



STAFF REPORT ACTION REQUIRED

Renewal of Letter of Understanding between Toronto Public Library Board and Toronto Public Library Foundation Board

Date: October 30, 2023

To: Toronto Public Library Board

From: City Librarian

SUMMARY

The purpose of this report is to present a renewed Letter of Understanding with a new Services Agreement between the Toronto Public Library Board (TPL Board) and the Toronto Public Library Foundation Board (Foundation Board) for TPL Board approval.

The current Letter of Understanding was signed in March 2010 and is provided as Attachment 2. Over the past 13 years, Toronto Public Library (TPL) and the TPL Foundation have enjoyed significant success and fundraising achievements and it is appropriate to now review and refresh the agreement to reflect the growth and maturity of the relationship. The renewed Letter of Understanding reaffirms the existing roles and responsibilities of TPL and the TPL Foundation, and the Services Agreement codifies the administrative service support levels TPL currently provides the TPL Foundation. TPL's work to lead the renewal of the Letter of Understanding and new Services Agreement was supported by external legal counsel. TPL and TPL Foundation staff worked collaboratively to

finalize the renewed Letter of Understanding and new Services Agreement presented here for TPL Board approval. The TPL Foundation will bring the Letter of Understanding and new Services Agreement to the Foundation Board for approval following TPL Board approval.

RECOMMENDATIONS

The City Librarian recommends that the Toronto Public Library Board:

1. approves the Letter of Understanding and Services Agreement as included in Attachment 1.

Implementation Points

The Letter of Understanding and Services Agreement will come into effect upon TPL Board and Foundation Board approval.

The TPL Foundation will bring the Letter of Understanding and new Services Agreement to the Foundation Board for approval following TPL Board approval.

As part of the renewal of the Letter of Understanding, TPL and the TPL Foundation have agreed to review and update TPL's Sponsorship Policy within one year to include mutually agreed upon criteria for evaluating reputational risk as it is currently not defined in policy.

FINANCIAL IMPACT

Funding provided by the TPL Foundation is used to supplement and enhance TPL's operating and capital budgets for areas such as programs, collections, technology, services and buildings. The Library benefits financially from the success of the Foundation.

The Director, Finance & Treasurer has reviewed this financial impact statement and agrees with it.

ALIGNMENT WITH STRATEGIC PLAN

Funding provided by the TPL Foundation is used to supplement and enhance the Library's operating and capital budgets in support of initiatives approved as fundraising priorities that are aligned with TPL's strategic priorities and their enablers.

EQUITY IMPACT STATEMENT

Initiatives funded through donations to the TPL Foundation have a positive impact on many equity-deserving groups with specific, dedicated fundraising priorities being in direct support of services and programs to equity-deserving communities.

DECISION HISTORY

At its December 14, 2009 meeting, the TPL Board approved the [Renewal of the Letter of Understanding between the Toronto Public Library Board and the Toronto Public Library Foundation Board](#) report, updating the original August 28, 1999 Letter of Understanding.

ISSUE BACKGROUND

In March 1998, the TPL Board adopted the Metropolitan Toronto Reference Library Foundation as the Foundation for the new Toronto Public Library. The Foundation assumed responsibility for all fundraising and changed its name to the Toronto Public Library Foundation. The first Letter of Understanding dated August 28, 1999 confirmed this arrangement and the agreed upon roles and responsibilities for each organization. The Letter of Understanding was updated in 2010 and is currently in force, and outlines the roles and responsibilities as agreed between the TPL Board and the TPL Foundation Board. TPL and the TPL Foundation have enjoyed significant success and fundraising achievements and it is appropriate to now renew the Letter of Understanding and codify a Services Agreement to reflect the growth and maturity of the relationship. TPL engaged external legal counsel to draft the renewed Letter of Understanding and the Services Agreement.

COMMENTS

Similar to the current Letter of Understanding, the renewed Letter of Understanding outlines roles and responsibilities on seven articles: Collaboration; Fundraising; Communication with the City of Toronto; Governance; Privacy and Intellectual Property; Conflict Resolution; and General Provisions.

As part of the renewal of the Letter of Understanding, TPL and the TPL Foundation have agreed to review and update TPL's Sponsorship Policy within one year of approval of the renewed Letter of Understanding to include mutually agreed upon criteria for evaluating reputational risk as it is currently not defined in policy.

The newly created Services Agreement codifies the current level of administration services, training access, office and event space, marketing and communication and statistics and reporting support required by the TPL Foundation and already provided by TPL in order to carry on activities in furtherance of the TPL Foundation's charitable purposes.

TPL and TPL Foundation staff worked collaboratively to finalize the renewed Letter of Understanding and new Services Agreement.

CONTACT

Pam Ryan; Director, Service Development & Innovation; Tel: 416-393-7133; Email: pryan@tpl.ca

Will Scott; Chief Executive Officer; Toronto Public Library Foundation; Tel: 416-393-7134; Email: wscott@tpl.ca

SIGNATURE

Vickery Bowles
City Librarian

ATTACHMENTS

- Attachment 1: Letter of Understanding and Services Agreement – October 30, 2023
- Attachment 2: Letter of Understanding – March 22, 2010

LETTER OF UNDERSTANDING

THIS LETTER OF UNDERSTANDING (the “LOU”) is effective as of the 30th day of October, 2023.

