

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City and County of Denver**, a Colorado municipal corporation (the "**City**"), on behalf of Denver's Public Library (the "**Library**"), and the **Denver Public Library Friends Foundation** (the "**Foundation**"), a Section 501(c)(3) organization.

RECITALS

A. The Foundation was organized and incorporated in 1961 for the purpose of raising funds for the benefit of the Library and promoting the interests of the Library in the Denver community.

B. The Foundation exists to raise and manage private resources supporting the mission and priorities of the Library and to provide for excellence in library programs and services beyond what is possible with only public, tax-based revenue.

C. The Foundation is dedicated to assisting the Library in the building of endowments and in addressing, through financial support, the long-term needs and other priorities of the Library.

D. The Foundation is a nonprofit corporation that is organized and operated exclusively for exempt purposes set forth in Section 501(c)(3) of the Internal Revenue Code. The Foundation is responsible for identifying and nurturing relationships with potential donors and other friends of the Library; soliciting cash, securities, real and intellectual property, and other private resources for the support of the Library; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

NOW, THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows.

1. Foundation Name, Seal and Logotype. Consistent with its mission to help to advance the plans and objectives of the Library, the Foundation is licensed to use the name of the Library as well as the logotype of the Library in the fundraising and promotion of the Library.

2. Library Governance. Consistent with the City Charter and the Denver Revised Municipal Code, the Mayoral appointed eight member Denver Public Library

Commission (the "**Library Commission**") is responsible for control of the public library, branches thereof and reading rooms, of all money appropriated therefore, of all property or money otherwise acquired for such purposes, of the acquisition by purchase, construction, or lease, of grounds and buildings for such purposes; of the administration of gifts and trusts, and power to do any and all things necessary or expedient in connection with library purposes. The Library Commission makes an annual report to the Mayor, stating the condition of its trust, the various sums of money received from the library fund and other sources, and for what purposes such sums of money have been expended; the number of books and periodicals on hand, the number added by purchase or gift, the number lost or missing and the general character of such books, the number of visitors, and such other information as may be deemed of general interest.

3. The Foundation's Relationship to the Library.

a. The Foundation is a separately incorporated Section 501(c)(3) organization created to raise, manage, distribute, and steward private resources to support the mission of the Library. Denver Public Library Friends Foundation and the Friends of the Blair-Caldwell African American Research Library are currently the only Section 501(c)(3) organizations established for the support of the Denver Public Library. Any other entity wishing to be established as a Section 501(c)(3) organization to raise funds on behalf of the Library must be approved in advance by the Library Commission, who shall confer with the Mayor and the other foundations.

b. The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts to it consistent with donor intent and applicable laws.

c. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws.

d. The Library, acting as an independent contractor, will provide services to the Foundation from time to time. The specific services to be provided to the Foundation by the Library will be mutually agreed upon from time to time, but may include, without limitation, assisting the Foundation in the raising of funds for the benefit of the Library. The Foundation agrees, in consideration for these services, to reimburse the Library in whole or in part as negotiated from time to time, for the costs of these services, which may be made through Foundation contributions to the City's special revenue fund for the Library, hereinafter referred to as the Library's Special Revenue Fund.

e. To the extent consistent with other duties and responsibilities to the Library, the Library's Director of Community Relations shall perform the functions of the

Director of the Foundation, the duties which are contained in the Foundation's Bylaws and which shall include the management of the Foundation in accordance with its mission and the strategic goals of the Board. The Foundation agrees to contribute to the Library an amount equal to approximately 35% of the salary and fringe benefits of the Director of Community Relations for performance of these duties. Payment shall be made annually prior to the last day of each year. The Chair of the Foundation Board shall provide the Foundation's evaluation of the performance of these duties by the Director of Community Relations to the City Librarian every six months. If the Director of Community Relations position becomes vacant, the City Librarian will confer with the Chair of the Foundation Board or his or her designee as to the selection of a new Director of Community Relations. The parties shall annually review the role of the Director of Community Relations and may adjust or terminate it upon mutual agreement without the necessity of amending the Agreement, with any such adjustment or termination to take effect within a timeframe agreed to by the parties; in addition, either party may terminate the arrangement described in this Section 3.e. upon six months' prior written notice to the other party, without the necessity of amending the Agreement.

