

## **AGREEMENT BETWEEN CITY OF SUNNYVALE AND THE FRIENDS OF THE SUNNYVALE PUBLIC LIBRARY FOR 2014-2019**

THIS AGREEMENT dated July 1, 2014 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and the Friends of the Sunnyvale Public Library, a non-profit 501(c)(3) organization ("FRIENDS").

WHEREAS, the City desires to accommodate independent organizations providing services beneficial to the Community; 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 wish to focus public attention on library services, library materials, facilities and needs; and

WHEREAS, the Friends of the Sunnyvale Public Library wish to stimulate 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 raise 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

CITY shall provide FRIENDS with space to collect, sort and store books and other donated and discarded print and non-print materials for FRIENDS book sales.

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

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

CITY shall provide the following staff assistance: collect money from FRIENDS' lobby sale area sales, provide a Library manager to serve as liaison to the FRIENDS, maintain records of the Library's expenditures from FRIENDS' donations, provide copies of these records to the FRIENDS, and publicize the FRIENDS' events and membership as appropriate.

CITY shall provide space to hold FRIENDS book sales, when possible.

## 2. Obligations of Friends of the Sunnyvale Public Library

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.

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.

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

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

FRIENDS shall comply with all CITY facility key policies and any other relevant policies.

FRIENDS shall contribute to the Sunnyvale Public Library at least 90% of total monetary donations. Donation may be for special equipment/furniture, programs, materials and services and other library needs as requested by Library staff.

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 of Libraries 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.

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 Libraries.

FRIENDS shall actively advocate for the maintenance and improvement of Sunnyvale Public Library services and materials.

## 3. 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.

4. 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) FRIENDS 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

FRIENDS 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 FRIENDS. FRIENDS is responsible for paying all required state and federal taxes.

6. Indemnity

FRIENDS agree to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, 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 FRIENDS, its officers, employees, agents, volunteers, , sub-contractors and/or any officer, agent or employee thereof in relation to FRIENDS' performance under this Agreement.

7. Insurance

FRIENDS shall, at its own cost, take out and maintain without interruption during the life of this Agreement in such form and with a company or companies satisfactory to the CITY policies of the following types of insurance:

a) Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.

b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required if FRIENDS owns any vehicles. Otherwise, non-owned and hired automobile liability coverage is required.

c) Worker's compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease for employees of FRIENDS as required by law.

The City of Sunnyvale, its officers, employees, agents and volunteers shall be named as additional insureds with respects to liability arising out of activities performed by or on behalf of FRIENDS; products and completed operations of FRIENDS; premises owned, occupied or used by FRIENDS; or automobiles owned, if any, leased, hired or borrowed by FRIENDS

6. CITY Representative

Administrative or Supervising Librarian or such other person as may be designated by the Director of Libraries, 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 Libraries  
CITY OF SUNNYVALE  
P. O. Box 3714  
Sunnyvale, CA 94088-3714  
(408) 730-7314

To GROUP: President of the Friends of the Library  
665 W. Olive Ave. Sunnyvale, CA 94086  
(408) 982-6657  
(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 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 must be sent 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 three years, unless terminated in accordance with section 11 below.

This Agreement shall continue until such time as terminated in accordance with section 11 below.

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 \_\_\_\_\_

Kathleen Franco Simmons  
City Clerk

Robert A. Walker  
Interim City Manager

APPROVED AS TO FORM:

GROUP

\_\_\_\_\_

Joan Borger  
City Attorney

By \_\_\_\_\_

Danielle Maddox  
President, Friends of the Sunnyvale Public  
Library