BETWEEN:

THE TORONTO PUBLIC LIBRARY FOUNDATION,
789 Yonge St. Toronto, Ontario M4W 2G8

(“Foundation”)

-AND-

TORONTO PUBLIC LIBRARY BOARD,
789 Yonge St., Toronto, Ontario M4W 2G8

(“TPL”)

(the Foundation and TPL are each a “Party” and collectively the
“Parties”)

WHEREAS:

- A. TPL is a public library board under the provisions of the *Public Libraries Act* and a registered charity under the *Income Tax Act* (Canada) (the “ITA”);
- B. TPL operates, manages, and maintains the Toronto Public Library (the “Library”);
- C. The Foundation is a federal non-share capital corporation and a registered charity under the ITA;
- D. The purpose of this LOU is to set forth the terms upon which the Foundation and TPL will work together to support the Library;

NOW THEREFORE, the Parties hereto agree as follows:

ARTICLE I
COLLABORATION

1.01 Scope of Collaboration

- (a) The Foundation’s charitable purposes as set out in its Articles of Continuance dated July 2, 2014 are as follows:
 - (i) To receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, for charitable purposes carried on by, in connection with, in relation to, for the benefit of or to enhance or improve the resources and services provided by the public library system known as Toronto Public Library (the “Library”);

- (ii) To facilitate and fund the provision of collections, electronic resources, technology, programs, facilities and other services suitable for such library (the “Services and Facilities”); and
 - (iii) To advocate for, promote, and help maintain TPL as a world-class public library and to help ensure that its Services and Facilities remain accessible to the public.
- (b) TPL seeks to provide comprehensive and efficient public library services that reflect the community's unique needs and to ensure that these services are conducted in accordance with the *Public Libraries Act*.
- (c) TPL and the Foundation agree to collaborate on the development and promotion of fundraising programs to help ensure that the Library continues to be a world-class public library and that its resources and programs remain accessible to the public.
- (d) The Foundation shall, subject to the terms of this Agreement, and specifically section 2.01 hereof, be responsible for:
 - (i) fundraising in support of the Library, which shall include: prospect clearance and cultivation; and solicitation of gifts, gifts-in-kind, donations, grants, sponsorships, bequests, and endowments in support of the Library;
 - (ii) recognition of donors and sponsors;
 - (iii) striving to meet the annual fundraising priorities and strategic plan fundraising priority areas; and
 - (iv) conducting the above activities in accordance with the policies of the Foundation and the relevant policies of TPL in place from time to time.
- (e) TPL shall be responsible for:
 - (i) providing administrative services – including payroll and human resources, accounting, and information technology services, training access, statistics and reporting services, office and event space to the Foundation, and marketing and communications support as set out in the Services Agreement between TPL and the Foundation, as may be amended or replaced from time to time;
 - (ii) providing the Foundation with Library information on Services and Facilities necessary for the Foundation to carry out its responsibilities under this LOU;
 - (iii) supporting the fundraising efforts of the Foundation to the best of its ability and making every reasonable effort to promote the interests and reputation of the Foundation;
 - (iv) applying for and obtaining grants, donations, gifts and gifts-in-kind from funders and donors that require the funds or gifts-in-kind to be given directly to TPL; and
 - (v) conducting the above activities in accordance with the policies of the Foundation and the relevant policies of TPL in place from time to time.

ARTICLE II

FUNDRAISING

2.01 Fundraising Priorities

- (a) Strategic plan fundraising priority areas shall be approved by the board of TPL and the board of the Foundation in accordance with TPL's strategic plan.
- (b) TPL and Foundation Senior Leadership Teams shall consult not less than once a year with the objective of setting strategic plan fundraising priority areas and annual fundraising priorities which are consistent with and in accordance with TPL's strategic plan.

2.02 Annual Fundraising Initiatives

- (a) Except for TPL's application for grants and gifts as outlined in section 1.01(e)(iv) of this LOU, all fundraising initiatives shall be executed in the name of the Foundation, unless otherwise agreed to in writing through mutual consultation.
- (b) Annual fundraising initiatives in support of the Library shall be directed by the fundraising priorities set in accordance with subsection 2.01(a). Senior staff of each of TPL and the Foundation shall meet at least annually to develop annual fundraising initiatives.
- (c) Annual fundraising initiatives set under subsection 2.01(b) shall be approved by TPL Directors Committee and Foundation Leadership Team and subsequently submitted to the board of each of TPL and the Foundation.

2.03 Fundraising Assessment and Reporting

- (a) Senior Leadership Team members of TPL and Seniors Leadership Team members of the Foundation shall meet at least monthly to review the status of all fundraising initiatives and the status of implementation of all funded projects.
- (b) The Foundation shall provide TPL with written progress reports, in a form acceptable to TPL, detailing the Foundation's fundraising activities and its fundraising results including information on restricted gifts and donor requirements.
- (c) Each Party shall report to the other Party, as soon as reasonably practicable to do so, on any significant changes in funded project status and/or fundraising initiatives, including proposed material changes to the nature of, or budget for the activities for which the funds have been provided. Any TPL-approved proposals that have been funded or are in the course of being implemented at the time that TPL advises of a change to fundraising priorities, TPL shall wherever possible, honour the terms agreed upon in these proposals.

2.04 Acceptance of Gifts and Sponsorships

- (a) When a grant or gift is directed to TPL, TPL shall, where feasible, direct the grant or gift to be received through the Foundation. Where a gift is directed to TPL and is subject to and in accordance with any agreed upon terms and conditions with the donor that specify that the gift is to go directly to TPL, TPL shall accept the gift. TPL and the Foundation shall use their best efforts to direct all grants and gifts to the Foundation in accordance with the relevant policies of TPL and the Foundation.

