

File No. 230873

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: November 2, 2023

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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- FYI Referral 073123
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- \_\_\_\_\_
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- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Stephanie Cabrera

Date: October 26, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Memorandum of Understanding - Friends and Foundation of the San Francisco Public  
2 Library]

3 **Resolution approving the Memorandum of Understanding (MOU) between the Friends**  
4 **and Foundation of the San Francisco Public Library and the San Francisco Public**  
5 **Library to establish roles and responsibilities of each party for purposes of**  
6 **fundraising, enhancing operations, and capital projects for a term of 10 years effective**  
7 **upon approval of this Resolution; and to authorize the San Francisco Public Library to**  
8 **enter into amendments or modifications of the MOU prior to its final execution by all**  
9 **parties that do not materially increase the obligations or liabilities to the City and are**  
10 **necessary to effectuate the purposes of the MOU or this Resolution.**

11  
12 WHEREAS, The San Francisco Public Library (Library) seeks to enter into a  
13 Memorandum of Understanding (MOU) with the Friends and Foundation of the San Francisco  
14 Public Library (Friends) to establish the roles and responsibilities of each for purposes of  
15 fundraising, enhancing operations, and capital projects; and

16 WHEREAS, Charter, Section 9.118(a), requires contracts entered into by a department  
17 having an anticipated revenue to the City of \$1,000,000 or more be approved by the San  
18 Francisco Board of Supervisors by Resolution; and

19 WHEREAS, A draft MOU is on file with the Clerk of the Board of Supervisors in File No.  
20 230873, which is hereby declared to be a part of this Resolution as if set forth fully herein;  
21 now, therefore, be it

22 RESOLVED, That the Board of Supervisors hereby authorizes the Library to enter into  
23 a Memorandum of Understanding with the Friends and Foundation of the San Francisco  
24 Public Library to establish roles and responsibilities of each for purposes of fundraising,  
25 enhancing operations, and capital projects; and, be it

1           FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Library  
2 to enter into any amendments or modifications to the MOU, prior to its final execution by all  
3 parties, that the Department determines, in consultation with the City Attorney, are in the best  
4 interests of the City , do not otherwise materially increase the obligations or liabilities of the  
5 City, are necessary or advisable to effectuate the purposes of the MOU, and are in  
6 compliance with all applicable laws; and be it

7           FURTHER RESOLVED, That within thirty (30) days of the MOU being fully executed by  
8 all parties, the Library shall provide the final MOU to the Clerk of the Board for inclusion in File  
9 No. 230873.

10

11 RECOMMENDED:

12 \_\_\_\_\_ /s/

13 Michael Lambert

14 City Librarian

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**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE SAN FRANCISCO PUBLIC LIBRARY**  
**AND**  
**THE FRIENDS AND FOUNDATION OF THE SAN FRANCISCO PUBLIC LIBRARY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), is made and entered into as of August 21, 2023, by and between the City and County of San Francisco, acting by and through the San Francisco Public Library (“Department”) and the Friends and Foundation of the San Francisco Public Library, a California non-profit public benefit corporation (“Friends”). On \_\_\_\_\_, 2023, the San Francisco Board of Supervisors approved this MOU with the adoption of Resolution No. \_\_\_\_\_.

**ARTICLE 1**

**Background**

- A. **The Department.** The Department is a department of the City and County of San Francisco (“City”) governed by the San Francisco Public Library Commission (“Commission”) and the City Librarian (“Director”). The Department’s mission is to provide free and equal access to information, knowledge, independent learning and to promote the joys of reading for the City’s diverse community.
- B. **The Friends.** Friends is a non-profit 501(c)(3) corporation and is a legally distinct entity from the City. The City does not have oversight of Friends. Friends’ mission is to strengthen, support, and advocate for a premier public library system in San Francisco. Friends’ fundraising is intended to supplement the funding for the Department and not to replace traditional sources or levels of City funding, and to support Friends’ programs, advocacy, and operating costs.
- C. **Statement of Common Purpose.** The Department and Friends (“Parties”) share the common objectives of developing and maintaining the highest level of Department service for all of the City’s residents, ensuring an adequate level of finance to maintain equipment and programming at appropriate levels, and making and keeping Department facilities safe and secure, in good repair, and fully accessible to all persons.

**ARTICLE 2**

**Fiscal Support of the Department**

- A. **Annual Funding from the Friends.** Friends shall raise and expend private funds for the Department for the purpose of enhancing City funding for programs, services, and operations of the Department. These monies shall be known as the “Annual Support” fund and will consist of both: (1) donor restricted funds; and, (2) unrestricted funds to support the Department. Each year the Department and Friends will mutually agree to the amount of Annual Support monies Friends will allocate to the Department in that fiscal year, as further defined in Article 3 of this MOU.

