

MARGARET DONNELLAN TODD  
COUNTY LIBRARIAN

November 12, 2008

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF MEMORANDUM OF UNDERSTANDING  
WITH THE CITY OF MALIBU  
(SUPERVISORIAL DISTRICT 3) (3 VOTES)**

**SUBJECT**

The Public Library is recommending Board approval of a Memorandum of Understanding ("MOU") with the City of Malibu. This MOU will govern the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch of the Public Library. The MOU is effective upon execution by the City and County and will continue through June 30, 2019 unless earlier terminated or extended. There is an automatic five-year extension that will extend the MOU to 2024 unless objected to by one of the parties.

**IT IS RECOMMENDED THAT YOUR BOARD:**

Approve and instruct the County Librarian to execute the attached MOU governing the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch.

**PURPOSE/JUSTIFICATION FOR RECOMMENDED ACTION**

The Public Library is recommending approval of the MOU on the grounds that it establishes a cooperative and mutually beneficial relationship with the City of Malibu,

provides for the City's continued participation in the County Library System and the benefits the County System derives therefrom, and for the improvement of the services provided at the Malibu Branch of the Public Library.

### **Implementation of Strategic Plan Goals**

Approval of this recommended action is consistent with the County's Strategic Plan Goals in the areas of Service Excellence (1), Organizational Effectiveness (3), and Fiscal Responsibility (4).

### **FISCAL IMPACT/ FINANCING**

The Public Library has established a special budgetary fund for the City of Malibu. The Public Library during each budget planning year, will determine the City's property tax revenues in excess of operating costs and set-aside this amount in the City's fund. The total accumulated reserve is \$2,646,000 based on excess property tax collections since Fiscal Year (FY) 2003/04 through FY 2006/07. It is the intent of the City and County to use the accumulated funds for a major renovation of the Malibu Library.

There is no other fiscal impact.

### **FACTS/PROVISIONS/ LEGAL REQUIREMENTS**

Under the provisions of Education Code section 19100 et seq., cities may elect to participate in the County's Public Library System. When they do, the cost of providing library services within the city is provided to the County by an apportionment of property tax revenues derived from property located within the city. Cities may later choose to leave the County System and these revenues are then redirected back to the city.

When the City of Malibu incorporated in 1991, the City elected to continue to be a part of the County of Los Angeles Public Library. However, in recent years, the apportioned amount of property taxes collected from the City has exceeded the cost of Library services provided within the City. And, in each budget fiscal year since FY 2005/06, the Library has set aside this difference in a special budgetary fund with the intent of improving Library services at the branch located in the City ("Malibu Branch").

In 2003, the County Library under direction from the Board provided revenue and cost information including property tax revenue to all the 51 cities served by the County Library. At that time, the City of West Hollywood, the City of Manhattan Beach and the

City of Malibu each approached the County Library with concerns that the library service provided to their cities was inadequate for their communities. They recognized that significant revenue was being collected in their cities for library service but that funding was not being directly used to improve library service in their cities. They requested that those funds be more directly used to raise the standard of service. As a result of that request, the County Library began to set aside excess funds to improve both the buildings and service levels.

These cities are committed to staying in the County System but recognize if they do not receive adequate library service for their communities, they may be forced to leave county service and establish their own city libraries. The loss of these cities would be detrimental to the County System as well as to the residents of those cities.

In 2003, the Board of Supervisors approved an agreement with the City of West Hollywood for set aside funds to be used toward the construction of a new library. Ground breaking for that new library is set for April 2009. The City of Manhattan Beach has also requested that funds be held for the construction of a new library or for the major renovation and expansion of the existing facility. It is anticipated that once these construction projects are complete, the increased operating costs of these two improved facilities will eliminate the disparity between the cost of service and the revenue collected .

The City of Malibu has requested an MOU. The proposed MOU is based on the Community Library Needs Assessment study which was commissioned by the City and County in 2005. This study identified a number of opportunities for improving Library services in the City including a major renovation of the 1970 facility. Staff from the Public Library and the County Counsel's Office have been meeting with the City to discuss how the recommended improvements could be made using funds already set aside for this purpose and to establish protocols governing the use of funds derived from future differences between property tax monies received by the County and the cost of providing Library services ("set aside funds"), if any. These discussions have culminated in the development of the attached MOU.