- (b) Either Party may, reasonably, refuse any grant or gift or sponsorship that could risk the reputation of TPL or the Foundation, as determined based on mutually agreed upon criteria for evaluating reputational risk, or is not in accordance with the policies of TPL or the Foundation.
- (c) Subject to subsection 2.04(b), the Foundation may accept unrestricted gifts.
- (d) Unrestricted funds raised by the Foundation, which are not required to fund the operations or to support the long-term growth of the Foundation, shall be available for use by the Library as determined by TPL and the Foundation.
- (e) Before the Foundation accepts a restricted gift in support of a specific Library project/program that has not been identified as a fundraising priority, it shall first obtain, in writing, approval by TPL.
- (f) TPL and the Foundation agree to each adopt a Sponsorship Policy to be completed within one year of the date of this Agreement and that the Sponsorship Policy of each Party shall be consistent with the strategic plan of TPL and the terms of this Agreement. The Foundation agrees to consult with TPL on the terms of the Foundation Sponsorship Policy and acknowledges that its Policy must align with the TPL Sponsorship Policy. Sponsorships of TPL assets shall be subject to TPL's Sponsorship Policy and must be approved by TPL prior to acceptance. Sponsorships of the Foundation shall be subject to the Foundation's Sponsorship Policy.
- (g) Naming commitments are subject to TPL's Naming Policy and must be approved by TPL before agreed to by the Foundation.

ARTICLE III

COMMUNICATION WITH THE CITY OF TORONTO

The Foundation shall remain arm's length with the City of Toronto and will normally be represented by TPL at City of Toronto meetings on matters of relevant mutual interest. Notwithstanding the foregoing, the Foundation shall be permitted to communicate directly with the City of Toronto, when required, and each party will commit to keep the other informed of the City of Toronto's position(s) regarding such matters of mutual interest.

ARTICLE IV

GOVERNANCE

- (a) To ensure communication, collaboration and cooperation between TPL and the Foundation:
 - (i) The Foundation's by-laws will continue to provide that at least one member of TPL's board shall be a director on the Foundation board;
 - (ii) Additional TPL board members may be considered for appointment to the Foundation board as long as they do not form a majority of the Foundation board;
 - (iii) The City Librarian of the Library shall serve as a director of the Foundation board and shall serve on the Governance & Nominating Committee of the Foundation;

- (iv) Members of the TPL board and the City Librarian who are directors of the Foundation board shall not be eligible to become officers of the Foundation;
- (v) In keeping with the spirit of equitable exchange of information, TPL will invite the Chair of the Foundation, and the CEO, and/or his or her designate(s), to attend all public board and relevant committee meetings of TPL;
- (vi) The CEO of the Foundation shall be a member of TPL's Senior Management team for the purpose of exchanging information on matters of mutual interest to the Parties; and
- (vii) Each Party may invite staff and/or members on the other Party's board to serve on its committees, operational or board and participate in strategic planning sessions for the purpose of fostering collaboration between the Parties and assisting with fundraising in support of the Library.

ARTICLE V

PRIVACY AND INTELLECTUAL PROPERTY

- 5.01** The Foundation has the right to use the personal information of individual Library cardholders for the purpose of communication and fundraising on behalf of the Library provided those individual cardholders have consented to the sharing of their personal information with the Foundation for this purpose. TPL will ask cardholders if they wish to disclose personal information to the Foundation during the registration/renewal process and then disclose cardholder personal information for consenting users as stated in TPL's Access to Information and Protection of Privacy Policy to the Foundation solely for communication and fundraising purposes. If a cardholder withdraws their consent, or if advised of the same by TPL, the Foundation shall, except as may be required by law, update the individual's personal information, per the wishes of said individual. Other than as described in Article V of this LOU, the Foundation will not disclose cardholder personal information shared by TPL to third parties, nor will it use or disclose this information for any purpose other than for communication or fundraising purposes. The Foundation shall at all times protect and use such information in accordance with direction from TPL as may be required to ensure TPL's obligation to comply with the *Municipal Freedom of Information and Protection of Privacy Act*.
- 5.02** The Foundation shall use reasonable organizational and technical security measures to protect the information it receives from TPL and promptly notify TPL of any breach of security safeguards that may reasonably lead to loss of or unauthorized disclosure or access to personal information, and cooperate with any investigation TPL may initiate in response.
- 5.03** The Foundation may only transfer the cardholder's personal information to third-party service providers solely for the purpose of obtaining assistance with its communication and fundraising activities. The Foundation is required to ensure, by means of terms, representations and warranties, as appropriate, in its contracts with such third parties, that any Library cardholder's personal information to which the third parties have access, remains the property of TPL and is only to be used for the purposes of carrying out the services the third parties provide to the Foundation and for no other purpose. All contracts of the Foundation with third parties that involve the disclosure of Library cardholder personal information to the third parties must include a term requiring that the personal information provided to the third party will be destroyed, in a manner acceptable to the Library, once the contractual obligations of the third party have been fulfilled, and generally contain provisions protecting the personal information no less strict than contained herein.

