

**AMENDED AND RESTATED AGREEMENT BETWEEN
CITY OF SUNNYVALE AND
THE FRIENDS OF THE SUNNYVALE PUBLIC LIBRARY**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY" or "Library"), and the Friends of the Sunnyvale Public Library, a non-profit 501(c)(3) organization ("FRIENDS").

RECITALS

WHEREAS, the City desires to accommodate independent organizations providing services beneficial to the Community and has maintained an agreement with the Friends of the Sunnyvale Public Library for many years; and

WHEREAS, the Friends of the Sunnyvale Public Library is an association of persons interested in books and libraries; and

WHEREAS, the Friends of the Sunnyvale Public Library have provided generous donations, programming and support to the Sunnyvale Public Library throughout is longstanding relationship with the City; and

WHEREAS, the Friends of the Sunnyvale Public Library wish to continue focusing public attention on local public library services, materials, facilities and needs; and

WHEREAS, the Friends of the Sunnyvale Public Library wish to continue stimulating gifts of books, desirable collections, endowments and bequests to benefit the Sunnyvale Public Library; and

WHEREAS, the Friends of the Sunnyvale Public Library wish to continue raising money through book sales and other means to contribute to the enhancement of library services, equipment and materials;

NOW THEREFORE, in accordance with the City's "Relationships with Outside Groups Policy", the City and the Friends of the Sunnyvale Public Library enter into this agreement.

1. Obligations of City

(a) CITY shall provide FRIENDS with space at the discretion of the Director of Library and Community Services (the "Director") to collect, sort and store books and other donated and discarded print and non-print materials for FRIENDS book sales (the "Friends Collection Area").

(b) CITY shall provide at the discretion of the Director , books and other materials donated to the Sunnyvale Public Library and discarded library materials to the FRIENDS.

(c) CITY shall provide a location within the Library for an on-going FRIENDS book sale when appropriate.

(d) CITY shall provide FRIENDS with the following staff assistance as available: (1) collect money from FRIENDS' library lobby sale area sales, (2) provide a Library staff liaison to the FRIENDS board, (3) maintain records of the Library's expenditures from FRIENDS' donations, (4) provide copies of these records to the FRIENDS, and (5) publicize the FRIENDS' events, fundraisers, and membership as appropriate.

(e) CITY shall provide space to hold up to six FRIENDS book sales per calendar year at no cost on a space-available basis with dates and times mutually agreed upon between the Director and Friends representative.

(f) CITY shall provide program and meeting space at no cost to FRIENDS at the discretion of the Director in acknowledgement of the FRIENDS ongoing efforts to fundraise and support the CITY. These spaces may be utilized by the FRIENDS for holding monthly Board meetings and up to four members-only events per year for the purposes of (1) fundraising to support the FRIENDS, (2) encouraging membership and participation in the FRIENDS through special programming, teambuilding, and/or a holiday party, and (3) recognizing the FRIENDS contributions to the support of the Library, including volunteer recognition. Space usage requests will be submitted in writing by FRIENDS for approval to the Director. In order to minimize the impact on the public, FRIENDS events may be scheduled only when spaces are available during regular operating hours, or after-hours, subject to availability after regular city programming and public rental requests are fulfilled. FRIENDS use of any Library space pursuant to this provision shall be subject to all CITY policies, including rules related to alcohol use/consumption in CITY facilities.

2. Obligations of Friends of the Sunnyvale Public Library

(a) FRIENDS shall provide a verified statement or a declaration under the penalty of perjury, signed by the president or other duly authorized officer of the organization, indicating that the organization qualifies as tax exempt under federal or state income tax laws. FRIENDS shall notify CITY within 30 days if the organization no longer qualifies as tax exempt under federal or state income tax laws.

(b) FRIENDS shall encourage membership, especially among Sunnyvale residents, and actively recruit and train new members to carry on Friends of the Sunnyvale Public Library activities on behalf of Sunnyvale Public Library.

(c) FRIENDS shall annually provide a Board member list to the Library, complete with addresses and other contact information.

(d) FRIENDS shall comply with all Federal, State and local laws.

