

City Clerk's Office
1052 South Livermore Avenue
Livermore, CA 94550-4899
Phone: 925.960.4200 Fax: 925.960.4205

DOCUMENT TRANSMITTAL FORM

Date: March 17, 2016

To: Matthew Berry, President
Friends of the Livermore Library
PO Box 2483
Livermore, CA 94551-2483

cc: M. Roberts
J. McMurry
L. Carpenter

PLEASE READ THE FOLLOWING:

Original document enclosed for your records

Date of Document:	March 16, 2016
Type of Document:	Memorandum of Understanding
Parties:	City of Livermore and Friends of the Livermore Library

By: Susan Neer, City Clerk
Roberta Mathews
925.960.4200

**AGREEMENT
BY AND BETWEEN
THE CITY OF LIVERMORE
AND
FRIENDS OF THE LIVERMORE LIBRARY**

This Memorandum of Understanding (“MOU”) is made and entered into on this ¹⁶ day of, *March, 2016* (“Effective Date”) by and between the CITY OF LIVERMORE (“City” or sometimes referred to as “Library”), a California municipal corporation, and the FRIENDS OF THE LIVERMORE LIBRARY (“FRIENDS”). City and Friends may be referred to herein individually as a “Party” or collectively at the “Parties” or the “Parties to this Agreement.”

RECITALS

1. The Friends of the Livermore Library (“Friends”) is a nonprofit corporation organized under the laws of the State of California and exempt from taxation under Section 501(a) of the Internal Revenue Code, as amended, as an organization described in Section 501(c)(3) of the Code.
2. The Friends’ purpose, as more fully expressed in its by-laws, is to support the Livermore Public Library, which includes the Civic Center, Rincon and Springtown Libraries. Among the Friends’ authorized purposes is support of the Library, its services and programs by advocating for public support and use of the Library by generating current and long-term funding, and by developing volunteer involvement.
3. The Parties enter into this MOU for the purpose of setting forth the rights and responsibilities of both Parties regarding the Friends’ funding to the Library (through the City), and the operation and management of the Friends’ Bookstore.

AGREEMENT

A. General Donation Principles

1. The Friends agree to sell donated and used books to generate funds for use by the Library.
2. The Friends agree that the Library has the first choice for use of any items donated and that it is the understanding of the Parties that the donations are being made to the Library irrespective of the location of the donation or which personnel conducts the initial sorting of the donations. The Library will designate staff to select and remove materials from the bookstore for Library use. Materials shall be removed during hours when the bookstore is normally closed or at mutually acceptable times. Remaining materials may be sold by the Friends, at the Bookstore, periodic book sales events, through independent booksellers or through online sales operations. Receipts indicating a tax-deductible donation will be provided at the donor’s request.

3. The City is the recipient of all other private gifts including, but not limited to cash, securities, real estate or other assets, for the use and benefit of the Livermore Public Library, unless otherwise expressed by the donor.
4. The Friends may discard, or otherwise dispose of, any items determined by the Friends to be in poor condition or not worthy of sale to a third party.
5. The Parties agree that donations (other than books, other literary materials, and cash) offered by corporations or individuals that are not on the Library's list of priority needs (discussed below in Section E (3)) may only be accepted by the Friends after agreement by the City Manager or designee that the items are appropriate and valuable to the Library.
6. The Friends and the City agree that all of the Friends' fundraising efforts shall be under the direction of the Friends and that the City shall not have any responsibility for, or control over, the actions of the Friends, its agents, volunteers or its employees regarding their fundraising activities.
7. The Friends acknowledge that it shall not have any authority regarding Library policies or decisions. The City agrees to inform the Friends of any changes in policies that may affect the Friends. Library managers shall consult with the Friends prior to adopting Library procedures that may affect the Friends' operation.
8. The Parties acknowledge that the City Council has the authority for administration of the Library, including acceptance of funds, administering of monies, personal property and real estate acquired for library purposes.
9. The Parties acknowledge that the Friends is a separate entity from the City and as such shall operate as a nonprofit, tax-exempt corporation in accordance with the Federal Internal Revenue Code with its own rules of operation and management. The Friends will operate the Bookstore in a manner that will enhance its continuing support to its sole beneficiary, the Library System of the City.
10. The Friends agree to pay all expenditures attributable to its fundraising efforts, including staff, fund raising counsel, postage, printing, supplies and event expenses.

