

# Kirkwood Public Library Foundation Bylaws

(Ratified on May 4, 2005 and Amended on  
November 15, 2005 – Article VII, Section 7b Only)

## **Article I** *Offices*

The principal office of the Corporation shall be located in Kirkwood, Missouri, at such address as the Board of Directors may from time to time designate. The Corporation may have such other offices, either within or without Kirkwood, Missouri, as the business of the Corporation may require from time to time. The principal office of the Corporation may be changed from time to time by the Board of Directors to any other city either within or outside Kirkwood, Missouri.

The registered office of the Corporation, required by the Revised Statutes of Missouri to be maintained in the State of Missouri, may be, but need not be, identical with the principal office in the State of Missouri, and the address of the registered office may be changed from time to time by the Board of Directors.

## **Article II** *Membership*

The Corporation shall not have members.

## **Article III** *Directors*

Section 3a: *General Powers*. The property, business and affairs of the Corporation shall be controlled and managed by its Board of Directors.

Section 3b: *Number of Directors*. The number of directors to constitute the first Board of Directors of the Corporation shall be nine (9), as set forth in the Articles of Incorporation. The initial Board of Directors shall consist of seven (7) elected directors and two (2) designated directors, as described in this Article. The number of directors of the Corporation shall remain nine (9) until such number is changed in the manner hereafter provided. The Board of Directors may at any time, and from time to time, change the number of elected or designated directors to constitute the Board of Directors by adopting a resolution fixing the new number of directors to constitute the Board of Directors of the Corporation from and after the effective date of such resolution.

Section 3c: *Election of Elected Directors.* There shall be seven (7) individuals elected to the first Board of Directors whose terms of office shall be established so that the initial terms of office of three (3) of the Directors expire after one (1) year, the initial terms of office of two (2) of the Directors expire after two (2) years, and the initial terms of office of two (2) of the Directors expire after three (3) years. At each annual meeting of the Board of Directors, a number of directors equal to the number of directors whose terms have expired shall be elected by the remaining directors. The Board of Directors may elect a director at any meeting of the Board upon a two-thirds vote of the Board.

Section 3d: *Tenure of Elected Directors.* After the election of the first Board of Directors for the terms of office described in Section 3c, each elected director of the Corporation shall be elected to serve for a term of three (3) years. No elected director shall serve as a director for more than two (2) full consecutive terms unless the director is elected to a subsequent term by a two-thirds vote of the Board of Directors. An elected director shall serve as a director for the term for which the individual was elected or until the individual's death, resignation or removal.

Section 3f: *Designated Directors.* The initial and each subsequent Board of Directors shall include the persons serving in the following positions, who shall serve as Designated Directors: (1) the Director of the Kirkwood Public Library and (2) the Chairman of the Board of the Kirkwood Public Library. A Designated Director shall serve as a director until the earlier of (i) the date he or she no longer serves in one of the positions described in this Section, or (ii) the individual's resignation or removal from the Board of Directors. A Designated Director may be removed from the Board and the vacancy may be filled as provided in this Article.

Section 3g: *Advisory Council:* The Board of Directors may, from time to time, appoint any number of individuals to serve as members of an Advisory Council which shall advise the Board of Directors of the Corporation. Any such appointment shall be for the term and based on the criteria as the Board of Directors from time to time deems appropriate. Members of the Advisory Council may attend Board meetings and participate in Board functions, however, members of the Advisory Council shall have no voting rights with respect to matters voted upon by the Board of Directors.

Section 3h: *Removal of Directors:* Any Director may be removed without cause by a two-thirds vote of the Board only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Section 3i: *Vacancy.* Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term his predecessor in office.

**Article IV**  
*Meetings of the Board of Directors*

Section 4a: *Annual Meeting*: The annual meeting of the Board of Directors shall be held each year at the time and place, within or without Kirkwood, Missouri as may be designated from time to time by the Board of Directors. If the Board of Directors does not fix a different time or place, such meeting shall be held at 1:00 p.m. CST on the second Thursday in March at the principal office of the Corporation in Kirkwood, Missouri. The presence of a majority of directors shall constitute a quorum.