(e) FRIENDS shall comply with all CITY facility access, fingerprinting, volunteer and any other relevant policies and rules as established by the Director. Friends will not allow volunteers less than 13 years of age in the Friends Collection Area and will require all volunteers to wear name/volunteer tags while working in the Friends Collection Area.

(f) FRIENDS shall raise and expend private funds for the purpose of enhancing City funding for programs, services, and operations of the Library, contributing at least 90% of total monetary donations to the Sunnyvale Public Library on an annual basis. Donation may be for special equipment/furniture, programs, materials and services and other library needs as requested by Library staff.

(g) FRIENDS may make monetary donations, not to exceed 10% of the total monetary donations it distributed to the CITY in the previous fiscal year, to other organizations which promote literacy, after prior discussion with the Director or his/her designated representative. Materials purchased for donation to an organization are included as part of the 10% of total monetary donations. FRIENDS may make donations of materials to other organizations and individuals, provided the materials have been determined to have no resale value.

(h) If, at any time, the FRIENDS organization should dissolve or the agreement should be terminated by either body, at least 90% of any remaining FRIENDS funds shall be donated to the Sunnyvale Public Library within 90 days. Up to 10% may be donated to other Sunnyvale literacy-related initiatives, after prior discussion with the Director of Library and Community Services

(i) FRIENDS may apply for grants from third-parties for the benefit of the Library, where the Library itself is not eligible to submit an application due to the terms of the grant. The Library, through the Director or his/her designee, and FRIENDS will mutually agree in advance to all grant applications that FRIENDS intend to submit. The Library and FRIENDS will ensure that acceptance and administration of any funds obtained through such grants comply with applicable CITY requirements and the requirements of the grantor. Neither FRIENDS nor the CITY have the authority to bind or make any commitment on behalf of each other.

(j) FRIENDS shall not permit any officer, employee, agent, or volunteer to provide services to FRIENDS under this Agreement on City premises or in City facilities until such person has been referred to City's volunteer program and has undergone criminal background screening through the California Department of Justice as provided in Penal Code 11105.3. FRIENDS agree that no person who has been convicted of a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164 shall be permitted to provide services under this Agreement.

(k) FRIENDS may maintain a web and social media presence, including but not limited to Facebook, Twitter, and Instagram. The function of this presence will be consistent with the goals of the FRIENDS to promote Library services and events,

solicit donations, recruit volunteers and other activities that support the Library. CITY is not responsible for content posted on these sites. FRIENDS must obtain permission from CITY for use of City logo.

3. Friends Support of City

- a. Annual Support Plan. Annually, in April of each year, the Library will submit a written proposal for the Annual Support monies to Friends. The submittal should summarize the purpose of the proposed uses. Friends will approve the Annual Support request by the end of April each year. The Library may also submit supplemental funding requests throughout the year as needed. The Library will obtain City authorization to accept the Annual Support and supplemental funds, as required and consistent with City policies including but not limited to Council Policy 7.1.5 (Grants, Donations, Contributions and Scholarships). Friends will send a representative if needed to attend any meetings regarding the acceptance of Annual Support or other funds. Distribution of Annual Support and supplemental funding approved by the Friends shall be completed consistent with administrative processes mutually agreed between the Friends and the City.
- b. Capital Campaigns and Special Support Projects. The Friends and the City may arrange for capital campaigns or similar special support projects ("Special Projects") upon mutual agreement of both parties. Generally, the party proposing the Special Project will submit a written purpose statement to the other party that defines the short and long term goals of the Project and states the specific fiscal or other support requested. Any agreement regarding such Special Projects shall be written and approved by both parties consistent with applicable authorization policies and procedures.