B. Bookstore Use, Operation and Management

1. The City has designated approximately 500 square feet of space, adjacent to the Library Board Room, in the Civic Center Library located at 1188 South Livermore Avenue, for use as a bookstore ("Bookstore" or "Bookstore Premises"). The nature of the use of this space is exclusive and revocable for a period of ten (10) years, with an option to renew for one (1) five-year term. Either Party may terminate the use of the Bookstore Premises without cause by giving the other Party written notice of the intent to terminate. The termination shall become effective no less than forty-five (45) calendar days after a Party receives such notice.

2. The Bookstore shall be used for the sale of used books and other library or literary-related items. The Friends shall provide oversight for this activity. The Bookstore may be used for other purposes only with the prior written consent of the City of Livermore's Director of Library Services.
3. The Friends agree to pay to the City an annual fee of \$25.00 for the use of the Bookstore Premises. This fee shall be due to the City within 30 days after approval of this Agreement by the Friends' Board of Directors and on or before each January 30th thereafter for the remainder of the term of the Agreement. Payment is collected in January for the following year.
4. The City agrees to provide at no expense to the Friends the following: Bookstore furnishings including bookshelves, cabinets, chairs, all utilities otherwise provided to the Library facility, janitorial service, reasonable local telephone service and wireless internet access.
5. The City agrees to collect payment made by credit or debit card, for materials sold in the Bookstore, if the Friends have no mechanism in place for doing so. The City also agrees to collect payment made by cash or check for materials sold in the Bookstore, at those times that the Bookstore is not staffed by Friends' volunteers or employees.
6. All monies received from the Bookstore operation at the end of each day shall be provided to the Library staff member responsible for the Civic Center Circulation Department. These receivables will then be processed by the City's Finance Department. By the last working day of the subsequent month, the City agrees to issue a check to the Friends in the amount of the monies received from the Bookstore operations.
7. The Friends agree to keep the Bookstore open for its operations and book sales during the following days and times: Monday through Thursday, 10:00 a.m. to 8:30 p.m.; Friday, 10:00 a.m. to 5:30 p.m.; Saturday, 10:00 a.m. through 4:30 p.m.; Sunday, 12:00 p.m. through 5:30 p.m., except on City holidays when the Bookstore and the Library are closed. When the Bookstore is closed, the door may be closed and the lights turned off. In the event volunteers or the Bookstore Manager require a break during normal Bookstore hours, the door may be locked for no longer than 15 minutes. Hours of operation may be changed by mutual written agreement except in the case of an emergency, at which time the Director of Library Services or his/her designee will have the full authority to open or close the Bookstore.
8. The Friends may retain an employee to manage and conduct the day-to-day operations of the Bookstore ("Bookstore Manager"). The Friends are responsible for all aspects of employee management for the Bookstore Manager, including payroll, taxes, etc. The Friends will provide the Director of Library Services with the Bookstore Manager's contact information and the name and contact information of the Friends member who serves as the Bookstore Manager's direct supervisor.

9. The Friends agree to provide an identification badge to the Bookstore Manager, who shall wear and display the badge at all times while working at the Library. The Friends also agree to provide identification badges to bookstore volunteers, who shall wear and display the badges at all times while working at the Library.

The City has provided the Bookstore Manager with keys to the Bookstore and to the closet in the Bookstore. The Friends are responsible for the keys and must report to the City if the keys are lost or damaged.

