistance with branch library projects. The amount, time, place, and manner of providing such services shall be determined by the LIBRARY DISTRICT in consultation with the ECA and with volunteer staff.

## **VIII. CONDITION AND MAINTENANCE OF PREMISES**

The LIBRARY DISTRICT shall always keep ECA's premises in good and slightly condition, insofar as it may be affected by LIBRARY DISTRICT'S operations hereunder. ECA will be responsible for janitorial service, maintenance, and repair of the annex building and the restrooms.

## **IX. COMMUNITY INPUT**

To give the community an opportunity to comment on the policies and services of the branch library, the LIBRARY DISTRICT will annually, or more frequently as needed, call a public meeting. This meeting may be held in conjunction with a meeting of the ECA Board. The time, date, and agenda for each meeting will be posted at the branch library. In addition, the County Library Director will mail a notice of the meeting to the President of the ECA if the meeting is not a joint event.

## **X. INDEMNIFICATION**

To the maximum extent permitted by law, each Party (as "**Indemnitor**") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers (as "**Indemnitee**") from and against any and all claims, losses, liability, costs or expenses to which any Indemnitee may become subject under any theory of liability whatsoever, including reasonable attorney's fees, court costs and the costs of appellate proceedings arising out of actions taken in performance of this

Agreement (hereinafter collectively referred to as “**Claims**”) to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such Indemnitor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree.

The mutual indemnification provisions of this Section shall not apply with respect to the personal or real property of the parties. Each Party agrees to waive all rights of recovery against the other for any losses, or loss of use thereof, howsoever occurring, to real or personal property belonging to the other Party, except that any library user shall be responsible for the care and return of any item borrowed from the branch library. The LIBRARY DISTRICT and ECA agree to notify their respective insuring companies of this mutual waiver provision.

## **XI. INSURANCE**

1. LIBRARY DISTRICT agrees to take out and keep in force during the life of this Agreement, general liability insurance in such amounts as is necessary to protect against any liability incident to the duties of the LIBRARY DISTRICT under this Agreement, or the LIBRARY DISTRICT’S use and occupancy of ECA’s premises.

2. It is permissible for the LIBRARY DISTRICT to be a self insurer as to any required insurance. If the LIBRARY DISTRICT elects to self-insure, all losses shall be paid by the LIBRARY DISTRICT to the extent of the LIBRARY DISTRICT’S liability for loss, damage or otherwise.

3. The LIBRARY DISTRICT shall provide ECA with proof of liability insurance for its use of ECA’s property.

4. ECA shall maintain and provide the LIBRARY DISTRICT with proof of sufficient liability insurance to cover its activities and obligations pursuant to this Agreement.

5. ECA, as owner of the premises, shall procure and maintain during the terms of this Agreement property insurance providing appropriate coverage for the premises.

6. The LIBRARY DISTRICT shall procure and maintain during the terms of this Agreement property insurance providing appropriate coverage for building contents owned by the LIBRARY DISTRICT.

**XII. ASSIGNMENT**

This Agreement is not assignable without the prior written consent of both parties. Any attempt to assign any of the rights, duties or obligations of this Agreement without prior written consent is void.

**XIII. TERMINATION**

This Agreement may be terminated by either party for any reason by giving ninety (90) days written notice thereof to the other.

**XIV. NOTICE**

All notices required to be provided by this Agreement or arising from this Agreement shall be provided in writing to the following:

For the LIBRARY DISTRICT: Amadee Ricketts, Library Director  
County of Cochise  
P.O. Drawer AK  
Bisbee, AZ 85603

For ECA: Jeanne V. Shaw, Executive Director  
Elfrida Citizens Alliance, Inc.  
P.O. Box 172  
Elfrida, AZ 85610

**XV. TERM OF AGREEMENT**

This Agreement shall commence on the date it is filed with the Cochise County Recorder's Office and upon it becoming effective any previous Agreement shall be terminated. The term of the Agreement shall be for three years, unless terminated by the parties as set forth in Section XIII of this Agreement.

**XVI. CANCELLATION**

This Agreement may be canceled pursuant to A.R.S. 38-511, the applicable

provisions of which are incorporated herein by reference.

#### **XVII. SEVERANCE**

The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. If any provision of this Agreement or portion thereof is held invalid, illegal or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

#### **XVIII. RIGHTS AND REMEDIES**

No provision in this document shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of any party to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the other party from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of a right of a party to insist upon the strict performance of the Agreement.

#### **XIX. GOVERNING LAW, JURISDICTION, VENUE**

This Agreement shall be governed by the laws of the State of Arizona. The parties hereby agree that the venue for the resolution of any dispute under this Agreement shall be and shall remain in Cochise County.

#### **XX. BOYCOTT OF ISRAEL**

In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

#### **XXI. IMMIGRATION LAWS**

The parties hereby warrant that they will comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements

of A.R.S. § 23-214(A) (together the “State and Federal Immigration Laws”). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

## **XXII. RECORDS**

The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

## **XXIII. PUBLIC RECORD LAWS**

Notwithstanding any other provision of the Agreement, the parties understand that the LIBRARY DISTRICT is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

## **XXIV. CONTRACT AMENDMENTS**

This Agreement may be modified only by a written Amendment signed by persons duly authorized to act in this capacity on behalf of the parties.

## **XXV. ENTIRE AGREEMENT**

This Agreement contains all the representations and the entire understanding and agreement between the parties pertaining to the occupancy and use of the subject property or any other matters connected therewith. All correspondence, memoranda, or oral or written agreements pertaining to the property or the parties hereto, which originated before the date of this Agreement are null, void and no longer in force and with no effect, and are replaced in total with this Agreement unless otherwise expressly stated in this Agreement. This License Agreement shall not be altered, amended, or modified except by a writing signed by authorized representatives of the parties.

## **XXVI. ARBITRATION**

To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the parties agree to resolve any dispute arising out of this Agreement by arbitration.

**XXVII. NO JOINT VENTURE**

It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties' employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other party, including, but without limitation, the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

**XXVIII. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

**XXIX. E-VERIFY COMPLIANCE:**

The parties warrant that they shall comply with all federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A). The parties further agree that any failure to comply with the requirements of this section shall be deemed a material breach of this Agreement that may result in termination of this Agreement. The parties further agree that they each retain the legal right to inspect the papers of any one of their employees who performs work under this Agreement to ensure that the parties are complying with the provisions of this section.

**IN WITNESS HEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives.

APPROVED:  
ELFRIDA CITIZENS ALLIANCE, INC.

\_\_\_\_\_  
DATE

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

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED:  
COCHISE COUNTY BOARD OF SUPERVISORS  
ACTING AS THE COCHISE COUNTY LIBRARY  
DISTRICT

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
CHAIRMAN PEGGY JUDD

ATTEST:

\_\_\_\_\_  
Arlethe, G. Rios  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Civil Deputy County Attorney  
Cochise County Attorney's Office