- B. **Capital Campaigns and Special Fundraising Projects.** In addition to the Annual Support, Friends may raise and expend funds for capital and special projects from time to time at the Department's request. The terms and conditions for each such capital campaign and special fundraising request that Friends agrees to support will be detailed in addenda to this MOU, as further defined in Article 3 of this MOU. On April 21, 2021, pursuant to the Parties' prior MOU dated August 21, 2017, the Parties entered into an Addendum regarding the Mission Branch Renovation Capital Project ("Mission Capital Project Addendum," attached hereto as Exhibit A). The Parties agree that the Mission Capital Project Addendum will remain in full force and effect as an Addendum to this MOU under this Article 2, Section B, until the expiration of the Mission Capital Project Addendum on June 30, 2025.
- C. **Acceptance of Donations.** The Department will obtain Board of Supervisors authorization to accept donations of cash, goods or services from Friends to the extent required by the San Francisco Administrative Code or other applicable law. Friends will attend any board meetings regarding the acceptance of donations, as needed.
- D. **Restrictions on Donations of Goods and Services.**
1. The Department will not request, and Friends will not provide, any donation of funds to be expended on or goods or services to be provided in connection with events for City staff, including but not limited to Department employee engagement events, unless such expenditure complies with Article III of the San Francisco Campaign and Governmental Conduct Code and all other applicable laws and is approved by the Board of Supervisors as part of an Accept and Expend Resolution.
  2. If Friends procures services, the Department will not request or direct Friends' selection of a vendor or provider for those services. All decisions regarding Friends' procurement of vendors or providers will be made by Friends without interference or involvement by the Department.

### **ARTICLE 3**

#### **Parties' Cooperative Operation**

A. **Annual Support Fund.**

1. *Annual Support Proposal.* Annually, by March of each year, the Department will submit a written proposal for the Annual Support monies to Friends, summarizing the purpose of the proposed uses and how such uses align with Friends' and donors' guidelines and requirements. The Department and Friends both will post a copy of the written proposal on their respective websites. Friends will approve or reject the Annual Support request by June 1 of each year. To ensure the proposal complies with any restrictions on monies donated to Friends, Friends will provide advance notice to the Department of the terms and conditions of any gifts or funds the use of which is restricted in any way.
2. *Requests for Disbursement from Annual Support Fund.* The Director, or any employee designated in writing by the Director, will submit written requests to Friends for use of monies from the Annual Support fund with supporting documentation, such as invoices and/or budgets. The Department's requests will adhere to Friends' fiscal year deadlines

and other requirements that have been communicated to the Department by Friends. Friends will pay all requests for advances or reimbursements within 30 business days after receipt from the Department. Friends will maintain applicable documentation regarding requests and corresponding payment in an orderly manner per Friends' applicable record retention requirements, which will at least require retention of such documents through the duration of the applicable program plus five fiscal years. Friends will make no such disbursements to individuals who Friends knows are members of Department employees' immediate families, or businesses in which Friends knows the Department's senior staff or their immediate families have an ownership interest.

3. *Reconciliation.* On a quarterly basis, the Parties will work together to reconcile expenditure reports. The Department will post annually, by the end of November, a reconciled annual expenditure report on the Department's website.

B. **Capital Campaigns and Special Fundraising Projects.** The Parties will define detailed roles and responsibilities in any future addenda to this MOU for particular projects. The Parties agree to the following general terms regarding capital campaigns and special fundraising projects:

1. *Project Proposal.* For each capital campaign or special fundraising project, the Department will submit a written purpose statement to Friends that defines the short- and long-term goals of the project and states the specific fiscal or other support requested from Friends. Friends will respond to the Department's purpose statement in a timely fashion, indicating willingness to support the request within the identified time period and meet all applicable deadlines.
2. *Project Management.* The Department will develop and manage budgets and schedules for each applicable project. Friends will develop a fundraising plan and present it to the Director for comment. Friends will conduct fundraising activities as contemplated by the approved fundraising plan and will periodically report the status of fundraising activities to the Department. Friends will provide advance notice to the Department of any restrictions on the uses of any gifts or funds.
3. *Requests for Disbursement.* The Parties will handle disbursement processing, and cooperate in reconciliation thereof, in substantially the same manner as with respect to the Annual Fund.

C. **Grant Applications.** The Department may request that Friends apply for particular grants from third-parties for the benefit of the Department, where the Department itself is not eligible to submit an application due to the terms of the grant ("Requested Grants"). If Friends agrees to submit an application for the Requested Grant, and is successful in obtaining funds, the Department and Friends will ensure that the acceptance and administration of any funds obtained through such grants comply with applicable City requirements, including any required approvals by the Board of Supervisors under the City's Administrative Code, and the requirements of the grantor.

D. **Friends' Fundraising Efforts and Activities.** The Parties shall meet as needed to discuss and define key fundraising efforts and goals. Friends shall seek Department approval in writing for all fundraising events and activities to be hosted on Department property at least three months in

advance of the planned event or activity. Such requests should include a description of the fundraising event or activity to be hosted and should include any anticipated costs for the City and whether those costs will be reimbursed by Friends. The Department will make reasonable efforts to respond to all such proposals within 30 business days by approving, modifying, or rejecting the proposal.