The MOU establishes current levels of Library service at the Malibu Branch. And, it provides that, absent a County-wide fiscal emergency, existing and future set aside funds will be used for improving Library services at the Malibu Branch. The MOU also establishes an ongoing process for the City and County to meet to jointly discuss priorities for the use of these funds and library-service improvement. The MOU was structured to provide adequate protections for the County. The MOU recognizes that

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the County retains the sole responsibility for adjusting base service levels and all improvements remain the property of the County Library. In addition, the County can cancel the MOU at anytime. Further, during a fiscal emergency, the MOU provides that the County may reduce library service in the City so long as the reduction is done in a fair and consistent manner in comparison with other communities served by the County Library System. Should the revenue contributed by the City decrease, the County has no obligation to continue enhanced services and may adjust the baseline service if revenues do not support the base line service.

The MOU will begin on approval of the City and County and will terminate on June 30, 2019. There is one five year extension which will occur automatically unless first objected to by the City or County. For the duration of the MOU, the City has agreed to participate in the County Library System.

The MOU may be terminated for any reason 120 days after notice is given by the terminating party. If the County unilaterally terminates the MOU before the natural expiration date, any set aside funds accrued prior to termination must be spent on service improvements at the Malibu Branch of the Library. If the City unilaterally terminates the MOU before the natural expiration date, all funds remain the County's to spend at its sole discretion.

### **CONCLUSION**

Please return a conformed copy of the adopted stamped Board letter to the Public Library and Office of the County Counsel.

Respectfully submitted,



MARGARET DONNELLAN TODD  
County Librarian

MDT:bf

Attachment (1)

c: Chief Executive Officer  
County Counsel  
Auditor-Controller

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding Agreement (“MOU”) is entered into by and between the City of Malibu, a California municipal corporation (hereinafter “City”) and the County of Los Angeles, a political subdivision of the State (hereinafter “County”).

### **RECITALS**

- A. The County of Los Angeles Public Library (hereafter "County Library") desires to improve the facility and services offered at the Malibu Branch of the Public Library System ("Branch");
- B. The City of Malibu ("City") desires an improved library facility and enhanced library services for everyone who uses the facility;
- C. County Library and City both wish for City to remain within the County Library System;
- D. County Library and City both recognize that a majority of the property taxes paid by City property owners reserved for the County Library System are actually used to fund the Branch and its services; but that over the past several years, the amount of such property taxes collected from City property owners has exceeded the operating costs of the Branch; and
- E. County Library and City both believe that these excess funds should primarily be used to implement the recommendations made in the 2005 Community Library Needs Assessment, which will accomplish the mutually desired improvement in the facility and services of the Branch.

**NOW, THEREFORE,** in consideration of the foregoing and of the promises and covenants set forth herein, the parties agree as follows:

### **BASE SERVICE LEVELS**

1. The County Library is the exclusive owner of all land on which the Branch sits as well as the contents and collection housed within the Branch, with the exception of certain materials within the Arkel Erg Memorial Mountaineering Collection. The Branch is a 15,926 square foot building consisting of a community meeting room, public restrooms, public space with adult and children's areas, staff work areas, a basement, and the Bookmobile garage. Utilities for the Branch are provided as part of the service for the entire property. The current library materials collection is approximately 85,400 items. The Branch houses three special collections: The Arkel Erg Memorial Mountaineering Collection, The Peter A. Horn Senior Citizen Collection, and The Sean Matthews Collection.
2. The current service levels ("Base Levels") at the Branch are as follows: The Branch is open 6 days a week for 50 hours a week (Mondays and Tuesdays 10 am to 8 pm; Wednesdays and Thursdays 10 am to 6 pm; and Fridays and Saturdays 10 am to 5 pm). The Branch full time staff consists of one Community Library Manager (Librarian III), one Reference Librarian (Librarian I), one Children's/Teen Librarian (Librarian I), and one Library Assistant I. The Branch currently provides reference services, public access Internet computers, WIFI and children's and young adult programming including

regularly scheduled toddler and preschool storytimes. The County Library currently conducts routine maintenance and repair of the Branch facilities including janitorial upkeep, landscaping/groundskeeping, and technological systems (telephones, internet connections etc.)

