

DRAFT

LICENSE AND OPERATING AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH AND FRIENDS OF THE HUNTINGTON BEACH PUBLIC LIBRARY

THIS LICENSING AND OPERATING AGREEMENT (“AGREEMENT”) is made and entered on _____, 2026 by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (“City”), and FRIENDS OF THE HUNTINGTON BEACH PUBLIC LIBRARY (“FOTL”), a California nonprofit public benefit corporation and organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (together, the “Parties”).

RECITALS

WHEREAS, FOTL’s mission is to focus public attention on the Huntington Beach Public Library and associated Branches (together, the “Library”); to enrich the Library’s collection of books, digital, and other resources; and to develop and expand innovative education programs, Library services, and community outreach, all for the benefit of City residents and the broader public and at no cost to the taxpayer, a mission that City shares;

WHEREAS, FOTL was formed in 1967 by Charlene Bauer and Rhoda Martyn, two City residents, to raise funds to purchase books and other materials not in the Library’s budget; and continued in that mission to support the Library at the 1975 opening of the Huntington Beach Central Library at 7111 Talbert Avenue; and has, since 2002, donated over \$4.8 million dollars and thousands of volunteer hours to the Library; and has, at all times since, with the help of

hundreds of City resident members and volunteers, continued to successfully carry out its mission in partnership with City;

WHEREAS, the City has allowed FOTL to use City property to operate a Gift Shop and Used Book Sale and to utilize spaces within City Libraries for sales, book sorting, and storage, at no cost;

WHEREAS, City and FOTL enter into this AGREEMENT to establish a license to use City property and to set forth the roles and responsibilities concerning FOTL's use of City property regarding the operation and management of FOTL's Gift Shop, FOTL Used Book Sales, and other FOTL activities carried out in the Library and for the support of the Library;

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained and intending to be legally bound, the Parties covenant and agree as follows:

SECTION 1. TERM & TERMINATION/REVOCATION

This AGREEMENT will commence on the date approved by the Huntington Beach City Council and shall terminate five (5) years thereafter. Upon mutual consent of the Parties, this AGREEMENT may be extended for one (1) additional five (5) year Term.

This AGREEMENT may be terminated/revoked at the sole discretion of the City or FOTL by providing six months' written notice of termination/revocation to the City or FOTL.

SECTION 2. FOTL's DUTIES

1. FOTL, in accordance with its charitable purpose, raises funds for the Library and donates those funds in support of the Library at its sole discretion. FOTL Library fundraising activities include, but are not limited to, public donations, donated and used book sales, FOTL Gift Shop sales, Library fundraising events, etc.

2. FOTL intends to make grants to City solely for the acquisition of books, digital, and other Library resources, and other materials in circulation within the Library's catalog (the "Funds"). City shall not use the Funds for any other purpose. City shall not use the Funds for capital expenditures, including, but not limited to, maintenance or improvements of any City buildings, including Library buildings, or other real property or fixtures. City shall not use the Funds to pay the salary or related costs of any City official or employee. City shall not use the Funds to pay subgrantees or contractors without prior written permission from FOTL. If FOTL, in its reasonable discretion, determines that City has used the Funds for any purpose not permitted by this paragraph ("prohibited purposes"), FOTL shall have no obligation to provide any additional Funds and may request the return of any Funds not properly spent or committed. The City's use of the Funds for any prohibited purpose shall constitute a breach of this AGREEMENT.

3. Each fiscal year, FOTL will disclose to City all amounts raised by FOTL through FOTL's operation of the FOTL Gift Shop, FOTL Used Book Sales, and other FOTL Library fundraising efforts carried out on City property. In return, City will keep records to substantiate City's expenditures of the Funds in accordance with this AGREEMENT and make these records available for FOTL's review. City will comply with FOTL's reasonable requests for information regarding City's use of the Funds. City will keep copies of all relevant books and records related to expenditure of the Funds for FOTL review for at least four (4) years after expenditure of the Funds.

4. FOTL shall accept donations of books and other materials for the

intended purpose of making them available for sale either through a FOTL online process or at FOTL Used Book Sales held on or off City property. FOTL will accept, organize, and provide donated materials for sale. If FOTL determines that donated materials are unfit for sale, it is the responsibility of FOTL to donate or dispose of materials properly at FOTL's sole expense.

