

**FACILITY USE AGREEMENT
BETWEEN
CITY OF SUNNYVALE AND
UNIQUE BOUTIQUE**

This user agreement (“Agreement”) is effective on execution date, by and between the City of Sunnyvale (“City”) and Unique Boutique (“User”), for the purpose of providing space at the Sunnyvale Senior Center for members of Unique Boutique to sell handmade items and goods.

RECITALS

1. City operates the Sunnyvale Senior Center (the “Senior Center”), located at 550 E. Remington Ave, Sunnyvale CA 94087, which provides programming and services to member adults ages 50 or older.
2. Many members of the Senior Center create a variety of handicrafts and handmade items, and Unique Boutique is a cooperative organization formed to provide those individuals an outlet to sell their items.
3. For many years, the City has provided Unique Boutique Access to Room 518 at the Senior Center for the purpose of providing a location for members to sell their handicrafts, while providing a nominal commission to the City for use of the room.
4. Senior Center staff members have observed that operation of the Unique Boutique provides benefits to members of the Senior Center by encouraging healthy creative and business activity, as well as to the community by providing the opportunity to purchase unique, locally made products.
5. In light of these benefits, the City and Unique Boutique wish to continue the longstanding partnership and operation of Unique Boutique from Senior Center Room 518, based on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. License. Subject to the terms and conditions set forth in this Agreement, City hereby grants to User a revocable and non-exclusive license to use Room 518 at the Senior Center (the “Premises”) for the sole purpose of conducting the activities described in Section 2 of this Agreement, at User’s sole cost and expense. User acknowledges that the purpose of this Agreement is solely to allow User access to the Premises in order to perform User’s Activities and for no other purpose. Accordingly, User agrees that it shall not use the Premises for any other purposes whatsoever during the term of this Agreement.
2. Permitted Use of Premises. User shall use the Premises for the sole purpose of selling hand made goods and crafts made by members of Unique Boutique (“Boutique”) on a

consignment basis. User shall be responsible for all business operations associated with Unique Boutique, including but not limited to day-to-day store operations, sales, accounting, and maintenance and upkeep of the contents of the Premises, including sales items, furniture, fixtures, windows, display cases, wall space, and storage cabinets, which User shall maintain in a clean, attractive, and orderly condition. User understands and agrees that those contents remain the property of City and agree to replace any such contents damaged or destroyed as a result of User's use. User shall ensure that Boutique is appropriately staffed and open to the public Monday through Friday, from 10:30 AM until 2:30 PM, during regular business hours. Changes in days and/or hours of operation shall be approved by City prior to implementation. User shall secure the premises at the close of each business day and maintain an adequate number of individuals to handle the day to day operations therein.

3. User Obligations. In addition to the obligations set forth in Section 2 of this agreement, User shall:
 - (a) Maintain a current Sunnyvale Business License.
 - (b) Maintain a membership and Board membership of at least 51% Sunnyvale residents, and require that all members of the UNIQUE BOUTIQUE are current members of the Sunnyvale Senior Center. Partner Organization shall provide CITY with membership roster, noting the residency of every member and board member, each year no later than June 1st.
 - (c) Maintain a system of records and accounts approved by CITY. On or before the 30th day of each month UNIQUE BOUTIQUE shall deliver to City a statement showing the total amounts of money collected or received by UNIQUE BOUTIQUE from all sources during the preceding calendar month.
 - (d) Be responsible for mailing and printing costs for any materials associated with Unique Boutique.
 - (e) Except as provided in section 4 of this Agreement, User shall be solely responsible for repairing, cleaning and/or otherwise maintaining the Premises such that the Premises will be left in substantially the same condition that existed prior to User's use, and for all costs related thereto.
4. City Obligations. City shall provide User the use of the Premises for the purpose of and consideration described in this Agreement, and shall list and/or promote Unique Boutique in the Department of Library and Community Services/Community Services Division quarterly Activity Guide, on the Division website and/or in other Division written or on-line materials as space and resources are available as determined by City staff. City shall provide designated User staff access to a key to the Premises during regular business hours. City shall provide heating, air-conditioning, lighting, annual carpet cleaning, HVAC related maintenance, and exterior window washing, storage space as available and determined by City Staff, and greeting, information and referral support from the front reception desk as needed for the Unique Boutique.
5. Consideration. User shall pay to City ten percent of all gross member sales, with payments to the "City of Sunnyvale" on a monthly basis by the 20th day of each month for the preceding calendar month.

6. Term and Expiration of License. The term of this Agreement shall commence upon its execution and shall end on June 30, 2021, unless sooner revoked by City.
7. Compliance with Laws.
 - (a) User shall not discriminate against any employee, volunteer, member or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, sexual orientation, or any other basis to the extent prohibited by federal, state or local law.
 - (b) User 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.
8. Independent Contractor. This Agreement is by and between two independent entities that have an independent contractual relationship. User shall perform all activities 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 User 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 User and any of their employees, agents, affiliates or other representatives, or between the City and any individual assigned by User to perform any services for the City. User or any agent or employee of User is liable for the acts and omissions of itself, its employees and its agents. User 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 User's performing services and work, or any agent or employee of User providing same.
9. Indemnity. Except as to the sole negligence or willful misconduct of the indemnified party, User 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 User or any of User employees, agents, subcontractors, or volunteers, and from all claims by User's employee's, subcontractors, agents, or volunteers for compensation for services rendered to User 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 User or of User's employees, subcontractors, agents, or volunteers.
10. Insurance. User 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 User, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance: User 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.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the CITY. User 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 User. 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 User's insurance shall be primary. Any insurance or self-insurance maintained by CITY shall be excess of User'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. User'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.
- F. 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 User'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 no less than A:VII, unless otherwise acceptable to the CITY.

Verification of Coverage

User 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 prior to commencement of work.

11. Amendments. Any amendments and modifications to this agreement must be in writing and signed by each party.

12. Notices and Contact Information. All notices required under this agreement or communications regarding the provisions of this agreement shall be directed to:

City: Damon Sparacino
Community Services Superintendent
550 E. Remington Drive Sunnyvale, CA 94087
408-730-7365

User: Linda Brown
President of Board
Unique Boutique
256 Lakemuir Dr. Sunnyvale 94089
408-732-4079

13. Miscellaneous.

- (a) Audit and Inspection of Records. User agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. User will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. User shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.
- (b) No assignment. This Agreement is personal to user and may not be assigned in any manner.
- (c) Costs and Fees. Should any party hereto bring any claim or action with regard to the terms, conditions and/or enforcement of this Agreement, there shall be an award to the prevailing party of all reasonable costs, including, but not limited to, reasonable attorney fees.
- (d) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- (e) Authority. City warrants that it is the owner of the Property and that it has the full rights and authority to grant the rights to the User which are contained in this License.

The individual signing this Agreement on behalf of User warrants that s/he has the ability to bind User to the terms described herein.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

APPROVED AS TO FORM:

CITY OF SUNNYVALE

City Attorney

Kent Steffens
City Manager

Date

USER

Linda Brown
President of Board

Date