- 5.04** All intellectual property will remain the sole and exclusive property of the Party owning such intellectual property. Where applicable, TPL and the Foundation each hereby grant the other Party a limited, non-exclusive, non-transferable, royalty-free, and non-sublicensable license during the term of this Agreement to use each Party's intellectual property, specifically, its trademarks and related marketing materials, solely for the purposes of joint fundraising and marketing activities with the consent of the other Party. No other intellectual property rights are granted. Each Party represents and warrants that it has all rights to its intellectual property and the right to license it to the other Party hereunder. Each Party shall indemnify and defend the other against any claims relating to any actual or alleged infringement of a third-party's intellectual property rights or a breach of this section.
- 5.05** The Foundation shall ensure it has the appropriate insurance in place to cover its operations and for greater certainty shall ensure that it has insurance that will address cybersecurity and related issues.

ARTICLE VI

CONFLICT RESOLUTION

6.01 Conflict Resolution

In the event that a dispute arises between the Parties, every effort will be made to resolve the dispute effectively, amicably, and as quickly as possible. Disputes will be resolved as follows:

- (a) Any dispute or controversy between the Parties arising out of or related to this LOU shall first be referred to the TPL City Librarian and the CEO of the Foundation, who shall, acting in good faith, seek to resolve the dispute or conflict in an amicable and constructive manner.
- (b) If the persons referred to in section 6.01(a) cannot resolve the dispute or controversy within thirty (30) business days of reference to them, the matter shall next be referred to the Chair of TPL and TPL City Librarian and the Chair and CEO of the Foundation, collectively, for resolution. In connection with the foregoing, the Chair of TPL and TPL City Librarian and Chair and CEO of the Foundation shall, acting in good faith, seek to resolve the dispute or controversy in an amicable and constructive manner.
- (c) If the persons referred to in section 6.01(b) cannot resolve the dispute or controversy within ten (10) business days of reference to them, either Party may at any time thereafter request that a mediator be retained to assist the Parties in resolving the dispute. In the event a request for mediation is made, the Parties shall, each acting reasonably, devote a period of up to thirty (30) days to both reaching an agreement on an independent, knowledgeable mediator and participating in the mediation and negotiations related thereto.
- (d) If the Parties are unable to agree on a mediator, the Parties agree to accept the mediator appointed by an independent mediation association or company. The Parties agree to participate in the mediation and negotiations related thereto.
- (e) In the event that a mediator is unable to assist the Parties in resolving a dispute between them, the TPL City Librarian and the CEO of the Foundation may recommend, and the Parties may agree, that the dispute be addressed in binding arbitration.

ARTICLE VII
GENERAL PROVISIONS

7.01 Amendment

This LOU may be amended by mutual agreement of the Parties in writing.

7.02 Term and Termination

This Agreement shall take effect as of the Effective Date and continue until terminated under this Section 7.02. The Parties acknowledge that they are committed to collaborating and that they wish to enter into this LOU for the long-term, which is in the best interest of TPL and the Foundation. A decision by a Party to terminate the LOU shall not be taken lightly and without first attempting to resolve the dispute pursuant to article 6.01 of this LOU. After such an attempt has been made and if unsuccessful, either Party may terminate this Agreement without further cause by giving not less than three hundred and sixty-five (365) calendar days' written notice to the other Party. Notwithstanding the foregoing, either Party may immediately terminate this Agreement if the other Party becomes bankrupt or insolvent, loses its qualified donee status under the *Income Tax Act* (Canada) or makes significant changes to its charitable mandate or charitable purposes as set out in its Articles of Continuance.

7.03 Assignment

Except as otherwise provided to the contrary, neither Party may assign its rights hereunder except with the prior written consent of the other Party.

7.04 Counterparts

This LOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the Parties have executed this LOU effective on the date first written above.

TORONTO PUBLIC LIBRARY BOARD,
789 Yonge St. Toronto, Ontario M4W 2G8

Per: _____
Name: _____
Title: City Librarian

Per: _____
Name: _____
Title: Chair

I/We have the authority to bind the Foundation.

**THE TORONTO PUBLIC LIBRARY
FOUNDATION**
789 Yonge St. Toronto, Ontario M4W 2G8

Per: _____
Name: _____
Title: CEO

Per: _____
Name: _____
Title: Chair

I/We have the authority to bind TPL.

SERVICES AGREEMENT

THIS AGREEMENT made as of the 30th day of October, 2023 (the “**Effective Date**”).

BETWEEN:

THE TORONTO PUBLIC LIBRARY FOUNDATION, 789
Yonge St. Toronto, Ontario M4W 2G8

(the “**Foundation**”)

- and -

TORONTO PUBLIC LIBRARY BOARD, 789 Yonge St.,
Toronto, Ontario M4W 2G8

(“**TPL**”)

WHEREAS:

- A. The Foundation requires administration services, training access, office and event space, marketing and communication and statistics and reporting support as more particularly described in **Schedule A** to this Agreement (the “**Services**”) in order to carry on activities in furtherance of its charitable purposes;
- B. TPL has the resources and expertise to provide these Services to the Foundation;
- C. The Foundation desires TPL to provide the Services and TPL has agreed to provide the Services to the Foundation upon the terms and conditions set out in this Services Agreement (the “**Agreement**”);

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed between the parties hereto as follows:

1. Engagement

TPL agrees to provide or arrange for the provision of the Services on the terms and conditions herein provided.

2. Support and Facilities

TPL shall provide or arrange for the support and facilities, including standard office space and equipment, telephone facilities and support as may reasonably be required to provide the Services, at its own expense or as otherwise provided for herein.