10. The City agrees to provide a generic proximity card to the Bookstore Manager and those Friends' volunteers who will have access to the gallery door located at the south side of the Civic Center Library adjacent to the Community Room.
11. The Bookstore Manager, Friends' volunteers and Board members must be escorted into the non-public areas of the Library by members of the Library staff.
12. The Friends agree to maintain a list of all volunteers with emergency contact information and to provide that list to the Director of Library Services on an annual basis. The Friends also agree to provide updates to the Director of Library Services as volunteer staffing changes.
13. The City will arrange for Library staff and/or volunteers to empty the donation bin located outside the Library on a daily basis. The Friends agree to move these donations into the Bookstore or offsite storage area within one week after they have been received. The Friends agree to empty the donation bin located in the hallway outside the Friends bookstore on a daily basis.
14. Maintenance of the Bookstore Premises shall be the responsibility of the City, which agrees to repair and maintain in good and habitable condition, the interior of the Bookstore. If the Friends note any deficiencies in the repair, custodial care, or maintenance of the Bookstore Premises, Friends shall send written notice of the deficiency to the Director of Library Services or his/her designee. City agrees to repair or correct such deficiency within a reasonable time after notice.
15. The Friends agree to keep the Bookstore Premises in a neat, clean, and orderly condition. All trash and rubbish, including those donated materials that the Friends have determined are not worthy of sale, shall be deposited within trash receptacles. Materials that can be recycled must be deposited within the recycling receptacle. With the exception of the donation bin, the Friends may not store or display items in the hallway outside the Bookstore.
16. Friends may install signs on the Bookstore premises provided such signs conform to the Library sign regulations and are approved by the Director of Library Services.
17. The Director of Library Services, or his/her designee, and designated representatives of the Friends' Board of Directors agree to meet on an annual basis to review the viability of the Bookstore's operation. Any operational issues addressed in this Agreement that need

to be altered as a result of such meeting shall be undertaken by written amendment to this Agreement.

C. Friends' Book Storage

Both parties acknowledge that the Friends have a need for an offsite storage space for used books and other materials that will not fit in the Bookstore. Any agreement regarding the use of City facilities for Friends' storage will be handled through a separate agreement.

D. Use of Library Facilities

1. Should the Friends utilize any of the library meeting rooms for author programs or other special programs, the Parties agree that the Friends are subject to the same rules and regulations as other non-profit organizations. Meeting rooms must be booked in advance. Fees for meeting room usage are waived unless, if in the opinion of the Director of Library Services, the meeting room required repair or extraordinary clean up, in which case, a fee may be imposed to recover the cost incurred by the City in addressing the damages.
2. The Friends may sell books and other items at special events provided a percentage of funds raised is returned to the City to fund Library programs and services, pursuant to the Library Sale of Commercial Items Policy, a copy of which is attached hereto as Exhibit A and which may be revised from time to time.

E. Friends of the Livermore Library Financing

1. All funds generated by the sales of books and other Friends' fundraising activities belong to the Friends. It is the Parties' understanding that the Friends have discretion over how their funds are spent although it is the Parties' intention that the funds shall be used to benefit the Livermore Public Library and its activities.
2. The Friends agree to provide a copy of its annual financial statement to the City within sixty (60) days of the end of the Friends' fiscal year. Upon request, Friends agree to provide monthly financial reports to the City.
3. The Director of Library Services or his/her designee will identify in writing the Library's specific requests, with estimated costs. The Friends' Board of Directors can choose whether or not to approve these funding requests. Funds will be used to support Library programs, furnishings and equipment at any of the Library branches. The Friends may also identify items or programs they deem beneficial to the Library and, with the agreement of the Director of Library Services or designee, these items would be added to the Requests.
4. The Friends shall remit funds the City once the Friends' Board of Directors has approved a funding request and confirmed that the funds are available.

5. The Parties agree that all equipment, personal property, or items that are purchased through funds provided by the Friends for the City libraries remain the property of the City.
6. The Library will manage and operate programs funded by Friends and shall provide a report to Friends at least annually, or as otherwise required by a specific grant, that documents how Friends' funds were used and if designated, used for the intended purpose.
7. The Friends agrees to notify the Director of Library Services of all expenditures over five thousand dollars (\$5,000) and the purpose of such expenditure, within five (5) business days of such expenditure.
8. The City and the Friends agree to cooperate to develop and implement a donor recognition policy that is subject to the approval of the Board of Library Trustees and by the City Council and the Friends' Board of Directors.
9. The Friends are responsible for maintaining its tax-exempt status and for all financial recordkeeping obligations.