- E. **Meetings.** The Department and Friends shall convene regular meetings to discuss the status of Department programs and projects and how Friends can support these activities, including potential donor cultivation strategies and communication plans.

#### **ARTICLE 4**

##### **Disclosure Obligations; Financial Reporting and Auditing**

- A. **Disclosure Obligations; Financial Reporting and Auditing.** The parties shall comply with the additional provisions regarding disclosures, financial reporting, and auditing attached hereto as Exhibit B which are fully incorporated herein.

#### **ARTICLE 5**

##### **Use of Department Property**

- A. **Use of City Property.** The terms of this Article 5 do not apply to the premises leased by the City to Friends pursuant to the Bookstore Lease entered into as of December 11, 2002, and as may be renewed or extended, including through a new lease agreement between Friends and the City. The terms of this Article 5 shall apply to the use of any Department property other than the premises governed by the Bookstore Lease.
- B. **Grant of Permission to Use Property.** Subject to the terms and conditions set forth in this MOU, and with advance written approval by the Director, the Department confers to Friends, including all agents, employees, volunteers, contractors, representatives and other persons designated by Friends (collectively, its “Agents”), a personal and exclusive permit to enter upon and use the Department’s property for the exclusive rights to conduct classes, to hold events, to display and disseminate Friends’ promotional materials, to collect donations, or any other reason that is approved by the Director and advances the Common Purpose set forth in Article 1 of this MOU. In addition, the Department confers to Friends the nonexclusive right to enter and use the Department’s property as necessary in order to perform its obligations under this MOU. This MOU gives Friends a permit only, subject to the discretion of the Director, and notwithstanding anything to the contrary herein, this MOU does not constitute a grant by the City of any ownership, leasehold, easement or other property interest or estate whatsoever in the property or any portion thereof.
- C. **Damage to Property.** If any portion of the Department’s property or any property of the City located on or about the Department’s property is damaged by Friends or any of its Agents, except for ordinary wear and tear from operation of the property, Friends shall promptly repair any and all such damage and restore the affected property to its previous condition or pay the City to repair and restore the property. Friends shall use reasonable efforts to ensure that all users of the Department’s property comply with all rules, regulations, or restrictions that the Director may adopt from time to time.

## ARTICLE 6

### Miscellaneous Items

- A. **Term.** The initial term of the MOU is ten (10) years (the “Term”) commencing on \_\_\_\_\_, 2023 (the “Commencement Date”); provided, however, that either Party may, in its respective sole and absolute discretion, terminate this MOU any time upon 90 days written notice to the other Party. In no event may the term of this MOU extend beyond ten (10) years without formal approval of the San Francisco Board of Supervisors acting in its sole discretion. Any extension approved by the Board would require a formal MOU amendment executed and approved in the same manner as the original.
- B. **Employer Taxes and Liability.** Employees, officers, or volunteers of Friends shall under no circumstances be deemed employees of the City due to their status as an employee, officer, or volunteer of Friends. Friends shall be responsible for any employer taxes and liabilities relating to its employees.
- C. **Liens and Encumbrances.**
1. *Liens.* During the Term, Friends shall keep the Department free from any liens arising out of any work performed in furtherance of this MOU, material furnished or obligations incurred by Friends or for the Department.
  2. *Encumbrances.* Friends shall not create, permit, or suffer any liens or encumbrances affecting the Department or any portion of the Department’s or the City’s interest therein.
  3. *Books and Records; Audit.* The Department and the Controller and any duly authorized agent or representative of the City shall have the right to examine the books and records of Friends associated with Friends’ in-kind gifts and services and cash monies to the Department, consistent with federal and state guidelines at any time upon prior reasonable notice during normal business hours for the purpose of auditing the same, including, at the City’s discretion and expense, a formal independent audit conducted by the Controller’s Audit Division for monies associated with Friends’ in-kind gifts and services, and cash monies to the Department.
  4. *Possessory Interest Tax.* The Parties do not intend hereby to establish a possessory interest. In the event, however, that it is determined that this MOU creates a possessory interest subject to property taxation, Friends agrees to pay any such levied tax.
  5. *Taxes, Assessments, Licenses, Permit Fees, and Liens.* Friends shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees, and other charges and impositions of every description levied on or assessed against Friends’ personal property. Friends shall make all such payments directly to the charging authority when due and payable, and in any case, reasonably prior to delinquency.
- D. **Insurance.** As of the Commencement Date, subject to approval by the City’s Risk Manager of the insurers and policy forms, Friends shall place and maintain, throughout the term of this MOU, the following insurance policies:
1. Comprehensive general liability insurance with limits not less than \$1,000,000 for each occurrence, and \$2,000,000 general aggregate for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require from time to time,



including coverage for contractual liability, personal injury, broadform property damage, products and completed operations. Any deductible under such policy shall not exceed \$10,000 for each occurrence; and

