
Library Board

Monday, August 15, 2016

Regular Meeting

Item D2

Discussion of Memorandum of Agreement with Grand Island Public Library Foundation and Referral to Library Board's Foundation Representatives

This is an item of continued discussion. As in most public libraries, we have a long standing practice of cooperation with the library foundation and friends. In some cases a more formal agreement is sought for additional clarity. Work continues with City Attorney Jerry Janulewicz on that possibility using an agreement in effect in Lincoln as a template. Referral of a first draft to Alan and Rob as foundation board representatives is recommended at this time.

Staff Contact:

DRAFT
AGREEMENT BETWEEN THE GRAND ISLAND PUBLIC LIBRARY
AND
THE GRAND ISLAND PUBLIC LIBRARY FOUNDATION, INC

THIS AGREEMENT is entered into by and between the City of Grand Island, doing business as Grand Island Public Library, hereinafter referred to as “Library” and the Grand Island Public Library Foundation, Inc Board of Trustees, hereinafter referred to as “Foundation” executed this 15st day of August 2016.

I.

The Library Board is an administrative board charged with overseeing the public library as designated in accordance with Chapter 19-3 in the Grand Island City Code.

II.

The Foundation is a non-profit Nebraska corporation designated as tax exempt under §501(c)(3) of the Internal Revenue Code of 1986, and is organized for the purpose of soliciting and receiving gifts, bequests, grants, and devises of property for the use and benefit of the Library consistent with its Articles of Incorporation as amended from time to time.

III.

Library and Foundation are desirous of setting forth in this Agreement the mutual responsibilities and understandings of the two organizations.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the Library and the Foundation do agree as follows:

1. Foundation’s Responsibilities.

a. Library Programs/Services Support. The Foundation will assist the Library in fulfilling the Library’s responsibilities under its adopted areas plan and, in particular, may assist the Library by providing cash and in-kind contributions and services for the management, maintenance, and support of the various library programs and/or services established within the designated areas of the Library.

b. Fundraising. The Foundation will conduct periodic fund drives, both general and project specific, for the purpose of obtaining charitable donations to be utilized in the provision of the Library’s programs and/or services within the Library’s designated area and in accordance with the Library’s missions and goals. The funds so raised may be utilized directly

by the Foundation for these purposes or may be transferred to the Library, as from time to time may be determined by the Foundation, but in any event all funds so solicited and received shall be initially accepted in the name of the Foundation and the solicitations shall be conducted in the name of the Foundation. The name of the City of Grand Island shall not be used for the purpose of such solicitations and no prospective donor shall be advised that any such donation is being made to the City of Grand Island. Notwithstanding anything to the contrary contained herein, it is agreed that the Foundation is entitled to use the Foundation's name for the purpose of such solicitations and to advise prospective donors that such donation is being made to the Foundation.

c. Other Duties. The Foundation shall act as a conduit on behalf of the Library, with the approval of both parties, for contracting with other agencies of government, obtaining grants, or taking other actions in which it is necessary that an organization with 501(c)(3) designation act as contractor, grantee, or otherwise. It is understood and agreed that any grant so submitted shall be in the name of the Foundation.

d. Reports. The Foundation shall provide the Library with its annual audits, quarterly Library Support Expenses, and other reports upon request.

2. Library's Responsibilities.

a. Meeting and Designated Space. The Library shall provide the Foundation with space for Foundation meetings as well as designated space, telephone and internet access, and office furnishings to conduct its services in support of the Library including but not limited to volunteer activities and Foundation sales of donated materials, Library discards and other items.

b. Promotion. The Library shall make available the Library system to promote and/or advertise Foundation events, meetings, and products to the extent allowed by the Grand Island City Code and other governing law. The Library shall provide a link to Foundation's web site from the Library's web site.

c. Proposals. The Library shall, on an as needed basis, provide proposals for funding consideration that meet the Foundation's funding guidelines and/or strategic plan. The Library shall also provide general advice and support to the Foundation.

d. Use of Funds. The Library shall make use of in-kind contributions or funds raised by the Foundation to supplement government funding and not supplant government funding of the Library, and for the purposes for

which the funds were raised by the Foundation, including using any “restricted funds” for their intended purposes, with such limitations as provided by the Grand Island City Code and other governing law.

e. Reports. The Library shall provide the Foundation with an accounting report on the use in-kind contributions and funds given to the Library by the Foundation at such times as are necessary and reasonably requested by Foundation in writing, but in no event less than annually.

f. Library Board Representation. To assure a high standard of collaboration, the Library Board shall designate two of its members as Foundation Board members.

3. Foundation Expenses. All correspondence of the Foundation shall be on Foundation letterhead, and the Foundation shall pay all direct costs of paper, printing, postage, and copying; provided, however, the Foundation may utilize copying equipment of the Library subject to reimbursement by the Foundation for solely-Foundation business.

4. No Compensation. It is understood and agreed by and between the Library and the Foundation that the purpose of this Agreement is to further the mutual goals of the Foundation and the Library by improving the provision of library programs and/or services within the Library’s designated areas and neither party shall provide monetary compensation to the other party for any of the activities or services rendered, performed, or provided by either, except for reimbursements as provided in paragraph 3 or as may hereafter be agreed upon in writing.

5. Independent Contractor. Library is interested only in the results produced by this Agreement. The Foundation has sole and exclusive charge and control of the manner and means of performance. The Foundation shall perform as an independent contractor and it is expressly understood that neither the Foundation nor any of its staff are employees of City of Grand Island and, thus, they are not entitled to compensation, sick leave, or injury leave. Nothing contained herein shall be deemed to change or alter the Foundation’s status as a 501(c) (3) organization.

6. Insurance. Foundation agrees to maintain general liability insurance with an insurer licensed by the State of Nebraska that will protect both Foundation and Library from claims of damages because of injuries, including death, suffered by persons and liability from damages to property which may arise from the work performed under this Agreement, either by Foundation, any subcontractor, or by anyone directly or indirectly engaged or indirectly engaged or employed by either of them. The parties agree that the limits of liability for the insurance which the Foundation shall procure shall be not less than \$1,000,000 each occurrence and

\$2,000,000 in the aggregate. The City of Grand Island shall be an additional named insured.

7. Indemnification. To the fullest extent permitted by law, Foundation shall indemnify, defend, and hold harmless the Library, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused by the intentional or negligent act or omission of Foundation or anyone for whose acts any of them may be liable. This section will not require Foundation to indemnify or hold harmless the Library for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Library.

To the fullest extent permitted by law, Library shall indemnify, defend, and hold harmless the Foundation, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused by the intentional or negligent act or omission of Library or anyone for whose acts any of them may be liable. This section will not require Library to indemnify or hold harmless the Foundation for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Foundation.

The Library does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

8. Fair Employment. The Foundation shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Grand Island City Code Chapter 11.08, and *Neb. Rev. Stat* § 48-1122, as amended.

9. Nebraska Law. This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

10. Integration, Amendments, Assignment. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This

Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

11. **Severability & Savings Clause.** Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

12. **Term.** The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than one year after the date of execution by Library. This Agreement may be renewed for subsequent one year periods as the parties may agree.

13. **Termination.** Either party may terminate this Agreement at any time by giving written notice to the other party of such termination at least 30 days before the effective date of such termination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the Library below.

GRAND ISLAND PUBLIC LIBRARY

Library Board President

Date

GRAND ISLAND PUBLIC LIBRARY FOUNDATION, INC

Foundation Board President

Date

Agreement Between Grand Island Public Library
and Grand Island Public Library Foundation, Inc
As Adopted _____, 2016

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