3. Expenses

During the term of this Agreement, TPL shall pay all expenses incurred by it in providing the Services, as described in Schedule A to this Agreement, or as determined from time to time by mutual agreement of the parties in writing.

Expenses and services that are not included in Schedule A will be paid directly by the Foundation or be reimbursed to TPL in accordance with this Agreement and shall be listed in the invoices described in section 4 of this Agreement and shall be payable as described in that section.

4. Fees and Invoices

(a) The Foundation may require from TPL additional services, equipment or spaces which are not covered by this Agreement (Additional Services). The Foundation shall pay TPL for the Additional Services based on an agreed fee (the “**Fees**”).

(b) The parties shall ensure that the Fees are reasonable and appropriate in connection with the Additional Services provided. Prior to providing the Additional Services, TPL shall provide the Foundation with a list of TPL Personnel who it expects will provide the Services as well as an approximate budget for the Additional Services to be provided. The Foundation shall approve such approximate budgets in writing prior to TPL providing the Additional Services.

(c) Any adjustments in excess of 10% of the approximate budget previously approved by the Foundation must be approved by the Foundation in advance of such Additional Services being provided.

(d) TPL shall invoice the Foundation on an annual basis, and invoices shall contain a detailed description of the Additional Services provided in connection with each invoice and a breakdown of the Fees and expenses.

(e) The Fees shall be payable within thirty (30) days of the date of each invoice, or as otherwise agreed to by the parties.

5. TPL’s Reliance on Records and Instructions

In connection with this Agreement, TPL may rely on any written records or instructions provided to it by any authorized persons of the Foundation (“**Authorized Persons**”). The Foundation shall provide TPL with a list of Authorized Persons.

6. Books and Records

TPL shall maintain all books and records related to this Agreement and the provision of the Services and Additional Services, including expenditure statements, copies of all receipts, invoices, and vouchers, where available, and other relevant documentation, including correspondence and agreements with any third parties retained by TPL for the purpose of enabling, assisting, or facilitating its provision of the Services and Additional Services, as per TPL’s records retention policy. TPL shall promptly provide any such books and records to the Foundation at its request.

7. Privacy and Confidentiality

TPL acknowledges that in providing the Services or Additional Services hereunder, TPL may have access to or acquire confidential information, including personal information, relating to the donors or beneficiaries of the Foundation or the administration, intellectual property, financial affairs or other operations of the Foundation and the Foundation acknowledges that as a result of TPL and/or its affiliates providing the Services to or for the Foundation, the Foundation may have access to confidential information of TPL or such affiliates, including personal information

pertaining to its members (collectively the “**Confidential Information**”). All Confidential Information is and shall remain the exclusive property of the Party to which it pertains. Each Party shall keep confidential and protect each item of Confidential Information it receives (as “**Recipient**”) and, except with the other Party’s (the “**Disclosing Party**”) prior written consent, shall not disclose any Confidential Information to any other person or entity whatsoever, unless specifically permitted in this section, nor use the Confidential Information for any purpose other than contemplated by this Agreement. Access to the Confidential Information will be restricted to the parties (including such personnel employed by their affiliates) and their advisors and subcontractors engaged in a use permitted by this Agreement, provided such parties are bound by substantially similar obligations of confidentiality and data protection. The Recipient shall promptly notify the Disclosing Party of any unauthorized access to or disclosure or loss of Confidential Information. Nothing in this section prohibits or limits the Recipient’s use of any information that was: (i) in the Recipient’s possession prior to its receipt from the Disclosing Party, (ii) independently developed by the Recipient without use of the Confidential Information, (iii) acquired by the Recipient from a third party which was not, to the Recipient’s knowledge, under an obligation to the Disclosing Party not to disclose such information, or (iv) which is or becomes publicly available through no breach of this Agreement by the Recipient. If the Recipient is becomes legally obligated to disclose any Confidential Information, the Recipient shall, to the extent permitted by law, promptly notify the Disclosing Party in writing and shall reasonably cooperate with the Disclosing Party in taking steps to narrow such request. If disclosure is ultimately required, the Recipient shall provide only that portion of the Confidential Information that is legally required to be disclosed.

8. Term and Termination

This Agreement shall take effect as of the Effective Date and shall automatically terminate upon the termination of the LOU, unless terminated earlier under this Section 8. Either party may terminate this Agreement without cause by giving sixty (60) days’ prior written notice to the other party. Sections 6, 7, 8, 11, 13, and 14 herein shall survive the termination of this Agreement.

9. Notices

Any notice authorized or required to be given hereunder shall be in writing and shall be sufficiently given if given by personal delivery or sent by telecopier with electronic confirmation of receipt, addressed as follows:

(a) in the case of a notice to the Foundation, at:

789 Yonge St.
Toronto, ON M4W 2G8

Attention: William Scott, CEO
E-mail: wscott@tpl.ca

(b) in the case of a notice to TPL, at:

789 Yonge St.
Toronto, ON M4W 2G8

Attention: Vickery Bowles, City Librarian
E-mail: vbowles@tpl.ca

or at such other address or telecopier number as the party to whom such notice is to be given shall have last notified to the party giving same in the manner provided in this section. Any notice delivered or telecopied to the party to whom it is addressed as herein provided shall be conclusively deemed to have been received if given by personal delivery, on the date and at the time of actual delivery thereof and, if given by telecopier, on the first business day following the time of transmittal thereof.