3. By signing this MOU, the City acknowledges that the County Library retains sole responsibility for adjusting the Base Levels at the Branch and throughout the County Public Library System. Neither the County nor the City is obligated to continue enhancements above the Base Level at any time. County agrees that any change to the Base Levels at the Branch will be made on a fair and consistent basis relative to Base Level spending at other branches of the County Library System. Further, should sources of funding to the Public Library System that are not available as of the date of this MOU become available during the pendency of this MOU, County agrees to make these sources available to the Branch on a fair and consistent basis relative to the other branches. County agrees that it will not arbitrarily reduce Base Levels at the Branch in an effort to reduce the overall availability of Set Aside Funds for enhancements at the Branch.

#### **SET ASIDE FUNDS**

4. Currently, approximately 2.45% of the ad valorem property tax revenue generated from property located within the City is reserved for the support of the County Free Library System in accordance with the provisions of Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

5. For purposes of this MOU, "Set Aside Funds" shall refer to the yearly difference in the amount of property tax received from City property owners and reserved for the County Library, and the cost of providing Base Level services at the Branch.
  
6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future
  
7. Absent extraordinary circumstances the County Library shall, for the duration of this MOU, continue to place Set Aside Funds in a separate fund within the County Library's budget. However the parties acknowledge that in case of a countywide fiscal emergency, the County may, after notice to the City, discontinue placing Set Aside Funds in the separate fund. The parties acknowledge that a countywide fiscal emergency would necessitate a reduction in funding for all branches of the County Library. County therefore agrees that any reduction in Set Aside Funds made in response to a countywide fiscal emergency under this section shall be made fairly and in a manner consistent with reductions at other branches receiving the equivalent of Set Aside Funds such that any

percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch. Further, County agrees that, in the event of countywide fiscal emergency, any reduction of Base Levels at the Branch will be made fairly and in a manner consistent with reductions at other branches such that any percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch.

8. All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve Branch facilities and services unless this MOU is unilaterally terminated by one of the parties before expiration. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect until all Set Aside Funds so accrued have been spent in accordance with the process established in Section 13, *infra*. However, if this MOU is terminated, any unexpended Set Aside Funds remaining in the separate account shall be spent in accordance with Section 28 *infra*.
9. The parties agree that any facility and collection improvements purchased with Set Aside Funds at the Branch shall remain the property of the County Library.
10. If the City obtains property for the construction of a new library branch, it shall notify County that the City desires to use the Set Aside Funds to assist in funding the construction of the new library branch and the parties shall meet to amend this MOU accordingly.

### **SET ASIDE FUND EXPENDITURES**

11. Set Aside Funds may be used for both one-time improvements at the Branch, such as capital improvements and materials purchases, and for on-going service enhancements at the Branch (such as increased Library hours on Sunday or increased staffing levels), and for additional needs as outlined in the 2005 Needs Assessment.
12. Set Aside Funds may not be used by either party as security for any loan or bond.
13. The City and County Library shall meet immediately upon approval of this MOU to discuss the use of Set Aside Funds from the date of approval through the following June 30. Thereafter, for the duration of this MOU, the City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to control or use Set Aside Funds. This section shall not be construed as a limit to the frequency of meetings between the parties and the parties hereby express a

willingness to meet as frequently as necessary to resolve issues related to Set Aside Funds or the Branch. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect so long as Set Aside Funds are required by any provision of this MOU to be spent on Branch enhancements.

14. It is the intent of the parties that the first use of Set Aside Funds shall be to renovate the interior of the Branch, as recommended by the 2005 Community Library Needs Assessment. The interior renovation shall include, at minimum, new lighting, new carpet, new paint, and compliance with current Americans with Disabilities Act requirements.
15. It is anticipated that the City will be primarily responsible for designing and delivering the interior and exterior renovations of the Branch contemplated by this MOU. However, the County may perform such tasks at the City's request. A separate project agreement, signed by both parties, shall be used to describe each party's specific responsibilities for the Branch renovation project.
16. All final plans for renovation of the Branch must be reviewed by each party to assure compliance with zoning and building codes, and all final plans are subject to the mutual approval of City and County.
17. Except as specifically provided herein, all costs associated with the physical

construction of the interior renovation described in this MOU will be paid from Set Aside Funds provided by the County, except that the cost of County Library and City administrative staff time devoted to this project shall not be charged to the Set Aside Fund.