Section 4b: *Other Regular Meetings*. Other regular meetings of the Board of Directors may be established by the Board of Directors. Such meetings may be held without notice at the principal office of the Corporation or at such other place or places as the Board of Directors may from time to time designate.

Section 4c: *Special Meetings*. Special meetings of the Board of Directors may be called at any time by the Chairman, the President, or upon the written request of twenty percent (20%) or more of the directors. A written request shall be made to the Secretary to call the meeting, and the Secretary shall give notice of the meeting, setting forth the time, place and purpose thereof, to be held between five (5) and sixty (60) days after receiving the request. If the Secretary fails to give notice of the meeting within seven (7) days from the day on which the request was made, the person or persons who requested the meeting may fix the time and place of the meeting and give notice in the manner hereinafter provided.

Section 4d: *Notice of Meetings*. Written notice of each annual meeting of the Board of Directors stating the time and place thereof shall be mailed, postage prepaid, not less than five (5) days nor more than sixty (60) days before the meeting, excluding the day of the meeting, to each director at his or her address according to the last available records of the Corporation. Written notice of each special meeting of the Board of Directors stating the time, place and principal purpose thereof shall be mailed, postage prepaid not less than five (5) nor more than 60 (60) days before the meeting, to each director at his or her address according to the last available records of the Corporation. Any director may make written waiver of notice before, at or after a meeting. The waiver shall be filed with the person who has been designated to act as Secretary of the meeting, who shall enter it upon the records of the meeting. Appearance at a meeting is deemed a waiver unless it is solely for the purpose of asserting the illegality of the meeting.

Section 4e: *Quorum*. A majority of the full Board of Directors from time to time constituted shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time to a specified date not longer than thirty (30) days from the last adjournment without further notice.

Section 4f: *Board Decisions/Manner of Acting*. The act of the majority of the directors present at a meeting of the directors at which a quorum is present shall be the act of the Board of Directors, unless a greater number shall be required by the Bylaws or by the Articles of Incorporation. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at such meeting.

Section 4g: *Actions of Board of Directors Without a Meeting*. Any action required by the Revised Statutes of Missouri, with respect to nonprofit corporations, to be taken at a meeting of the Board of Directors of the Corporation, or any action which may be taken at a meeting of the Board of Directors, may be taken without a meeting if consents in writing, setting forth the action so taken, shall be signed by all the directors. Such consents shall have the same force and effect as a unanimous vote of the Board of Directors at a meeting duly held and may be stated as such in any certificate or document filed under the Revised Statutes of Missouri. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors.

## **Article V** *Officers*

Section 5a: *Officers*. The officers of the Corporation shall be a President, a Secretary and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors, by resolution, may create the offices of Treasurer and one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries, all of whom shall be elected by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary. The officers need not be directors of the Corporation.

The Board of Directors may also, in its discretion, elect and designate one of its members to the office of Chairman of the Board of Directors. In such event, the Chairman of the Board of Directors shall be the Chief Executive Officer of the Corporation and shall have general supervisory control over all of the executive officers of the corporation and its administrative and financial affairs.

All officers and agents of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the property and affairs of the Corporation as may be provided in the bylaws, or, in the absence of such provision, as may be determined by resolution of the Board of Directors.

Section 5b: *Election and Term of Officers*. The officers of the Corporation shall be elected annually by the Board of Directors. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office

until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 5c: *Removal*. Any officer or agent elected or appointed by the Board of Directors may be removed at the discretion of the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby.

Section 5d: *Vacancies*. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5e: *President*. The President shall be the principal executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation (unless there shall be in office a person serving as Chairman of the Board of Directors, in which case the President shall be subordinate only to the Chairman of the Board of Directors and shall be Chief Operating Officer of the Corporation and shall be in charge of, and exercise general supervisory control over, all operating phases and departments of the Corporation). The President shall preside at all meetings (if there be no Chairman of the Board, or if there be one, then in his absence or with his consent) of the Board of Directors. He may sign, with the Secretary or Treasurer or any other proper officer thereunto authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, or by these bylaws, to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties as may be prescribed by the Board of Directors from time to time or by the Executive Committee, as established pursuant to Article VI.