10. Amendment of this Agreement

No provision of this Agreement may be changed, waived, discharged, or terminated other than by an instrument in writing signed by the parties hereto.

11. Assignment

This Agreement may not be assigned by either party without the consent of the other party hereto. TPL may with the prior written consent of the Foundation appoint other parties to carry out some or all of its responsibilities under this Agreement.

12. No Effect on Other Agreements

No provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the parties unless specifically referred to, and solely to the extent provided herein and in any such other agreement.

Notwithstanding the foregoing, in the event of a conflict between the provisions of this Agreement and the Letter of Understanding entered into between the parties, effective as of October 30, 2023 (the “LOU”), the terms of the LOU shall prevail.

13. Dispute

In the event of any dispute or conflict arising between the parties with respect to any issue of concern relating to this Agreement, the parties shall seek to resolve the dispute or conflict in an amicable and constructive manner. The parties shall endeavor in good faith to reach a negotiated settlement to resolve the dispute.

14. General

(a) This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) This Agreement shall be governed by the laws of the province of Ontario and the federal laws of Canada applicable therein.

(c) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(d) This Agreement, including all schedules and any agreements and other documents to be delivered pursuant to it, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, oral or written, between the parties.

[Signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their officers designated below as of the day and year first above written.

**TORONTO PUBLIC LIBRARY
FOUNDATION**

Per: _____

Name: William Scott

Title: CEO

I have the authority to bind the Foundation.

**TORONTO PUBLIC LIBRARY
BOARD**

Per: _____

Name: Vickery Bowles

Title: City Librarian

I have the authority to bind TPL..

SCHEDULE A – SERVICES AND EXPENSES

TPL shall provide the following Services to the Foundation at no cost.

1. Administration Services

(a) Payroll and Human Resources Services:

- i. set up new employees, make changes or termination, and enter timesheet information and payroll adjustments to generate biweekly Foundation staff payroll.
- ii. provide support for Foundation staff participation in the pension, benefits and EAP plans and other related onboarding and offboarding of Foundation staff.
- iii. enroll, make changes and process terminations of benefits upon direction from the Foundation administrative staff.

(b) Accounting Services:

- i. maintain the Foundation's financial accounts and transactions separately on TPL's financial accounting system;
- ii. deposit monies into Foundation's bank account and enter deposit information into the financial system;
- iii. generate checks/EFTs/wires payments from Foundation-approved invoices, cheque requisitions and expense reports;
- iv. enter Foundation-approved invoices and journal entries provided by Foundation staff into the financial system;
- v. open new bank account, monitor bank balances, complete monthly bank reconciliation and enter any necessary journal entries into the financial systems;
- vi. reconcile intercompany accounts and ensure trial balance is balanced monthly;
- vii. prepare the Foundations' annual financial statements and audit working papers for review by Foundation staff;
- viii. provide financial information and records to the Foundation for their external auditor; and
- ix. prepare and assist the Foundation in filing any necessary federal and provincial tax and regulatory filings.

(c) Information Technology Services and Expenses

- i. provide information technology services and technology, maintenance and basic Information Technology (IT) support, including, but not limited to:
 - (i) computers, laptops, tablets, printers, copiers, phone system and phone service;

- (ii) internet connection and networked file storage; and
- (iii) resources and consultation on Payment Card Industry (PCI) compliance and other technology-driven issues.

The Foundation will be responsible for additional charges related to their operations including:

- (i) fundraising software;
- (ii) equipment other than the standard hardware and software provided to TPL staff;
- (iii) payroll costs; and
- (iv) bank charges and credit card fees.

2. Training Access

- i. provide access to selected Library training and development courses and programs (both online and in-person) to support the Foundation in carrying out its responsibilities in accordance with the policies and practices of TPL.

3. Office and Event Space Rental

- i. provide the standard office, equipment, facilities cleaning and maintenance, and event rental services to the Foundation at no cost subject to the use of premium venue spaces according to an annual TPL shared space agreement pursuant to which the Foundation receives a maximum annual allocation for its use.

4. Marketing and Communications

- i. support and promotion of Foundation activities and events and inclusion on Library assets including the TPL website, as appropriate.

5. Statistics and Reporting Services

- i. provide statistics and reporting metrics on library services to the Foundation that supports current and future donor reporting requirements

Other Services and Expenses

Subject to TPL agreement, TPL shall provide such Additional Services as the Foundation may reasonably request from time to time and such other Services as are reasonably necessary to enable TPL to provide the Services set out in this Agreement. Any amendments to the Services must be set out in writing and signed by the parties hereto as an additional schedule to this Agreement or as an amending schedule. In making such amendment the parties shall specify what expenses are entitled to be reimbursed in connection with such Services, and/or whether the Additional Services may be provided at no cost.

March 22, 2010

Janet McKelvey
Chair, Toronto Public Library Foundation Board
789 Yonge Street
Toronto, Ontario
M4W2G8

Dear Janet,

Both the Toronto Public Library and the Toronto Public Library Foundation have enjoyed significant success in the past decade, and it is an appropriate time to review and refresh the Letter of Understanding, which was originally signed in 1998.

A report to the Library Board in December 2009 provided notice to the Board of the renewal of the letter, and at that time the Board authorized the Board Chair to renew the Letter of Understanding.

The Letter of Understanding has now been finalized and signed by our Board chair, Matthew Church.

Thank you to the Foundation for its continued support of the Library.