2. As applicable, business automobile liability insurance with limits not less than \$1,000,000 for each occurrence, combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles. Any deductible under such policy shall not exceed \$10,000 for each occurrence; and
3. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.
4. The liability insurance policies required under subsections (a) through (c) above shall be endorsed to name as an additional insured the City and its respective officers, agents, and employees, including the Director. Said policies shall be endorsed to provide that the insurer waives all rights of subrogation against the City.
5. Should any of the required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
6. If Friends will use any subcontractor(s) to engage in the activities contemplated by this MOU on City property, Friends shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Friends as additional insureds.
7. All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section of this MOU entitled "Notices."
8. All insurance and surety companies are subject to approval as to coverage forms and financial security by the Director. Friends shall furnish the Department certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Friends' liability hereunder.

E. **Indemnity.**

Friends shall indemnify, defend and hold harmless the City, its officers, agents, employees and contractors, and each of them, from and against any and all third party demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) the use in connection with the performance of this MOU by Friends, its officers, employees, volunteers, agents, contractors or subcontractors (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), of the Department or other City property, or any part thereof, (b) any activities conducted thereon by Friends, its Agents or Invitees in connection with the performance of this MOU, or (c) the negligence or willful misconduct of Friends or its Agents in the performance of this MOU, except to the extent of Claims resulting in whole or in part from the active negligence

or willful misconduct of the City or the City's agents. In addition to Friends' obligation to indemnify the City, Friends specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any Claim that actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Friends by the City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified Parties, including, without limitation, damages for decrease in the value of the City property and claims for damages or decreases in the value of adjoining property. Friends shall also indemnify and hold City harmless from all loss and liability (including attorneys' fees, court costs and all other litigation expenses) for any infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of City's acceptance or use of logos, trademarks, or other intellectual property created or provided to the City by Friends or the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this MOU. Such obligation shall apply where City's use of Friends' intellectual property is authorized under this or any subsequent agreement between the Parties. Friends' obligations under this Section shall survive the expiration or other termination of this MOU.

City shall indemnify, defend and hold harmless Friends, its officers, agents, employees, volunteers and contractors, and each of them, from and against any and all third party demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) the use in connection with the performance of this MOU by City, its employees, agents, contractors or subcontractors (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), of Department or other City property, or any part thereof, (b) any activities conducted thereon by the City, its Agents or Invitees in connection with the performance of this MOU, (c) the active negligence or willful misconduct of the City or its agents in the performance of this MOU or (d) the physical condition of the Property, except to the extent of Claims resulting in whole or in part from the active negligence or willful misconduct of Friends or Friends' agents. In addition to the City's obligation to indemnify Friends, the City specifically acknowledges and agrees that it has an immediate and independent obligation to defend Friends from any Claim that actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the City by Friends and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified Parties, including, without limitation, damages for decrease in the value of the Property and claims for damages or decreases in the value of adjoining property. The City's obligations under this Section shall survive the expiration or other termination of this MOU.

- F. **Assignments.** This MOU is personal to Friends. Except as specifically provided herein, Friends shall not assign, transfer, or encumber its interest in this MOU or any other right, privilege, or license conferred by this MOU, either in whole or in part, without obtaining the prior written consent of the City, which the City may give or withhold in its sole and absolute discretion; provided, however, that Friends may assign its interest in this MOU to a non-profit public benefit corporation formed by Friends for the purpose of performing the obligations hereunder and

reasonably approved in advance by the Director, and subject to any required approvals by City boards or commissions. Any assignment or encumbrance without the City's consent shall be voidable and, at the City's election, shall constitute a material default under this MOU.

- G. **MacBride Principles – Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this MOU on behalf of Friends acknowledges and agrees that he or she has read and understood this section.
- H. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to Section 804(b) of the San Francisco Environment Code, City urges all entities with which it contracts not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.
- I. **Non-Liability of City Officials, Employees and Agents.** Notwithstanding anything to the contrary in this MOU, no elective or appointive board, commission, member, officer, employee, or agent of the City shall be personally liable to Friends, its successors and assigns, in the event of any default or breach by the City or for any amount which may become due to Friends, its successors and assigns, or for any obligation of the City under this MOU.
- J. **Controller's Certification of Funds.** To the extent the City is required to expend any funds in furtherance of this MOU, the City's obligations are subject to the budget and fiscal provisions of the City's Charter. Any charges due hereunder will accrue to the City only after authorization is certified by the Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such authorization. This section shall control against any and all other provisions of this MOU; and if for any budgetary period of the City, the City fails to appropriate sufficient funds for the payment of any amounts due from City under this MOU, the City shall have the right to terminate this MOU without penalty, liability, or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year.
- K. **Nondiscrimination; Penalties.** In the performance of this MOU, Friends agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability, AIDS/HIV status, weight, height, or association with members of classes protected under this paragraph or in retaliation for opposition to such discrimination, against any employee or volunteer of, any City employee working with, or any applicant for employment with, Friends in any of Friends' operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Friends.
- L. **Conflicts of Interest and Statement of Incompatible Activities.**
1. By executing this MOU, Friends certifies that it does not know of any fact which constitutes a violation of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware

of any such fact during the term of this MOU. For example, Friends will notify the Department if it becomes aware that any Department employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest.