4. The Library's Relationship to the Foundation.

a. The Foundation, acting as an independent contractor, will provide services to the Library through certain Foundation personnel to be designated from time to time. The specific services to be provided to the Library by Foundation personnel will be mutually agreed upon from time to time. The Library agrees, in consideration for these services, to provide the Foundation with certain agreed to basic office space and facilities as described below.

b. Consistent with other duties and responsibilities to the Library, the City Librarian is responsible for communicating the Library priorities and long-term plans, as approved by the Library Commission, to the Foundation.

c. The President of the Library Commission or his or her designee shall be an ex-officio non-voting member of the Foundation Board of Directors. A Library Commission member designated by the Library Commission President shall serve a one-year term as an ex-officio non-voting member of the Foundation Board.

d. The City Librarian shall serve as an ex-officio non-voting member of the Foundation board and, to the extent consistent with other duties and responsibilities to the Library and City, shall assume a prominent role in fundraising activities.

e. Ex-officio Foundation board members shall receive written notice of all meetings, including special meetings, of the entire Foundation Board of Directors and

Executive Committee. All meetings will be conducted in accordance with the Foundation's Bylaws.

f. The Foundation has owned and shall continue to own the donor database (supported by Blackbaud Raisers Edge software), and shall retain responsibility for maintenance of the database in accordance with foundation best practices. The Library recognizes that the Foundation is a private corporation with the authority to keep all of its records and data confidential consistent with applicable law and foundation best practices. To the extent permitted by law, including the Colorado Open Records Act, the Denver Charter, and the Denver Revised Municipal Code, the Library shall support the Foundation's ability to respect the privacy and confidentiality of donor records.

g. The Director of Community Relations shall be included as a member of the Library's executive team.

h. The Library shall include the Foundation as a key stakeholder in the strategic planning for the Library.

i. The Library shall ensure that all expenditures of distributions from the Foundation's Special Use Funds are in accordance with donor specifications as identified to the Library by the Foundation prior to the Library's acceptance of the Special Use Funds. The Library shall provide documentation of appropriate expenditures of Foundation Special Use Funds upon request by the Foundation, including in connection with any Special Use Funds audit.

5. Foundation Responsibilities

a. Fundraising

- 1) The Foundation's purpose is to assist and aid the Library by raising funds from private sources for the benefit of the Library. This includes solicitation and receipt of private gifts, annual giving contributions, deferred gifts, devises and bequests, corporate gifts and foundation grants, and special events.
- 2) The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the Library.
- 3) The Foundation and the Library will collaborate, through their respective authorized representatives, to plan and execute comprehensive fundraising and donor acquisition programs in support of the institution's mission. These programs include annual

giving, membership, major gifts, planned gifts, special projects and campaigns as appropriate.

- 4) The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies which will further the Library's mission. It will promptly acknowledge and issue receipts for all gifts to the Foundation on behalf of the Foundation and the Library and provide appropriate recognition and stewardship of such gifts.
- 5) The Library recognizes that the Foundation and the Community Relations Department of the Library have primary responsibility for fundraising. The Foundation and the Community Relations Department will coordinate with Library representatives on fundraising strategy and initiatives, including, without limitation, special events, major gifts, solicitations, naming opportunities, and planned giving.
- 6) Consistent with other responsibilities and duties, the City Librarian and the Director of Community Relations will work in conjunction with the leadership of the Foundation Board to identify, cultivate, and solicit prospects for private gifts.
- 7) The Foundation and the Library shall cooperate in the solicitation of grants and donations. However, the Foundation shall not solicit or accept grants from local, state or federal agencies unless the Library is not eligible to receive the particular governmental grant.
- 8) The Foundation shall establish and enforce policies to protect donor confidentiality and rights, consistent with applicable law.