4. Conflicts of Interest

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

5. Compliance with Laws

- a) FRIENDS shall not discriminate against any volunteer or volunteer applicant because of race, religion, creed, color, gender, age, disability, national origin, sexual orientation, or any other basis to the extent prohibited by federal, state or local law.
- b) During the term of this Agreement FRIENDS shall comply with all applicable federal, state and local laws and regulations relating to the provision of the Services. FRIENDS shall also comply with all City policies, taking into consideration all of the surrounding facts and circumstances, a policy or policies or a portion of a policy does not reasonably apply to FRIENDS. FRIENDS shall

provide the Services in a manner that complies with the Americans with Disabilities Act (ADA) including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation. FRIENDS hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with any law, regulation, or applicable policy and shall indemnify City under the provisions of section 6 (Indemnification) of this Agreement for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of FRIENDS failure to comply with such laws, regulations or policies.

c)

6. Independent CONTRACTOR

This Agreement is by and between two independent entities that have an independent contractual relationship. FRIENDS shall provide all services under this Agreement as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. City does not retain the right to control the means or the method by which FRIENDS performs work under this Agreement. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the City and FRIENDS and any of their employees, agents, affiliates or other representatives, or between the City and any individual assigned by FRIENDS to perform any services for the City. FRIENDS or any agent or employee of FRIENDS is liable for the acts and omissions of itself, its employees and its agents. Partner Organization's shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to FRIENDS performing services and work, or any agent or employee of FRIENDS providing same.

6. Indemnity

Except as to the sole negligence or willful misconduct of the indemnified party, FRIENDS shall defend, indemnify and hold the CITY and its officers, employees, agents, and volunteers harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees which arises out of or is in any way connected with the performance of services under this Agreement by FRIENDS or any of FRIENDS' employees, agents, subcontractors, or volunteers, and from all claims by FRIENDS' employee's, subcontractors, agents, or volunteers for compensation for services rendered to FRIENDS in the performance of this Agreement, notwithstanding that the CITY may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Partner Organization or of FRIENDS' employees, subcontractors, agents, or volunteers.

7. Insurance

FRIENDS shall, at its own cost, take out and maintain without interruption during the life of this Agreement policies of insurance as specified in Exhibit "A"

attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

6. CITY Representative

The Director of Library and Community Services or his/her designee 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.

7. FRIENDS Representative

The President of the Friends of the Sunnyvale Public Library or other designated officer shall represent FRIENDS in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of FRIENDS pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the FRIENDS representative. Upon appointment or election of a new Friends of the Sunnyvale Public Library representative, the City shall be notified within fourteen days.

8. 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: Director of Library and Community Services
CITY OF SUNNYVALE
665 W. Olive Ave.
Sunnyvale, CA 94086
(408) 730-7314

To GROUP: President of the Friends of the Sunnyvale Public
Library
665 W. Olive Ave. Sunnyvale, CA 94086

(Or current representative of the Friends of the
Sunnyvale Public Library)

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, e-mail, or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission may be sent upon request by first class mail, by 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.

9. Assignment

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

10. Duration of Agreement

This Agreement shall continue from the date of execution for a period of five years, unless terminated in accordance with section 11 below. The Director, with mutual agreement of FRIENDS, and review by the Board of Library Trustees, shall have the option to extend this agreement for up to two additional two-year terms, for a total term not to exceed nine (9) years.

11. Termination

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

(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.

12. 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.

13. 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.

DATE: _____

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____

David Carnahan
City Clerk

Kent Steffens
City Manager

APPROVED AS TO FORM:

FRIENDS OF THE SUNNYVALE
PUBLIC LIBRARY

John A. Nagel
City Attorney

By _____

Kathy Boelter
President, Friends of the Sunnyvale Public
Library

EXHIBIT A
INSURANCE REQUIREMENTS FOR PARTNER ORGANIZATION (FRIENDS)
(3/2/2017)

Partner Organization 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 Partner Organization, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Partner Organization shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ If working directly with children, Partner Organization's Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. Partner Organization 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** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Partner Organization; products and completed operations of the Partner Organization; premises owned, occupied or used by the Partner Organization t; or automobiles owned, leased, hired or borrowed by the Partner Organization. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Partner Organization's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Partner Organization's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Partner Organization'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.
5. 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 of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Partner Organization's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Partner Organization shall furnish the City of Sunnyvale with original a Certificate 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 of Sunnyvale prior to commencement of work.

Subcontractors

Partner Organization shall require all subcontractors to procure and maintain insurance policies subject to the requirements of this Exhibit. Failure of Partner Organization to verify existence of sub-contractor's insurance shall not relieve Partner Organization from any claim arising from sub-contractors work on behalf of Partner Organization.