2. The Department's Statement of Incompatible Activities ("SIA") was adopted under San Francisco Campaign & Governmental Conduct Code Section 3.218. In general, the SIA (1) prohibits outside activities that are incompatible with the Department's mission; (2) restricts the use of City resources, City work-product and prestige for any non-City purpose, including any political activity or personal purpose; and, (3) prohibits receipt or acceptance of gifts in exchange for doing the employee's job. A copy of the SIA is attached to this MOU as Exhibit C. Friends agrees that it will not knowingly cause Department staff to violate the SIA.
3. To ensure compliance with this Section, Friends shall ensure that no employee or officer of the Department is a member of Friends' board of directors or otherwise holds a fiduciary position with Friends, and that no employee or officer of the Department and no member of an employee or officer's immediate family receives income from Friends.

M. **Intellectual Property; Grant of License.** Except as otherwise provided, no intellectual property rights, including without limitation any trademarks, copyrights, trade names, service marks, images and technology of either Party, are transferred by this MOU, and all such intellectual property rights are and shall remain the property of each respective party.

1. Logo/Trademark License. In accordance with San Francisco Administrative Code Section 1.6 governing the use of the City's Seal, if Friends wishes to seek permission to use the City's Seal, Friends must follow the procedures set forth in Administrative Code Section 1.6 and seek the Board of Supervisors' prior approval. In addition, if Friends wishes to use the Department's logo, it must obtain prior written approval from the Department and if the Department or the City wishes to use the Friends' logo, it must obtain prior written approval from Friends.
2. Merchandising. Friends may develop and produce merchandise for sale related to the Department, including, without limitation, appropriate literature, illustrative materials, and other goods or items that increase the public's understanding of the mission of the Department and its programs. Such merchandise may bear the name, image, logo, or likeness of the Department ("Branded Merchandise"). Friends shall obtain the Department's prior written approval of the use of the logos before selling or distributing Branded Merchandise. Friends shall work with the Department to arrange for the sale of all Branded Merchandise. Either Friends or the City also may sell any Branded Merchandise developed hereunder at locations away from the Department (including, without limitation, through catalogs and Internet sites). The Department, in consultation with the Friends, shall have the right to determine and control the nature, quality and type of Branded Merchandise which may be sold by Friends in, or associated with, the name of the Department. The Director or the Director's designee shall review and approve in advance the production and use of any Branded Merchandise, and to remove any items for sale the Director reasonably deems as inappropriate. In order to protect the goodwill associated with the Department's name, trademarks, and logos, Friends agrees to cooperate with the Department to facilitate the Department's reasonable control over the

nature and quality of the Branded Merchandise. Friends also agrees to supply the Department with specimens of the Branded Merchandise from time to time for inspection by the Director on reasonable written request and to offer the Department the first right to purchase all Branded Merchandise upon the termination of this MOU, at acquisition cost.

For clarity, Branded Merchandise does not include Friends' materials that are not created for sale, including, without limitation, fundraising materials, and advocacy materials.

## ARTICLE 7

### General Provisions

- A. **MOU.** This MOU and any attachments thereto contain the entire agreement between the Department and Friends with respect to the subject matter of this MOU and supersedes all other oral or written agreements between the Department and Friends relating thereto.
- B. **MOU Amendments.** This MOU can be amended as appropriate and agreed to by both the Department and Friends. The party wishing to initiate an amendment should do so in writing and highlight the sections of the current MOU to be amended. All amendments must be in writing and signed by both parties.
- C. **MOU Addenda.** Addenda to this MOU should be limited to capital and special projects that provide more detailed descriptions of outcomes, roles, and responsibilities. All requests to add an addendum to this MOU should be in writing, including the project purpose statement defining the short- and long-term goals of the applicable project and stating the specific fiscal and/or other support requested from a given party. The recipient of the request shall respond in a timely manner and indicate the capacity to participate in the specific capital or special project. Addenda must be in writing, provide project details, define roles and responsibilities, establish timelines, and be signed by both Parties.
- D. **Compliance with Laws.** Each Party shall, at its expense, conduct and cause to be conducted all activities performed under this MOU in a safe and reasonable manner and in compliance with all applicable laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity.
- E. **Events of Default.** Any material failure by Friends or the Department to perform any of the terms, conditions, or covenants under this MOU shall constitute a default. Upon written notice of such default by either Party, and failure of the other Party to comply with a reasonable opportunity to cure such default (in no event less than 30 days), the non-defaulting Party may terminate this MOU without additional notice.
- F. **Notices.** Except as otherwise expressly provided herein, any notices given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first class mail or certified mail, with a return receipt requested, with postage prepaid, or by overnight courier, addressed as follows:

City:                   Michael Lambert, City Librarian  
                              San Francisco Public Library  
                              100 Larkin Street, 6<sup>th</sup> Floor  
                              San Francisco, CA 94102

Friends: Bob Daffeh, Director of Finance & Administration  
Friends and Foundation of the San Francisco Public Library  
163017<sup>th</sup> Street  
San Francisco, CA 94107

Notices herein shall be deemed given two days after the date it was mailed if sent by first class, certified mail, or overnight courier, or upon the date personal delivery is made.

**G. General Provisions.**

1. Except as otherwise expressly required by the City’s Charter, any ordinance of City or other applicable law, the Director may exercise all rights, powers and privileges on behalf of the City or the Department under this MOU.
2. No waiver by any Party of any of the provisions of this MOU shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this MOU.
3. The headings used in this MOU are for convenience of reference only and shall be disregarded in the interpretation of this MOU.
4. Neither Party may record this MOU or any memorandum hereof.
5. This MOU shall be deemed to be made in, and shall be construed in, accordance with the laws of the State of California.
6. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this MOU as of the day mentioned above.

**FRIENDS AND FOUNDATION OF THE  
SAN FRANCISCO PUBLIC LIBRARY**

**SAN FRANCISCO PUBLIC LIBRARY**

---

Name: Bob Daffeh  
Title: Director of Finance & Administration

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Name: Michael Lambert  
Title: City Librarian

APPROVED AS TO FORM:

DAVID CHIU  
CITY ATTORNEY

By: \_\_\_\_\_  
Jen Huber  
Deputy City Attorney

APPROVED AS TO FINANCIAL REPORTING AND AUDITING PROVISIONS:

\_\_\_\_\_  
BEN ROSENFELD  
CONTROLLER

**Exhibit A**  
**Mission Capital Project Addendum**





*San Francisco Public Library*

**Addendum to the Memorandum of Understanding  
between  
the San Francisco Public Library  
and  
the Friends and Foundation of the San Francisco Public Library  
regarding  
the Mission Branch Renovation Capital Project**

THIS ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING, is made and entered into on April 29, 2021, by and between the San Francisco Public Library (“Library”), and the Friends and Foundation of the San Francisco Public Library, a California non-profit public benefit corporation (“Friends”), pursuant to Article 2, Section B, of the Memorandum of Understanding between the Library and Friends dated August 21, 2017 (“MOU”).

**ARTICLE 1**

**Background**

- A. **The Library.** The Library is a Department of the City and County of San Francisco (“City”) governed by the San Francisco Public Library Commission (“Commission”) and the City Librarian. The Library’s mission is to provide free and equal access to information, knowledge, independent learning and to promote the joys of reading for the City’s diverse community.
- B. **The Friends.** The Friends is a non-profit 501(c)(3) corporation and is a legally distinct entity from the Library. The Library does not have oversight of the Friends. The Friends’ mission is to strengthen, support, and advocate for a superior free public library system in San Francisco. Friends’ fundraising is intended to supplement the funding for the Library and not to replace traditional sources or levels of City funding, and to support the Friends’ programs, advocacy, and operating costs.
- C. **Existing MOU.** Article 2, Section B of the MOU states that in addition to Annual Support from the Friends raised for the purpose of enhancing City funding for programs, services, and operations of the Library, the Library may request Friends support for capital and special fundraising projects from time to time. It states that capital campaigns typically include funding for furniture, fixtures, and equipment, but can include funding for other costs. The terms and conditions for each such campaign are to be detailed in an addendum to the MOU.