b. Asset Management

- 1) The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable City, federal and state laws including the Uniform Prudent Management of Institutional Funds Act (UPMIFA).
- 2) The Foundation will receive, hold, manage, invest, and disburse contributions to the Foundation of cash, securities, and other specified forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

c. Inspection and Audit. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial records and will provide the Library Commission, the Mayor, and the City Librarian with a copy of the annual audited financial statements, including any communications between the independent auditor and those in charge of governance. Representatives of the City, including (without limitation) the City's Auditor, shall have the right to reasonably inspect and copy such books and records from time to time upon reasonable written notice to the Foundation. The Foundation shall maintain its financial records in accordance with generally accepted accounting principles consistently applied. At any time after five (5) business days prior notice to the Foundation of its intention to do so, and only once within any twelve (12) month period and at its own cost, the City may cause to be made a complete audit of the records of the Foundation relating to the performance of this contract for any fiscal period within the preceding four (4) years. However, upon termination or reasonable information of possible violations of this Agreement or misconduct on the part of the Foundation or its officers, employees or agents, the City may conduct such inspections and/or audit of the records of the Foundation upon notice to the Foundation that is reasonable under the circumstances.

d. Foundation Flexibility

- 1) The Foundation may serve as an instrument for certain activities for the Library and engage in such activities as reselling books and other similar Library materials (i) that are scheduled to be removed from circulation or (ii) that have been donated to the Library and designated by the Library for resale. In all cases, City and Library processes, policies, and legal requirements will be adhered to and all proceeds (minus direct costs related to the particular matter) shall be deposited into the Library's Special Revenue Fund not later than 30 days after each event.
- 2) Books and other similar Library materials (i) that are scheduled to be removed from circulation or (ii) that have been donated to the Library and designated by the Library for resale will, after evaluation by Library staff, be re-sold to generate revenue for the benefit of the Library. City and Library processes, policies, and legal requirements (including for purchasing, contracting, and the Library's deaccession policy) will be followed and all proceeds of resale (minus direct costs related to the event) shall be promptly

deposited into the Library's Special Revenue Fund not later than 30 days after each activity.

- 3) The Library will provide reasonable space and facility support for the purpose of storing and reselling de-accessioned and donated materials. Any materials deemed unsuitable for resale or recirculation shall be donated.
- 4) When distributing gift funds to the Library, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal determination on the gift. If the Library accepts the donation, the Library will abide by such restrictions and provide appropriate documentation.

e. Transfer of Funds

- 1) The Foundation will present a report annually to the Mayor, the City Librarian and the Library Commission as to its progress in raising funds for the Library, any present or anticipated problems, a listing of scheduled fundraising activities and events, financial results for the previous year of fundraising, and financial projections for the upcoming year. It shall also provide a copy of any written report and/or return it has provided to the Internal Revenue Service with respect to its activities of the prior year.
- 2) The Foundation's disbursements on behalf of the Library must be reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with applicable law or this Agreement.
- 3) Annually on a date agreed to by the parties, the City Librarian, with the approval of the Library Commission, will submit to the Foundation a formal request for distribution to the Library of Foundation endowment funds, based on the needs the Library has identified in the areas for which the funds have been dedicated. Such requests will be subject to annual approval by the Foundation Board, and such distributions, once approved by the Foundation Board, will be transferred to the Library's Special Revenue Fund in four quarterly payments over the following twelve months.

- 4) The Library will present a report annually to the Library Commission and Foundation Board to account for the appropriate use of endowment funds.
- 5) Foundation net revenue from, fundraising will be held in the Foundation Operating Fund. Annually on a date agreed to by the parties, the Foundation will report the total fundraising revenue and direct expenses for the preceding twelve months. The net revenue less Foundation general and administrative expenses, other operating expenses and an annual amount needed to build and maintain a reserve of between \$100,000 and \$150,000 will be available for distribution to the Library. The Library will prepare a request for distribution from the available funds to be reviewed and approved by the Foundation Finance Committee and subsequently the Foundation Board. After Board approval, the funds will be distributed to the Library within thirty days.
- 6) Foundation revenue from grants and restricted donations shall be held in the Foundation Special Use Fund. On a quarterly basis, the Library and Foundation shall review the activity and balances in the Foundation Special Use Fund. As funds are needed, usually twice each year, the Library shall submit a distribution request to be reviewed and signed by the Library Finance Director and submitted to the Foundation for approval by the Finance Committee, and distributed within ten days following the next Finance Committee Meeting.

f. Fiduciary Duties.

