

## **AGREEMENT BETWEEN CITY OF SUNNYVALE AND THE SUNNYVALE GARDEN CLUB**

THIS AGREEMENT dated August 1, 2015 is by and between the CITY OF SUNNYVALE (CITY), a municipal corporation, and The Sunnyvale Garden Club (CLUB).

WHEREAS the City desires to support independent organizations providing services beneficial to the Community; and,

WHEREAS the Sunnyvale Garden Club, a non-profit organization, wishes to provide services beneficial to the Community; and,

WHEREAS the Sunnyvale Garden Club desires to use certain Sunnyvale Department of Library and Community Services facilities for a cost reduced from that dictated by established City facility rental rates;

NOW THEREFORE, in accordance with Policy 7.2.4 - Relationships with Outside Groups, the City and the Sunnyvale Garden Club enter into this agreement.

1. Obligations of City:

CITY shall:

- a) Provide CLUB use of one (1) room at the Sunnyvale Community Center for a three and one-half hours period (includes set-up and clean-up time) one (1) day per month for Club's membership meeting at no charge to CLUB;
- b) List CLUB in the Community Services Division Activity Guides;
- c) Provide one (1) reservation for one (1) date annually as mutually agreed by City and Club for the Community Center Ballroom, capacity of 250, for a fundraising activity for a maximum of eight (8) hours (includes set-up and clean-up time) at a reduced rate of 15% of the current published non-profit rental rate.
- d) Provide CLUB two keys to the Sunnyvale Heritage Center garden gate and shed.
- e) Provide necessary supplies for 500 children to complete CLUB's Hands on the Arts festival workshop project. CITY will cover all costs associated with the festival.

## 2. Obligations of CLUB

CLUB shall:

- a) Maintain portions of the Sunnyvale Heritage Center landscapes and grounds at no cost to the City (site map of designated area attached). Note: no power equipment is to be used, or major design alterations implemented, without City approval.
- b) Advise the Library on library programs and services and act as a resource to ensure the Library meets the needs of the gardening community.
- c) Maintain a membership of at least 51% Sunnyvale residents for both members and Board of Directors. In the event members and/or Board of Directors falls below 51% Sunnyvale residents, CLUB shall forfeit the free and discounted room rates and shall pay the regular non-profit rate. Club agrees to provide a roster with participant full addresses to City to verify residency annually by September 1 of each year and at any other time requested by City.
- d) CLUB agrees to staff a garden art-related workshop booth for up to 500 children ages 3-12 at the CITY's annual Hands on the Arts children's art festival. CLUB will submit workshop proposal according to published festival deadlines and will work with CITY representative to ensure that proposed project meets festival requirements. CLUB will contribute \$100 annually to the CITY to support the festival. CLUB will provide sufficient volunteers to staff its workshop booth. According to City policy, all event volunteers 18 years and older must pass Department of Justice fingerprinting through the City of Sunnyvale Department of Public Safety.
- e) Comply with all Federal, State and local laws.

## 3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CLUB shall not accept employment or an obligation which is inconsistent or incompatible with CLUB'S obligations under this Agreement.

4. Compliance with Laws

- a) CLUB shall not discriminate against any employee, member or applicant for employment because of race, religion, creed, color, gender, age, disability, national origin, or any other basis to the extent prohibited by federal, state or local law.
- b) CLUB shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Independent CONTRACTOR

CLUB is acting as an independent contractor in furnishing any services or materials and performing work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CLUB. CLUB is responsible for paying all required state and federal taxes.

6. Indemnity

CLUB agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of GROUP, its officers, employees, agents, members or any officer, agent or employee thereof in relation to CLUB'S performance under this Agreement.

7. Insurance

Club shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Club, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance: Club shall maintain limits no less than:

A. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and \$2,000,000 annual aggregate. ISO Occurrence Form CG 0001 is required.

B. Workers' Compensation with statutory limits and Employer's Liability with limits of not less than \$1,000,000 per accident for bodily injury or disease.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the CITY. Club shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

#### Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

A. The City of Sunnyvale, and its officers, employees and elected officials, boards and commissions are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Club. The coverage shall contain no special limitations on the scope of protection afforded to the CITY.

B. For any claims related to this project, the Club's insurance shall be primary. Any insurance or self-insurance maintained by CITY shall be excess of Club's insurance and shall not contribute with it.

C. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY.

D. Club's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

#### Verification of Coverage

Club shall furnish the CITY with original Certificates of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the CITY.

#### 8. CITY Representative

Parks Division liaison or such other person as may be designated by the Director of Department of Public Works of CITY shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

#### 9. CLUB Representative

Sunnyvale Garden Club President shall represent CLUB in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CLUB pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CLUB representative.

#### 10. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:

Deanna J. Santana, City Manager  
CITY OF SUNNYVALE  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
(408) 730-7480

To Sunnyvale Garden Club:

Ann Andersen, President  
576 Hyannis Drive  
Sunnyvale, CA 94087  
(408) 738-1942

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, email or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, the expedient means of communication (eg. telephone, email, facsimile) must be followed by written confirmation of those communications. Written confirmation must be sent by first class mail, commercial carrier or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

11. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

12. Duration of Agreement

This Agreement shall continue from the date of execution for a period of five (5) years, unless otherwise terminated in accordance with section 13 below. The City Manager has the option and is authorized to execute extensions of this agreement for two (2) two-year terms, provided Club has performed its responsibilities under this Agreement to City's reasonable satisfaction.

13. Termination

(a) If CLUB defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving sixty (60) days written notice to CLUB.

(b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party.

14. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

15. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

SUNNYVALE GARDEN CLUB

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Ann Andersen, President