F. Miscellaneous

1. The term of this Agreement shall begin on the Effective Date and terminate on January 30, 2026. Thereafter, the Agreement may be extended by written Amendment to this Agreement, at the City's discretion, for up to one (1) time for a five (5) year term.
2. The Agreement may be terminated in the event of the dissolution of the Friends or upon thirty (30) day written notice by the City to the Friends. The term of this Agreement may be modified by written amendment. Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. The Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice, unless the Party receiving the notice requests, within 10 days of receipt of such Notice of Termination, an Opportunity to Cure. Upon receipt of a request for Opportunity to Cure, the parties shall meet to determine a mutually acceptable timeframe within which to commence and complete the Cure. After the Opportunity to Cure period has elapsed, or should the Parties fail to agree upon a timeframe or reasonable cure methods, a Final Notice of Termination shall be issued. After either Party provides a Notice of Termination (or Final Notice of Termination in the event of an attempted Cure), Friends shall release the funds raised by Friends specifically on behalf of the City within ninety (90) days of said Notice of Termination or Final Notice of Termination. If this Agreement is terminated due to dissolution of the Friends' organization, Friends shall release the funds raised by Friends specifically on behalf of the City within ninety (90) days of said Notice of Termination. The Friends may retain funds raised in the most recent 12 months through membership dues and funds up to, but not in excess of, \$15,000 to cover budgeted operating expenses for up to one year.

3. This Agreement shall not be assigned or transferred without prior written consent of the Parties.
4. The Friends shall not use City's name, insignia, or emblem, or distribute any information related to this Agreement in any magazine, trade paper, newspaper or other medium without the written consent of City. Such consent will not be unreasonably withheld if the intended use is to further the charitable purposes of the Friends. Any request for the use of the City's name or emblem must be submitted in writing to the City Manager along with a description of how the City's name or emblem is proposed to be used. The City Manager shall have the authority to grant or deny such request.
5. The Friends agree to protect, defend, hold harmless and indemnify the City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim or suit for damage to property, personal injury or death caused by or arising from the Friends' acts, errors, omissions, negligent or willful misconduct associated with this Agreement.
6. Within thirty (30) days of the Effective Date and during the term of this Agreement, including any required time thereafter as set forth below, the Friends shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:
 - a. commercial general liability (bodily injury and property damage);
 - b. worker's compensation and employer's liability policy (if applicable); property insurance; and
 - c. director's and officer's liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and including the required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit B attached and incorporated by this reference.

7. This Agreement may be amended only with the written consent of both Parties.
8. This Agreement represents the entire agreement between City and the Friends. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall not be binding upon the Parties.
9. In the event that any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.
10. This Agreement shall be governed and interpreted using the laws of the State of California.
11. Dispute Resolution

- a. Any controversies or claims between the Friends and City regarding this Agreement must first be put in writing and delivered to the other Party. After a written claim is delivered by one Party to the other, the Parties will promptly arrange to meet in good faith to attempt to resolve the issue in question. If the Parties fail to come to an agreement on the resolution of the issue, all required administrative procedures must be followed. If all administrative procedures are exhausted and the Parties are unable to resolve the issue, the matter must be submitted to mediation within thirty (30) calendar days after the written request for mediation is delivered by one Party to the other.
 - b. In order to facilitate the mediation process, the Parties must agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Alameda County appoint a mediator. The mediation meeting shall not exceed one work day (eight (8) hours). The Parties may extend the time allowed for mediation by mutual agreement under this Agreement.
 - c. Mediation under this section is a condition precedent to filing an action in any court. In the event litigation arises out of any dispute related to this Agreement, the Parties shall each pay their own attorney's fees, expert witness costs and cost of suit.
 - d. Only after both the administrative dispute resolution procedure and the mediation procedure have failed to resolve a dispute between the Parties may one or both of the Parties file suit in the appropriate civil court.
12. The venue of any suit filed by either Party shall be vested in the state courts of the County of Alameda, California.
 13. The pursuit by any Party of any specific remedy shall not exclude any other remedy available to the Party.
 14. All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Livermore
Attention: Director of Library Services
Civic Center Library
1188 South Livermore Avenue
Livermore, California 94550
Or by facsimile at (925) 373-5503

And to the Friends addressed as follows:


Friends of the Livermore Library
P.O. Box 2483
Livermore, California 94551

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

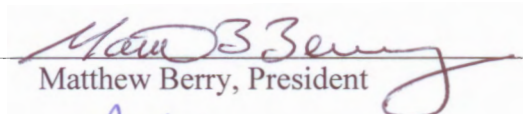
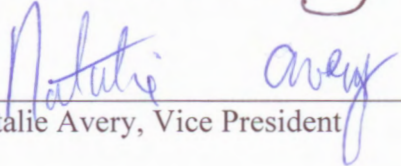
Signatures continue on following page.