- 1) The Foundation and its Board members and staff shall be required to conduct themselves, in pursuit of the Library's affairs, in accordance with applicable law and this Agreement, including the fiduciary standards of loyalty and care to the City and the Library.

6. Foundation Funding and Administration

a. Consistent with its mission to assist and aid the Library, the Foundation has the right to use the Foundation's annual unrestricted General Fund funds, assess fees for services, or impose gift taxes, to support its operations.

b. The Foundation, at its own expense, will provide computers and other such services that may be necessary or required to fulfill its responsibilities and obligations.

c. The Library owns the computer server which houses the records that are owned by the Foundation. Maintenance of the computer server is provided by the Library, while the maintenance of the software and data housed on the server is provided by the Foundation.

d. In consideration for these services, the Library agrees to provide the Foundation with certain agreed to basic office space and facilities (800 square feet) consistent with bond obligations at the Central Library at 10 West 14th Avenue Parkway, Denver, CO 80204, as well as support services, office furniture, information technology support for computer systems, telephone service, fax service and copier machine usage. The parties shall annually review this Section 6.d. and may adjust or terminate the Foundation's use of such space, facilities and other items described in this Section 6.d. upon mutual agreement without the necessity of amending the Agreement, with any such adjustment or termination to take effect within a timeframe agreed to by the parties; in addition, either party may terminate the Foundation's use of such space, facilities and other items upon six months' prior written notice to the other party, without the necessity of formally amending the Agreement.

e. With the prior approval of the Library, and proper insurance, the Foundation may use Library facilities at no charge for fundraising activities and events.

7. Additional Terms

a. This Agreement is intended to set forth policies and procedures that will contribute to collaboration and the coordination of the parties' mutual activities for the benefit of the Library.

b. To ensure effective achievement of the items of the agreement, the Library and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

c. Neither the Library nor the Foundation shall have any liability for the obligations, acts or omissions of the other party.

d. Term. The Agreement shall be in effect from January 1, 2012 through December 31, 2021.

e. Termination. Either party may terminate the Agreement prior to expiration of the term:

- 1) If the other party commits a material breach of the Agreement and fails to cure said breach to the non-breaching party's satisfaction after receiving 30 days notice in writing; or,

2) If the terminating party gives six (6) months prior written notice to the other party.

c. Upon expiration of the term of this Agreement or termination of the Agreement, the parties shall agree upon any outstanding present and future obligations and performance commitments to one another, and shall arrange for a proper accounting and work plan for any and all such obligations. In addition, the Foundation shall promptly and seriatim:

- 1) Establish a reserve, as deemed sufficient by the Foundation, to cover all outstanding or potential costs and financial obligations of the Foundation; and,
- 2) Pay all outstanding costs and resolve all financial obligations of the Foundation and resolve all other issues including the status of any funds in the reserve.

8. Nonprofit Status. The Foundation shall at all times take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a nonprofit corporation that qualifies as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

9. Political Activity: No funds raised or grants obtained by the Foundation, including any earnings thereon, shall be used in connection with any activity not authorized by the Foundation's tax exempt status under 501(c)(3) of the Internal Revenue Code (or any successor provision) However, the Library's Director of Community Relations and other City employees shall, in all respects, abide by the City's laws, policies and procedures.

10. Certification Ordinance. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance"). The Foundation certifies that:

a. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

11. The Foundation also agrees and represents that:

a. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

b. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Foundation that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

d. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Foundation to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Foundation will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

f. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

12. The Foundation is liable for any violations as provided in the Certification Ordinance. If Foundation violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Foundation shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Foundation from submitting bids or proposals for future contracts with the City.