## ARTICLE 2

### Mission Branch Renovation Capital Project

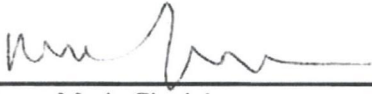
- A. **Project Proposal.** In collaboration with the community, the Library seeks to transform the Mission Branch Library into an energy efficient, safe, and resilient neighborhood library while maintaining its inherent charm and connection to the surrounding communities. SFPL plans to incorporate contemporary library practices, buildings systems, and technology into this landmark 1916 Carnegie library building. The goals of this project include the restoration of community meeting space, returning the primary building entrance to its original location on 24<sup>th</sup> Street, returning a grand central staircase to the building, improving the facilities for children and teens, adding restroom capacity, and restoring the grand reading room on the upper level. Friends funds raised in support of this project are expected to support furniture, fixture, and equipment purchases in support of these goals.
- B. **Acceptance of Funds.** The Library will seek City authorization from the Board of Supervisors to accept funds in support of the Mission Branch Renovation project in an amount not to exceed \$875,500 (eight hundred and seventy-five thousand and five hundred dollars). This request for authorization will be incorporated in the Library's budget approval process for FY 21-22. Friends will attend any meetings regarding the acceptance of such funds, as needed.
- C. **Fundraising.** Friends will develop a fundraising plan and present it to the City Librarian for comment. Friends will conduct fundraising activities as contemplated by the approved fundraising plan and will periodically report the status of fundraising activities to the Library. Friends will provide advance notice to the Library of the terms and conditions of any gifts or funds for the project, the use of which is restricted in any way. The fundraising plan may include a proposed structure for naming opportunities for Friends to offer in connection with the campaign, including possible locations for naming, dollar thresholds, and naming formats. The naming proposal must be approved by the Library prior to Friends offering naming rights in connection with any donation.
- D. **Reporting.** Expenditures, invoices, and inventory info made through direct spending by Friends on the Mission Branch Renovation project should be shared monthly with SFPL Finance and Facilities staff. SFPL expenditures of Friends cash received should be shared monthly with Friends. The Library will report the status of the project to the Library Commission, as necessary. Friends will comply with all donor reporting requirements under the MOU with respect to funds raised for this capital project.
- E. **Project Management.** Consistent with San Francisco Administrative Code Chapter 6, the Library will deliver this project through the San Francisco Department of Public Works ("Public Works"). Public Works staff will manage the budget and schedule for the project for the Library as a client.
- F. **Overhead.** Friends overhead administrative costs do not count towards the not-to-exceed project fundraising amount, and that figure will not be reported publicly on any SFPL documents as part of the Friends contribution to the project.
- G. **Requests for Disbursement.** The Parties will handle disbursement processing, and cooperate in reconciliation thereof, in substantially the same manner as with respect to the Annual Fund, noting that SFPL Finance and Facilities staff should be consulted prior to purchasing. In the event there are unspent monies once the Mission Branch Renovation project has been closed out, SFPL and Friends will agree to a mutually acceptable use of funds, both those funds transferred to SFPL and those held by Friends.

- H. **Term.** The term of this project's MOU should cover the duration of the Mission Branch Renovation capital project, including project close-out, and shall expire on June 30, 2025 (the "Expiration Date"); provided, however, that either Party may, in their respective sole and absolute discretion, terminate this Addendum any time upon 90 days written notice to the other Party.
- I. All other provisions of the MOU remain in full force and effect, other than any provision that conflicts with the terms of this Addendum.

In witness thereof, the parties have executed this MOU addendum.

Friends and Foundation of the San Francisco Public Library

San Francisco Public Library



Name: Marie Ciepiela  
Title: Executive Director

Name: Michael Lambert  
Title: City Librarian

DATE: 04/29/2021

DATE: 4/29/2021

## Exhibit B

### Disclosure Obligations; Recordkeeping and Auditing

- A. **Acknowledgment of Disclosure Obligations under City Law.** San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this MOU, the disclosure must identify Friends as the contributor, the amounts contributed, and a statement as to any financial interest Friends has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from Friends in any related resolution or ordinance submitted to the Board of Supervisors for approval.
- B. **Friends' Reporting & Disclosure Obligations.**
1. **Donor and Grant Information.** Friends agrees to comply with San Francisco Administrative Code Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to Friends, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Department's performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the Friends has involving the City, including any donor's contract, grant, lease, or request for license, permit, or other entitlement for use. Friends will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Department each year by no later than July 15 for the preceding fiscal year. Friends will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, Friends will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this MOU. These provisions shall also apply to any grants received by Friends, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.
  2. **Financial Reports.** Friends will provide to the Department and the Department will upload a PDF (searchable text) copy of the Friends' annual audited financial report and IRS Form 990 annual tax return into the City's financial system as part of the MOU documentation and prior to City's execution of this MOU. The annual audited financial report filings provided by the Friends must include detailed information about the Friends' total sources and uses of funds and also the sources and uses of funds dedicated to support the Department covered under this MOU, the names of the Friends' Board of Directors and Officers, and the names of any and all payees of Funds covered by this MOU, including consultants, contractors and subcontractors and any current or past City employees paid and any funds provided directly to the City Department to support the Department's functions including but not limited to employee recognition and public events. Additionally, Friends will post its audited financial report and its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

3. **Links to Friends Website.** The Department will provide a link on its website to Friends' website for the public to readily access the information required under this MOU. Friends will also post this MOU on its website along with copies of any other copies of Grant Awards or other City Contracts and MOU Agreements with any City Department including the Department covered by this MOU.
4. **Friends' Supplier Registration.** As part of the MOU Agreement execution, the Friends must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.
5. **Friends' Invoices through SF City Partner Online (eSettlements) site.** If the MOU Agreement includes invoicing by Friends to the City Department, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

C. **Recordkeeping and Auditing.**

1. **Recordkeeping.** Friends will maintain books and records relating to this MOU, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit Friends' records and to verify contributions and expenditures in accordance with this MOU.
2. **Auditing.** Friends shall make such books and records relating to this MOU available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. Friends shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the Friends' audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.