Sincerely,

A handwritten signature in cursive script that reads "Jane Pyper".

Jane Pyper
City Librarian

Office of the City Librarian

789 Yonge Street, Toronto, Ontario, Canada M4W 2G8

Tel: 416-393-7032 Fax: 6-393-7083



Letter of Understanding

Between

Name: **Toronto Public Library Foundation**
Address: 789 Yonge St., Toronto M4W 2G8
Charitable Business Number: 886554476RR0001

And

Name: **Toronto Public Library Board**
Address: 789 Yonge St., Toronto M4W 2G8
Charitable Business Number: 873275499RR001

The Toronto Public Library Foundation (the Foundation) was established on April 22, 1997. The parties signed a previous Letter of Understanding regarding their roles, responsibilities and relationships on August 28, 1998. This Letter of Understanding reflects revisions to the roles, responsibilities and relationship of the Foundation and the Toronto Public Library Board (the Board).

Roles

Toronto Public Library Foundation

The Foundation's roles and responsibilities are as outlined in the Objects of the Corporation set out in its Letters Patent. They are to receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, for charitable purposes for the benefit of, or to enhance or improve, the resources and services provided by the public library system currently known as the Toronto Public Library (the Library). These funds will be used to facilitate and fund the provision of enhanced Library collections, programs, technology, services and facilities. In addition, the Foundation supports the Library's goals to maintain and preserve the Library as a world-class public library and to help ensure that the Library and its resources and programs remain accessible to the public. (Adapted from Foundation: Objects of the Corporation III (1-3)).

Toronto Public library Board

The Board, in accordance with the Public Libraries Act, seeks to provide comprehensive and efficient public library services that reflect the community's unique needs and to ensure that these services are conducted in accordance with the Public Libraries Act and the regulations. (Adapted from the Public Libraries Act: powers and duties of a board.)

The Library provides free and equitable access to a wide range of public library services, which meet the changing needs of the people of Toronto. The Library preserves and promotes universal access to a broad range of human knowledge, experience, information and ideas in a welcoming and supportive environment. New technologies extend access to global information beyond Library walls. The Library upholds the principle of intellectual freedom.

Effective partnerships enhance Library service throughout the City of Toronto. The Library is accountable for the effective management of Library resources and for the quality of Library service offered to the people of Toronto.

Appointment

In order to ensure a coordinated and integrated approach to all current and potential funding sources, the Foundation is responsible for, and undertakes, all fundraising activities on behalf of the Library. All resource-raising strategies will continue to be executed in the name of the Foundation, unless otherwise agreed to through mutual consultation.

For the purposes of this agreement, fundraising shall be broadly defined to include all gifts, gifts-in-kind, barter, donations, sponsorships, bequests, endowments and donor membership programs. Marketing and advertising programs are also included in this definition. However the Library may engage separately in marketing, media and advertising activities, and in securing modest donations for community-based activities. Both parties may seek funding through grants.

Both parties will keep each other apprised of these activities and relationships donors. No representation to funders or potential funders will knowingly be made on behalf of the Library by either party, without agreement between the parties.

Responsibilities

Toronto Public Library Foundation:

- The Foundation is incorporated and registered as a charitable organization under the Income Tax Act and is a qualified donee;
- The Foundation agrees to seek funding on behalf of the Library towards Library funding priorities as identified by the Library;
- The Foundation will not entertain other requests from the Library for support that have not been identified by the Library's own corporate priority-setting process;

- Foundation has exclusive right to use the Library's cardholder database for the purpose of fundraising on behalf of the Library provided individual cardholders have consented to the sharing of their personal information with the Foundation. The Library will disclose cardholder personal information for consenting users as stated in the Toronto Public Library Board's Access to Information and Protection of Privacy Policy to the Foundation solely for fundraising purposes. Other than as described in the next bullet-point, the Foundation will not disclose this information to third parties. The Foundation will not use or disclose this information for any purpose other than for fundraising purposes and shall at all times use such information in accordance with direction from the Library as may be required to ensure the Library's obligation to comply with the Municipal Freedom of Information and Protection of Privacy Act;
- The Foundation may disclose the cardholder's personal information it receives to third parties solely for the purpose of obtaining assistance with its fundraising activities. The Foundation is required to ensure, by means of terms, representations and warranties, as appropriate, in its contracts with such third parties, that any Library cardholder's personal information to which the third parties have access, remains the property of the Library and is only to be used for the purposes of carrying out the services the third parties provide to the Foundation and for no other purpose. All contracts of the Foundation with third parties that involve the disclosure of Library cardholder personal information to the third parties must include a term requiring that the personal information provided to the third party will be destroyed, in a manner acceptable to the Library, once the contractual obligations of the third party have been fulfilled;
- The Foundation has the first right to conduct fundraising activities utilizing Library facilities, with the exception of commercial rentals of the Appel Salon. All other fundraising activities to be undertaken on Library property must receive prior approval by the Foundation, which approval will not be unreasonably withheld;
- The Foundation will remain at arms length to the City of Toronto and will normally be represented by the Library on matters of relevant mutual interest. This arrangement does not preclude direct Foundation/City communication when warranted.