5. FOTL's Library fundraising activities are at the direction and action of FOTL, except that the City reserves the right, at its sole discretion, and provided that City gives at least 1 month written notice to FOTL, to review and approve or to cancel or modify any FOTL Library fundraising activity on City property. Except: the City may not review, approve, cancel, or modify FOTL's operation of the FOTL Gift Shop or FOTL Used Book Sales activities without prior written agreement from FOTL.

6. FOTL has a non-exclusive license to use space in the City Central Library currently designated as a Gift Shop and Used Books Shop (as designated on the map attached hereto as Exhibit A). The City may, at its discretion, provide FOTL with merchandise for sale at the Gift Shop and/or other locations within the Library facilities, and all net proceeds from the sale of those items shall be provided to the City.

7. Apart from the items provided by the City for sale, FOTL may determine the pricing of items sold at Gift Shop and Used Book Sales. City will determine the pricing on City merchandise provided for sale.

8. FOTL will provide proof of donation to donors as requested or required by law.

9. FOTL will adhere to all lawful City regulations and policies and procedures to the same extent required of any nonprofit organization engaged in activities on City property. FOTL understands it has no authority regarding lawful City policies or decisions.

10. FOTL may not utilize City resources, property, equipment, systems, or other assets or funds derived therefrom related to services covered within this AGREEMENT in a manner that would violate federal, state or local laws regarding FOTL's tax-exempt status.

11. FOTL may provide publicity for Library fundraising efforts conducted on City property, but must do so in consultation with the City Manager or designee in advance of such Library fundraising efforts. Such publicity must positively enhance the City or the Library's image.

12. FOTL Board Members and volunteers must submit fingerprints if and as required by California Education Code Section 10911.5 at their own expense. In addition, FOTL will provide a list of all personnel who may access the Library, including volunteers, and their emergency contact information. FOTL also agrees to provide updates of this list to the Library Services Manager or designee as staffing changes.

13. With the exception of the designated FOTL licensed space, FOTL is not permitted in nonpublic areas of the Library without City permission, except as reasonably required to carry out the FOTL Library fundraising, meetings, and other activities described in this AGREEMENT. FOTL shall not enter or remain in the

Library except during normal City operating hours without prior permission from the City. FOTL shall not interfere with normal Library operations or Library staff space.

14. FOTL shall maintain accurate financial records of funds raised or donated directly from FOTL Library fundraising activities conducted on City premises. FOTL shall keep such financial records in accordance with generally accepted accounting principles. FOTL shall provide the records described in this paragraph to City for each fiscal year in which this AGREEMENT is in effect.

SECTION 3. OBLIGATIONS OF CITY

1. City will provide reasonable support and space for FOTL Gift Shop and Used Book Sales within the Library. During operation of this AGREEMENT, City will not revoke or modify FOTL's use of Gift Shop or Used Book Sales Library space without prior and mutual written agreement between City and FOTL.

2. City agrees to permit FOTL's use of a Library work and storage area to receive, store, organize, and prepare donations of used books and other items for sale and to conduct online sales for these books and items. If City reasonably determines that its storage requirements necessitate the removal or relocation of FOTL storage items from a City space, City shall provide FOTL with at least three months' notice of the same and will collaborate with FOTL in good faith to identify potential options or alternate solutions for storage space.

3. City agrees to permit FOTL to use a portion of the Library for various meetings and activities, as approved by the Director of Community & Library Services.

City shall collaborate in good faith with FOTL to find space for these events.

4. FOTL may hold monthly Board of Directors meetings and an annual membership meeting in City's Library Meeting Rooms and other areas of the Library for other events at no charge. Dates and times for such meetings shall be arranged in consultation with the Director of Community & Library Services or designee. FOTL meetings/events may not interfere with normal City or Library operations and require prior scheduling and paperwork in accordance with Facility Rental policies.

5. City will provide regular cleaning of the Library space utilized by FOTL on the same schedule and level as other Library spaces at no charge to FOTL.

6. City will provide a mailbox, phone, internet access, reasonable use of copy machine and other equipment to FOTL at no charge.

7. City will maintain a staff liaison to FOTL, either the Library Services Manager or designee, who may attend the open and non-confidential portions of FOTL Board Meetings in order to maintain effective communication and operations between City and FOTL.

SECTION 4. ACCESS TO CITY MARKS AND LOGOS

FOTL may use approved City logos and branding in connection with Library fundraising and promotional activities that directly benefit the Library, subject to prior approval by the Office of Communications.