CITY OF LIVERMORE

a California municipal corporation

By: 
Marc Roberts
City Manager
March 16, 2016

FRIENDS OF THE LIVERMORE LIBRARY
a California nonprofit corporation

By: 
Matthew Berry, President
By: 
Natalie Avery, Vice President

APPROVED AS TO FORM:




Catrina Fobian
Assistant City Attorney 

EXHIBIT "A"

LIVERMORE PUBLIC LIBRARY

SALE OF COMMERCIAL ITEMS IN THE LIBRARY

Statement of Policy

Commercial items may be sold in the Livermore Public Library only upon approval of the Director of Library Services. At least some portion of the proceeds from the sale of the items must benefit the Library and its programs and services through a gift donation or must be a public service to the citizens of Livermore. Wherever possible, local Livermore businesses should be contacted to provide the commercial items at competitive and reasonable prices. Commercial items may include books for sale to the general public at programs and otherwise, used books, book bags, pencils, paper, event tickets, etc.

Rationale

The basis for establishing a policy relating to the sale of commercial items is to determine guidelines and a procedure for such activity within the Library and at Library-related events. The public library exists primarily to provide organized library services to the community and is a non-profit institution. Profits generated from the sale of items to library clientele which go to for-profit organizations or are otherwise not to the benefit of the Library are not appropriate in light of the Library's primary mission and non-profit status. The policy set up to allow limited sale of commercial items has been created to enhance the ability of the Library to generate funds for its own programs and to enhance Library-related activities, not as a commercial venture or to further commercial ventures in the community.

Procedure

Any organization or individual wishing to sell commercial items in the Library should indicate to the Director of Library Services in writing the items they wish to sell, the time frame in which they wish to sell them, their appropriateness to the Library's primary mission and the manner in which the sale of such items will benefit the Library. The Director of Library Services will respond in a timely manner to the request. If the sale of the items is disallowed, the Director of Library Services will indicate the reasons for the decision. Final judgment on the sale of commercial items in the Library will be made by the City Manager of the City of Livermore.

Approved by Board of Trustees, January 1990.
Reaffirmed by Board of Trustees, January 2004

EXHIBIT "B"

CITY OF LIVERMORE

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Friends ("Licensee") 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 Licensee's operation and use of the licensed premises. The cost of such insurance shall be borne by the Licensee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for lessees with employees). A waiver of subrogation is required.
3. Property insurance against all risks of loss.
4. Officers and directors liability insurance policy (D&O).

Minimum Limits of Insurance

Licensee shall maintain limits no less than:

1. 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, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Property Insurance: Total value of all tenant improvements, betterments, and contents. The City of Livermore shall be named as loss payee as its interest may appear. The insurer shall waive all rights against City.
4. Officers and Directors liability insurance policy: This policy shall cover damages, liabilities, and costs incurred as a result of officers and directors of the Licensee for decisions, acts, errors and omissions or negligence in carrying out their responsibilities. The policy shall be endorsed to include all directors and officers of (a) named insured (and shall include a listing of all subsidiaries), and (b) all

wholly owned or financially controlled organizations, firms, or corporations (including subsidiaries thereof) and organizations, firms or corporations of which the named insured(s) has assumed or exercised management control, all now existing, which may hereafter exist or have existed. This policy shall include a coverage limit of at least one million dollars (\$1,000,000) per claim, including the annual aggregate for all claims.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Livermore. At the option of the City of Livermore, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Livermore, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

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

1. The City of Livermore, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of premises owned, occupied or used by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees or volunteers.
2. The Licensee's insurance coverage shall be primary insurance as respects the City of Livermore, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Livermore, its officers, officials, employees or volunteers shall be excess of the Licensee'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 Livermore, its officers, officials, employees or volunteers.
4. Coverage shall state that the Licensee'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 canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, 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.

7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Acceptability of Insurers

Insurance is to be placed with insurers licensed to do business in the State of California with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

Licensee shall furnish the City of Livermore with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Livermore before work commences. As an alternative to the City of Livermore's forms, the Licensee's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.