#### **OTHER PROVISIONS**

18. If during the duration of this MOU or anytime thereafter, the City notifies the Los Angeles County Board of Supervisors that the City no longer desires to be a part of the County Free Library System, (pursuant to California Education Code section 19116 or any other means), any unspent Set Aside Funds accrued at any time shall remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch, and this MOU shall terminate at the time such notice is provided if it is still in operation at the time notice is given. The provisions of this section shall supersede all other provisions of this MOU including the provisions of sections 8 and 28. And, the provisions of this section shall survive the natural expiration or other termination of this MOU and shall continue in effect until all Set Aside Funds accrued have been spent.
  
19. The Parties hereby acknowledge that the expenditure of any Set Aside Funds are subject to, and conditioned upon, ongoing approval by the County's Board of Supervisors and that such approval is not certain.
  
20. The City acknowledges that Set Aside Funds are the only funds that shall be used by the

County Library to enhance facilities and services at the Branch, other than an increase in the Base Levels; and that neither the County Library nor the County of Los Angeles is under any obligation to expend funds from any other source for this purpose. This MOU shall not be construed to place any limitations on the City's ability to raise funds for contribution to the Branch or for library services within the City, nor shall it limit the right of City or County Library to apply for and receive grants or State bond proceeds for library purposes.

21. In the performance of its obligations under this MOU, the parties shall comply with all applicable laws, regulations, standards and ordinances.
  
22. The City shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the City's acts and/or omissions arising from and/or relating to this MOU.
  
23. The County shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this MOU.

24. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this section:

CITY: City of Malibu  
ATTN: City Manager  
23815 Stuart Ranch Road  
Malibu, CA 90265

COUNTY LIBRARY: County of Los Angeles Public Library  
ATTN: Margaret Donnellan Todd  
7400 East Imperial Highway  
Downey, CA 90242

25. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.

26. The term of this MOU shall be from the date of complete execution of this MOU by both parties until June 30, 2019 unless sooner terminated as provided elsewhere herein. However, the term of this MOU shall be automatically extended one (1) time for an

additional five (5) years unless written objection to extension is given at any time by either party. Objection by any party to the automatic extension provisions of this MOU shall not be considered termination of the MOU by that party for purposes of Section 28 of this MOU. At the expiration of this MOU the County Library will cease placing Set Aside Funds in a separate account; however unless this MOU has been terminated by either party, and under the terms and procedures of Sections 8 and 13 of this agreement, *supra*, Set Aside Funds accrued during the pendency of this MOU shall be used to enhance Branch facilities and services until such funds are exhausted.

27. Any amendments to this MOU shall be in writing and executed by both parties.
  
28. Either party may unilaterally terminate this MOU for any reason upon 120 days written notice. As described in Section 8 *supra*, upon termination of this MOU, any remaining Set Aside Funds will be used as follows:
  - 28.1 If County terminates the MOU, any remaining Set Aside Funds will be used solely to improve Branch facilities, services, and programs above Base Levels.
  - 28.2 If City terminates the MOU, any remaining Set Aside Funds will remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch.
  - 28.3 If the MOU is terminated by mutual written agreement of the City and the County, the parties shall agree upon the use or uses of the remaining Set Aside Funds as part of the termination agreement.

29. This MOU is made and entered into for the sole benefit of the parties hereto. No other person or entity shall have any right of action based upon any provision of this MOU.
30. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.
31. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.
32. If any provision of this MOU or the application thereof to any person or circumstance is held invalid, the remainder of this MOU and the application of such provision to other persons or circumstances shall not be affected thereby.
33. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

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IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

CITY OF MALIBU	COUNTY OF LOS ANGELES
By: _____	By: _____
Pamela Conley Ulich Mayor	Margaret Donnellan Todd County Librarian
Dated:	Dated:
ATTEST:	APPROVED AS TO FORM:
_____ City Clerk	Raymond G. Fortner, Jr. County Counsel
APPROVED AS TO FORM:	By _____ Brandon Nichols Deputy County Counsel
_____ Christi Hogin, City Attorney	