**Exhibit C**

**Statement of Incompatible Activities**



San Francisco Public Library

**SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION**

**STATEMENT OF INCOMPATIBLE ACTIVITIES**

**I. INTRODUCTION**

This Statement of Incompatible Activities is intended to guide officers and employees of the San Francisco Public Library (“Department” or “Library”) and Library Commission (“Commission”) about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, “officer” shall mean the City Librarian and a member of the Commission; and “employee” shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code (“C&GC Code”) section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer’s or employee’s collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

- Political Reform Act, California Government Code § 87100 *et seq.*;
- California Government Code § 1090;
- San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance;
- Applicable Civil Service Rules;
- San Francisco Public Library Collection Development Policy and Collection Development Plan;
- San Francisco Public Library Exhibitions Policy and Exhibitions Guidelines;
- Library Bill of Rights; and the
- Code of Ethics of the American Library Association.

Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City’s and/or public’s attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties



San Francisco Public Library

required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

No amendment to any Statement of Incompatible Activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the City Librarian. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the City Librarian, although the supervisor or City Librarian may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

## **II. MISSION OF THE SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION**

*The mission of the San Francisco Public Library is to provide free and equal access to information, knowledge, and independent learning and the joys of reading for our diverse community.*

## **III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES**

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the City Librarian delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the City Librarian.

### **A. RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES**

#### **1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES**

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

- a. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, or publicist for a publisher who sells books to the Library.*





San Francisco Public Library

- b. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, or publicist for a publisher of databases or other electronic media if that publisher sells such materials to the Library.***

**2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS**

Neither the City Librarian nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the City Librarian or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the City Librarian or employee's performance of his or her City duties.

*Example.* An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the City Librarian or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

**3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT**

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one's own department or commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

Assistance in Responding to City Bids, RFQs and RFPs. No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.

**B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS**

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

**[RESERVED.]**



### C. ADVANCE WRITTEN DETERMINATION

As set forth below, an employee of the Department or the City Librarian or a member of the Commission may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called “the requestor”; the individual or entity that provides an advance written determination shall be called “the decision-maker.”

#### 1. PURPOSE

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor’s written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

- (a) the requestor is an *employee* who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or
- (b) the requestor is an *officer* who has not received a determination under subsection C from the decision-maker; or
- (c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.



## **2. THE DECISION-MAKER**

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the City Librarian or his or her designee. The City Librarian or his or her designee will be deemed the decision-maker for the employee's request.

Decision-maker for request by the City Librarian: The City Librarian may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the City Librarian's request.

Decision-maker for request by a member of the Commission: A member of the Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Commission or Ethics Commission will be deemed the decision-maker for the member's request.

## **3. THE PROCESS**

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the City Librarian delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the City Librarian.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee's request, the proposed activity will be determined not to violate this Statement.

The decision-maker may revoke the determination at any time based on changed facts or circumstances or other good cause, by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

## **4. DETERMINATIONS ARE PUBLIC RECORDS**

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.



#### **IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE**

##### **A. USE OF CITY RESOURCES**

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

*Example.* An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

##### **B. USE OF CITY WORK-PRODUCT**

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer's or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

##### **C. USE OF PRESTIGE OF THE OFFICE**

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

###### **1. USING CITY BUSINESS CARDS**

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.



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*Example of inappropriate use.* An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

*Example of acceptable use.* An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

## **2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL**

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

*Example.* An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

## **3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT**

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

*Example.* An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

## **V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES**

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216.) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of



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the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve.

*Example.* A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

*Example.* A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- ii. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.



*San Francisco Public Library*

## **VI. AMENDMENT OF STATEMENT**

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

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BOARD of SUPERVISORS



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## MEMORANDUM

TO: Michael Lambert, City Librarian, San Francisco Public Library  
Marie Ciepiela, Executive Director, Friends and Foundation of the San Francisco Public Library

FROM: Stephanie Cabrera, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: July 31, 2023

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Mayor London N. Breed on July 25, 2023:

**File No. 230873**

**Resolution approving the Memorandum of Understanding (MOU) between the Friends and Foundation of the San Francisco Public Library and the San Francisco Public Library to establish roles and responsibilities of each party for purposes of fundraising, enhancing operations, and capital projects for a term of 10 years effective upon approval of this Resolution; and to authorize the San Francisco Public Library to enter into amendments or modifications of the MOU prior to its final execution by all parties that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the MOU or this Resolution.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [Stephanie.Cabrera@sfgov.org](mailto:Stephanie.Cabrera@sfgov.org).

cc: Almer Castillo, Public Library