Toronto Public Library:

- The Library is established under the Public Libraries Act and registered as a charitable organization under the Income Tax Act and is a qualified donee;
- The Library is responsible for setting identified funding priorities;
- The Library will work closely with the Foundation to determine appropriate fundraising goals and priorities for the enhancement of the Library;
- The Library will encourage all staff and other supporters of the Library to work closely with the Foundation to ensure a fully integrated approach to all revenue generation and to maximize potential funding for the Library;

- If donated funds, or other gifts, are directed to the library, the library will consult with the Foundation to determine the most desirable handling of the gift. Where possible, the library will direct the deposit of, or transfer, donated funds to the Foundation, subject to and in accordance with any agreed upon terms and conditions under which they are provided by the donor. The Library will endeavour to disclose to the Foundation information about all donations received directly so that the Foundation can ensure an integrated approach to the stewardship and cultivation of all donors.

Governance:

To ensure communication, collaboration and cooperation between the Library and Foundation:

- The Foundation's by-laws will continue to provide that at least one member of the Board shall be an ex-officio, voting director of the Foundation;
- The City Librarian/CEO of the library shall be an ex-officio, non-voting director of the Foundation;
- The member of the Board and the City Librarian/CEO of the Library who are ex-officio members of the Foundation Board will not be eligible to become officers of the Foundation;
- Additional members of the Board may be considered for appointment to the Foundation Board as long as they do not form a majority of the Foundation Board;
- In keeping with the spirit of equitable exchange of information, the Board will invite the Chair of the Foundation, and/or his or her designate, to attend all public meetings of the Board and relevant committees of the Board;
- The President of the Foundation shall be an ex-officio member of the Library's Senior Management team for the purpose of exchanging information on matters of mutual interest to the parties.

Independence Issues

In order to maintain the independence of the Foundation and the Library and to recognize the responsibility of the Library as a public institution:

- Both the Foundation and the Library retain the right to establish policies pertaining to fundraising, sponsorship and advertising, but in so doing will respect the responsibilities and policies of the other;
- Both parties acknowledge that either party may refuse any gift, sponsorship or advertisement that, in their sole discretion, is deemed inappropriate or not in keeping with the Library's or Foundation's policies;
- Neither party shall expect to have undue influence over the operations or direction of the other party.

Relationship Issues

In order to coordinate and prioritize fundraising activities, the Library and the Foundation will develop and implement strategies and protocols as they consider appropriate from time to time. Currently, such strategies and protocols are as follows:

- On a regular basis, the Board will make a formal written request to the Foundation Board stating its funding priorities and the purposes for which funds are being sought. The request shall include a short summary outlining the needs and level of funding support required as well as the Board's prioritization of needs.
 - The mechanism(s) to determine funding priorities and enable the flow of funds from the Foundation to the Library should not be overly burdensome for either the Library or the Foundation;
 - Appropriate representatives of both the Board and the Foundation Board or designated staff shall hold at least one joint meeting each year. Despite the annual meeting, there should be ongoing dialogue between the Library and the Foundation regarding the fundraising priorities, timelines and the reasonableness of estimates of the amount of money which will be required and/or available for transfer to the Library in the coming year(s);
 - There should be sufficient levels of agreement between the parties preceding each funding request so as to ensure the Foundation can respond favourably in most instances;
 - The Foundation and the Library will establish protocols to ensure successful implementation and reporting mechanisms for the funding requests;
 - The Library will ensure that funds provided by the Foundation are utilized in accordance with the purposes for which the funds are being sought and/or the terms and conditions under which they are provided by the donor, provided the library has approved those purposes and/or terms and conditions in advance of receipt. The Library will report on any significant changes in funded project status, including proposed material changes to the nature of, or budget for, the activities for which the funds have been provided;
 - Both parties will respect each other's business requirements for successful fulfilment of their respective mandates and will work collaboratively to support each other's effectiveness.

Administrative Issues

The Foundation shall employ its own staff and independent contractors and consultants and such persons shall not be Library employees or contractors and the Library shall have no responsibility for them.

The Foundation Board will be responsible for hiring and firing the President of the Foundation in consultation with the City Librarian/CEO of the Library.

In recognition of the significant funds raised for the Library through the Foundation, the Library will provide the following support at no charge to the Foundation:

- The Library shall provide office space, furniture and standard office equipment for Foundation at 789 Yonge Street for Foundation staff, including the provision of services such as utilities, cleaning, premise insurance and maintenance;
- Use of Library meeting and facility rooms;
- The Library's Finance & Administration Department will manage and administer payroll and benefits, issuing cheques, depositing funds and the preparation of financial statements as required by the Foundation;
- Marketing and communications support including media and public relations, advertising and promotional development and support (design and production), and strategic communications.

Change in Status

It is understood that both parties will endeavour to manage the provision of the above supports using effective and efficient processes. Recognizing that Foundation activities may increase in complexity or volume, the provision of support services will be revisited annually.


In the event of the dissolution of the Foundation, all the remaining assets of the Foundation after payment of its liabilities will be distributed to the Library in accordance with section VI of the Foundation's Letters Patent. The Library will accept such assets on the same trusts, terms and conditions and for the same purposes under which they are held by the Foundation.

In signing this Letter of Understanding, both the Board and the Foundation agree to comply with the above terms and conditions.

Name:
Toronto Public Library Board

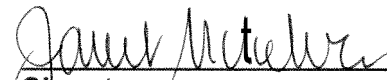
Name:
Toronto Public Library Foundation

Chair, Board:
Matthew Church


Signature: _____

Date: 22.3.16

Chair, Board of Directors:
Janet McKelvey


Signature: _____

Date: 12.05.10