All City assets must be approved and in-line with current City branding policies. City marks shall not be used to imply City endorsement of third-party products or services.

SECTION 5. HOLD HARMLESS

FOTL hereby agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, and employees, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with performance of this AGREEMENT or its failure to comply with any of their obligations contained in this AGREEMENT except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

SECTION 6. WORKERS' COMPENSATION INSURANCE

Pursuant to California Labor Code Section 1861, FOTL acknowledges awareness of Section 3700 et seq. of said Code, which requires every employer to be insured against liability for workers' compensation; FOTL covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

In the event FOTL directly hires employees, FOTL shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

SECTION 7. GENERAL LIABILITY INSURANCE

In addition to the workers' compensation insurance (if needed) and FOTL's covenant to indemnify City, FOTL shall obtain and furnish to City a policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify FOTL, its officers,

agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with this AGREEMENT and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name City, its agents, its officers, employees and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable shall be deemed excess coverage and that FOTL's insurance shall be primary.

Under no circumstances shall the above-mentioned insurance contain a self-insured retention, or a "deductible," or any other similar form of limitation on the required coverage.

SECTION 8. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencement of this AGREEMENT, FOTL shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this AGREEMENT; these certificates shall:

- (a) provide the name and policy number of each carrier and policy; and
- (b) state that the policy is currently in force; and
- (c) promise to provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of City; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

FOTL shall maintain the foregoing insurance coverage in force during the entire term of

the AGREEMENT or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverage shall not derogate from FOTL's defense, hold harmless, and indemnification obligations as set forth in this AGREEMENT. City or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. FOTL shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

SECTION 9. ASSIGNING AS BREACH

Neither Party shall encumber, assign, or otherwise transfer this AGREEMENT, or any right or interest in this AGREEMENT, without the express written consent of the other Party. A consent by a Party to one assignment or transfer to another person shall not be deemed to be a consent to any subsequent assignment or transfer to another person. Any encumbrance, assignment or transfer, without the prior written consent of the other Party, whether it is voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the other Party, terminate this AGREEMENT.

SECTION 10. CONFLICT OF INTEREST

FOTL shall employ no City official or any regular City employee in the work performed pursuant to this AGREEMENT. No officer or employee of City shall have any financial interest in this AGREEMENT in violation of the applicable provisions of the California Government Code.

SECTION 11. NONDISCLOSURES/PRESS RELEASES

FOTL or members presenting themselves as a representative of FOTL shall consult with the City Manager or designee prior to issuing any press releases, speaking with the media/press or making any public statements with respect to this AGREEMENT, the transactions contemplated herein, or matters arising here from.

SECTION 12. WAIVER OF BREACH

The waiver by either FOTL or City of any breach by FOTL or City of any of the provisions of this AGREEMENT, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by the other Party, either of the same or another provision of this AGREEMENT. Additionally, the failure of either Party to exercise any of its rights under this AGREEMENT shall not be deemed a waiver of such rights.

SECTION 13. AMENDMENT

This AGREEMENT may be amended in writing and signed by both Parties.

SECTION 14. NOTICES

Any notice to be given hereunder shall be sent by registered mail, and shall be deemed to be given when so mailed to the Party to be notified at the address herein below stated:

TO CITY:
City of Huntington Beach
Attn: Director, Community & Library Svcs

2000 Main Street
Huntington Beach, CA 92648

TO FOTL:
President
Friends of the Library
c/o Huntington Beach Central Library
7111 Talbert Avenue
Huntington Beach, CA 92648

City or FOTL may change the name of the Party to be notified by written notice to the other Party.

SECTION 15. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire understanding of the Parties hereto, and no representations or promises have been made that are not fully set forth herein. The Parties hereto understand and agree that no modification of this AGREEMENT will be binding unless such modification is in writing and duly accepted and executed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed by their authorized officers on:

FOTL:
FRIENDS OF THE LIBRARY,
A California nonprofit public benefit corporation exempt from federal income tax under 501 (c) (3)

CITY:
CITY OF HUNTINGTON BEACH,
A Municipal Corporation of the State of California

By: _____

Mayor

Print Name

Title

By:

APPROVED AS TO FORM:

Print Name

City Attorney

Title

INITIATED AND APPROVED:

Director of Community & Library Services

REVIEWED AND APPROVED:

City Manager