13. Insurance:

a. General Conditions: Foundation agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Foundation shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension

thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Foundation shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Foundation. Foundation shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Foundation. The Foundation shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. Proof of Insurance: Foundation shall provide a copy of this Agreement to its insurance agent or broker. Foundation may not commence services or work relating to the Agreement prior to placement of coverage. Foundation certifies that the certificate of insurance attached as **Exhibit A** preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Foundation's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Foundation and sub-contractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Foundation's insurer shall waive subrogation rights against the City.

e. Subcontractors and Sub-consultants: All subcontractors and sub-consultants (including independent vendors, suppliers or other entities providing goods or

services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Foundation. Foundation shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Foundation agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance:

Foundation shall maintain the coverage as required by statute for each Colorado work location, if any, and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Foundation expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Foundation's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Foundation executes this Agreement.

g. Commercial General Liability:

Foundation shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. Crime (employee dishonesty):

Foundation shall maintain Crime (employee dishonesty) coverage with limits of \$1,000,000.

i. Directors and Officers:

Foundation shall maintain Directors and Officers coverage with limits of \$1,000,000.

j. Additional Provisions:

- 1) For Commercial General Liability, the policies must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs in excess of policy limits;
 - (iii) A severability of interests, separation of insureds or cross liability provision; and

- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- 2) For claims-made coverage:
 - i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
- 3) Foundation shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Foundation will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

14. Immunity: Under no circumstance shall any provision of this Agreement be construed as constituting a waiver of immunity on the part of the City or the Library or for any of its facilities under Colorado Governmental Immunity Act (C.R.S. § 24-10-101 et seq.).

15. Claims: In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against the Foundation related in any way to this Agreement or the actions or activities of the Foundation, the Foundation shall give written notice thereof to the City, within fifteen (15) working days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the Foundation. Such written notice shall be submitted to the City Librarian, as provided in section 20 below, and the City Attorney, City and County Building, 1437 Bannock Street, Room 353, Denver, Colorado 80202.

16. Non-Discrimination: The Foundation agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on the board of directors of the Foundation and its activities and actions relating to the Library. In connection with the performance of work under this Agreement, the Foundation agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any

person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

17. Assignment: Except as expressly provided in this Agreement, the City and the Foundation acknowledge and agree that this Agreement and the rights and obligations thereunder shall not be assigned or otherwise transferred to another party.

18. Amendments: This Agreement may be modified, changed, or amended only by mutual written agreement of the parties, approved and executed in the same manner as this Agreement.

19. Integration: This Agreement is intended as the complete integration of all understandings between the City and the Foundation. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Agreement in writing. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

20. Severability: The City and the Foundation agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal government, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

21. Compliance With Laws; Venue: The Foundation and the City acknowledge and agree that this Agreement shall be governed by and construed, to the extent applicable, in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, as both may be amended or recodified from time to time, and Executive Orders, and that the Foundation shall perform its obligations hereunder in accordance with applicable laws. Venue for any action arising hereunder shall be exclusively in the District Court for the City and County of Denver, Colorado.

22. Notices. All notices required under this Agreement shall be in writing and delivered as provided in this section (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the Foundation:

Denver Public Library Friends Foundation
10 West 14th Avenue Parkway

Denver, CO 80204

If to the City or the City Librarian:

City Librarian
10 West 14th Avenue Parkway
Denver, CO 80204.

The address for any party set forth above may be changed at any time by written notice in the manner provided herein to the other party.

23. No Third Party Beneficiary: The City and the Foundation understand and expressly agree that enforcement of the terms and conditions of this Agreement shall be strictly reserved to the City and the Foundation, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the City and the Foundation that any person other than the City or the Foundation receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

24. Use, Possession Or Sale Of Alcohol Or Drugs: The Foundation agrees to cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring the Foundation from City facilities or participating in City operations.

25. Legal Authority.

a. The Foundation warrants that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

b. The person(s) signing and executing this Agreement on behalf of the Foundation does hereby warrant and guarantee that the signatory(ies) below has been fully authorized by the Foundation to execute this Agreement on behalf of the Foundation and to validly and legally bind the Foundation to the obligation and performance of all the terms and conditions herein set forth.

c. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Foundation or the person(s) signing the Agreement to enter into this Agreement.

26. City Execution of Agreement: This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

28. Conflict of Interest. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Foundation shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12. The Foundation shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Foundation represents that it has disclosed any and all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Foundation by placing the Foundation's own interests, or the interests of any party with whom the Foundation has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Foundation written notice describing the conflict.

29. Electronic Signatures and Electronic Records. Foundation consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Signature Page to Follow