Section 5f: *Vice President*. If a Vice President is designated by the Board as Executive Vice President, such Executive Vice President, in the absence of the President, or in the event of his inability or refusal to act, shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. If there shall be no Executive Vice President or if there shall be an Executive Vice President, and he shall be absent, then the Vice President who shall have been first elected by the Board of Directors at the last annual meeting of the Board (and the order of the names of such Vice Presidents, as they appear in the minutes of such Annual Meeting of the Board, shall be conclusive as to which Vice President shall have been first elected), shall perform the duties of the President in the event of the latter's absence, inability or refusal to act. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors or by the Executive Committee.

Section 5g: *The Treasurer*. If a Treasurer is designated by the Board, and if required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety of sureties as the Board of Directors shall determine. He shall: (a) have charge and custody of and be responsible for all funds and

securities of the Corporation, receive and give receipts for the moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such, banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; (b) in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or the Board of Directors or the Executive Committee.

Section 5h: *The Secretary*. The Secretary shall: (a) keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these bylaws; and (d) in general perform all duties incident of the office of Secretary and such other duties as from time to time may be assigned to him by the President or the Board of Directors or the Executive Committee.

Section 5i: *Additional Powers*. Any officer of the Corporation, in addition to the powers conferred upon these individuals by these bylaws, shall have such power and perform such additional duties as may be prescribed from time to time by said Board.

## Article VI *Committees*

Section 6a: *Authority*. The Board of Directors may act by and through such committees as may be specified in resolutions adopted by the Board of Directors. Each such committee shall have such duties and responsibilities as are granted to it from time to time by the Board of Directors. Each such committee shall at all times be subject to the control and direction of the Board of Directors.

Section 6b: *Executive Committee*. The Board of Directors may designate an Executive Committee composed of two or more directors which shall be authorized by the Board of Directors to manage the business of the Corporation. During the interval between meetings of the Board of Directors, the Executive Committee shall at all times be subject to the control and direction of the Board of Directors. Additional members may be added to the Executive Committee as determined by the Board of Directors.

Section 6c: *Nominating Committee*. The Board of Directors may designate a Nominating Committee composed of any number of individuals as the Board may determine. The Nominating Committee shall consider and recommend to the Board candidates for election as directors. The Board shall designate one individual as Chairman of the Committee, and may designate one or more individuals as alternate members of the

Committee, who may replace any absent or disqualified member at any meeting of the Committee.

Section 6d: *Finance Committee*. The Board of Directors may designate a Finance Committee composed of three or more directors. The Committee shall advise the Board regarding financial management of the Corporation and determine and recommend investment policies and procedures for investment of the principal of the Corporation. The Board shall designate one director as Chairman of the Committee, and may designate one or more directors as alternate members of the Committee, who may replace any absent or disqualified member at any meeting of the Committee. The Finance Committee shall at all times be subject to the control and direction of the Board of Directors. Additional members may be added to the Finance Committee as determined by the Board of Directors.

Section 6e: *Meetings and Voting*. Each committee of the Corporation may establish the time for its regular meetings and may change that time as it deems advisable. Special meetings of any committee of the Corporation may be called by the Chairman of that committee or by the Chairman of the Board of Directors. Two days notice of any special meeting of a Committee shall be given by mail, telephone, telegraph or email. Such notice may be waived in writing or by attendance at the committee meeting. At all committee meetings of the Corporation, each committee member shall be entitled to cast one vote on any question coming before such meeting. The presence of a majority of the membership of any committee of the Corporation shall constitute a quorum at any meeting thereof, but the members of a committee present at any such meeting, although less than a quorum, may adjourn the meeting from time to time. A majority vote of the members of a committee of the Corporation present at any meeting thereof, if there be a quorum, shall be sufficient for the transaction of the business of such committee.

