

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 08-159

Adopting a Memorandum of Understanding between Multnomah County and The Library Foundation, Inc.

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Library and The Library Foundation, Inc. seek to clarify and formalize their roles, responsibilities and general agreements.
- b. It is in the best interest of the County that the relationship between Multnomah County Library and The Library Foundation, Inc. is formalized through a Memorandum of Understanding.

The Multnomah County Board of Commissioners Resolves:

1. The attached Memorandum of Understanding between Multnomah County and The Library Foundation, Inc. is approved.
2. The County Chair is authorized to execute the attached Memorandum of Understanding on behalf of Multnomah County.

ADOPTED this 11th day of December, 2008.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Bernadette Dieker Nunley, Assistant County Attorney

SUBMITTED BY:
Molly Raphael, Multnomah County Director of Libraries



**Memorandum of Understanding Between
Multnomah County Library and The Library Foundation, Inc.**

1. **Independence:** The Multnomah County Library (“MCL”), on behalf of Multnomah County, and The Library Foundation, Inc. (“Foundation”) enter into this agreement in order to clarify roles, responsibilities, and general agreements. MCL is a department of Multnomah County, a municipal corporation, governed by the Board of County Commissioners. The Foundation is a legally separate, independent entity, incorporated as a 501(c)(3) organization in Oregon in 1995, and governed by its Board of Trustees.

MCL recognizes that, for the Foundation to operate as an independent entity under Section 501(c)(3) of the IRS Code and the Nonprofit Corporation Act of the State of Oregon, the Foundation must remain separate and apart from MCL.

2. **Collaborative Fundraising Agreement:** MCL recognizes the Foundation as the primary, private fundraising organization to provide charitable funds for library services. The Foundation funds enhance and do not supplant public support.
 - a. MCL agrees to consult with the Foundation about fundraising needs. The Foundation agrees to consult with MCL about the Foundation’s fundraising plans through annual and long-range planning.
 - i. Both MCL and the Foundation recognize that the Library Director may have a conflict of interest as a Trustee of the Foundation. In her capacity as Trustee, the Library Director may be recused from voting or discussions when motions regarding the Library are raised. The Board of Trustees of the Foundation is solely responsible to determine the composition of the Board.
 - ii. Because MCL is a government department and accountable to Multnomah County taxpayers, citizens and MCL patrons, the Foundation may not commit MCL to any program or effort without explicit approval from MCL.
 - iii. MCL maintains the right to refuse funds if the funds are designated for purposes that are inconsistent with MCL’s mission.
 - iv. Any funds MCL accepts from the Foundation are tracked separately from public funds.
 - b. The Foundation recognizes that MCL is bound by County Financial and Budget Policies. County Financial Budget Policies are based on government budgeting best practices set forth by the General Accounting Standards Board, the Government Financial Officers Association, and Oregon Budget Law.

- c. MCL recognizes that the Foundation is bound by the Oregon and federal laws governing tax-exempt organizations, Foundation Board policies, and by its representations to its donors.
- d. The Foundation will be the legal recipient for charitable donations, bequests, and significant in-kind gifts to MCL, unless a donor specifically requests that the donation not be distributed to the Foundation. MCL will give unsolicited donations to the Foundation, unless a donor specifically requests that the donation not be distributed to the Foundation. MCL will not encourage a donor to bypass the Foundation.
 - i. The Foundation's unrestricted assets raised for MCL are held for the benefit of MCL and shall be used by the Foundation at the discretion of the Foundation Board to support the mission of the Foundation, including direct support of MCL's programs and activities as well as providing for the administrative support of the Foundation, fundraising and financial development on behalf of MCL.
 - ii. The Foundation's restricted assets raised for MCL are held for the benefit of MCL and shall be disbursed at the discretion of the Foundation Board, consistent with the donors' wishes. Restricted gifts, with conditions that obligate MCL, will not be agreed to by the Foundation without MCL's agreement.
 - iii. The Foundation assures that funds designated to MCL will be available to MCL should the Foundation dissolve or change its mission. The Foundation's enabling documents shall continue to include a clause requiring that in the event of its dissolution or the winding up of its affairs, the Foundation's Board of Trustees, after paying or making provision to pay all of the debts or obligations of the Foundation, shall select a tax-exempt organization that will hold and distribute assets for the benefit of MCL. The selection of a tax-exempt organization will be completed with consultation from MCL.
 - iv. MCL depends upon the Foundation to manage these private donor gifts and donor relations.
 - v. MCL and the Foundation will agree to a process that will give MCL an understanding of the Foundation resources that are available and give the Foundation an opportunity to understand MCL's needs.
- e. Noting the Foundation's cooperation as MCL's primary, independent, private fundraising organization, MCL legally retains full authority to seek fundraising alliances and partnerships with entities that benefit MCL's priorities and goals, other than those priorities and goals that are met by Foundation funding.
 - i. MCL will not seek funding from private individuals, corporations or foundations without consulting the Foundation well in advance.
 - ii. If partnership possibilities with other organizations arise, MCL will assess any impacts on the Foundation and make every effort to discuss those potential impacts with the Foundation in a timely and complete manner.
 - 1. MCL will consult with the Foundation promptly and in advance when considering taking the lead in a group funding request that includes other partner organizations.
 - 2. MCL will inform the Foundation as soon as possible when MCL is not the lead organization in a group request.

- f. MCL will consult with the Foundation, if seeking state or federal funding, when both MCL and the Foundation are eligible to apply. MCL and the Foundation may agree that MCL should proceed alone when the Foundation chooses not to fundraise for the funding opportunity.
- g. MCL and the Foundation will reach mutual agreement about the sustainability of programs or projects before the Foundation begins fundraising. The Foundation recognizes that given MCL's unpredictable budget environment, MCL cannot make any firm commitments for future funding. Given certain conditions, MCL will make every effort to ensure that a Foundation-funded program will continue as anticipated.
- h. This agreement is not retroactive.

3. Process for Fundraising Collaboration:

- a. MCL and the Foundation will develop a process to discuss strategic priorities, fundraising priorities, funding needs, fundraising strategy and reporting to support the Foundation's audit and IRS reporting.
- b. The fundraising process will include specific funding criteria from the Foundation and a timeframe for MCL to request funding from the Foundation. MCL and the Foundation will use a mutually acceptable form of written requests for funding and written reports on spending that meets the Foundation's needs to report to its donors and the IRS.
- c. Fundraising collaboration will include a process by which MCL may approve or disapprove any commitments the Foundation may make in proposals or presentations that commit MCL to any activity.
- d. MCL and the Foundation will create a process whereby MCL will invoice the Foundation for approved expenses based on agreed upon project goals and the Foundation will reimburse MCL accordingly. The details of this process will include specific dates for invoicing and reimbursement based on a process that is workable for Multnomah County and the Foundation.
- e. When developing fundraising and funding plans, MCL and the Foundation will discuss the way any program savings will reflect on Foundation funding reimbursement.
- f. This process will be reviewed and updated on an as needed basis.

4. Confidentiality: MCL, a public entity, is subject to public records and public meetings laws, among other federal, state and, local laws. MCL and the Foundation are committed to donor confidentiality and the privacy of Foundation Business. Both entities will protect that confidentiality to the fullest extent allowed by law. The Foundation will implement procedures to safeguard its confidentiality of its business and the privacy of its donors.

5. Term of Agreement: The parties agree to reexamine the terms set forth in this document every three years to determine whether they continue to meet the needs of both parties.

6. Resolving Issues: If the parties' own efforts fail to resolve issues arising under the terms set forth in this document, the parties agree to seek non-binding mediation to reach resolution.