## Article VII *Endowment*

Section 7a: *Gifts*. It is intended that the Corporation establish and maintain a permanent Endowment Fund. All contributions and gifts to the corporation shall, if designated for endowment, be placed in the permanent endowment fund. Said endowment fund shall be considered as principal and shall be retained and invested by the Corporation in debt and equity securities and in such manner as the Board of Directors shall from time to time determine, in order to provide a permanent fund. The income of said fund may be used for the benefit of the Kirkwood Public Library as determined in the discretion of the Board. Specially designated gifts, when accepted by the Board, shall be used and expended in the manner specified by the Donor. Contributions and gifts not restricted to the endowment or a specific purpose shall be held in a general fund and may be expended as determined in the discretion of the Board for the benefit of the Kirkwood Public Library. (Amended 3/2/2005)

Section 7b: *Income and Principal*. In any year in which the endowment of the Foundation shall total One Million Dollars (\$1,000,000.00), the Corporation shall expend in that year at least 5%, including expenses, of the sum of its endowment and endowment earnings to benefit the Kirkwood Public Library, all as determined by the Board of Directors in consultation with the Board of Trustees and management of the Kirkwood Public Library. In addition, the Corporation may use a portion of its income for its ordinary and necessary expenses incurred in operating the Corporation.

### **Article VIII**

#### *Contracts, Loans, Checks and Deposits*

Section 8a: *Contracts*. The Board of Directors may authorized any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 8b: *Authority to Borrow, Encumber Assets*. No officer, director, agent or employee of the Corporation shall have any power or authority to borrow money on behalf of the Corporation to pledge its credit or to mortgage or pledge its real or personal property except within the scope and the extent of the authority delegated by resolutions adopted from time to time by the Board of Directors.

Section 8c: *Checks, Drafts, etc.* All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 8d: *Deposit of Funds*. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may approve or designate, and all such funds shall be withdrawn only in the manner or manners authorized by the Board of Directors from time to time.

### **Article IX**

#### *Indemnification*

Section 9a: *Action, Etc. Other Than By or In The Right of The Corporation*. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Corporation, by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid

in settlement actually and reasonably incurred by him in connection with such action, suit or process if he acted in good faith in and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

*Section 9b: Actions, Etc. By or In The Right of The Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

*Section 9c: Determination of Right of Indemnification.* Any indemnification under subsections 9a and 9b of this Article, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in this Article IX. The determination shall be made by the Board of Directors by a majority vote consisting of directors who were not parties to the action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

*Section 9d: Other Enterprises, Fines, and Serving at Corporation's Request.* Notwithstanding any other provision of this Article, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 9a and 9b of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the action, suit or proceeding.

Section 9e: *Prepaid Expenses.* Expenses incurred in defending a civil or criminal action suit or proceeding may be paid by the Corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this section.

Section 9f: *Other Right and Remedies.* The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under sections 351.355, 355.471, 355.476 or 537.117 RSMo, any other provision of law, the articles of incorporation or bylaws or any agreement, a vote of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 9g: *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article.

Section 9h: *Constituent Corporations.* For the purpose of this Article IX, references to “the Corporation” include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.

Section 9i: *Definitions.* For purposes of this Article IX, the term “other enterprise” shall include employee benefit plans; the term “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” as referred to in this Article IX.

**Article X**  
*Miscellaneous*

Section 10a: *Fiscal Year*. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall begin on January 1 and end on the succeeding December 31.

Section 10b: *Corporate Seal*. The Board of Directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Missouri." The seal shall be stamped or affixed to such documents as may be prescribed by law or custom or as directed by the Board of Directors.

Section 10c: *Debts and Obligations of Corporation*. The directors and officers of the Corporation shall not be personally liable for the debts or obligations of the Corporation of any nature whatsoever, nor shall any of the property of the directors or officers be subject to the payment of the debts or obligations of the Corporation to any extent whatsoever.

Section 10d: *Amendments*. These bylaws may be altered, amended or repealed from time to time by a majority vote of the Board of Directors, provided that, Article VII may be altered, amended or repealed from time to time only by a two-thirds vote of the entire Board of Directors.

So Ratified:

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Norella V. Huggins, President  
Dated: May 4, 2005

So Amended:

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Norella V. Huggins, President  
Dated: November 15, 2005