

NORTH CAROLINA ORANGE COUNTY	PERFORMANCE AGREEMENT FRIENDS OF THE CHAPEL HILL PUBLIC LIBRARY
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THIS AGREEMENT, made and entered into by and between the TOWN OF CHAPEL HILL, a North Carolina Municipal Corporation, 405 Martin Luther King Jr. Boulevard, Chapel Hill, North Carolina, hereinafter referred to as "Town" and FRIENDS OF THE CHAPEL HILL PUBLIC LIBRARY, a North Carolina Non-Profit Corporation, hereinafter referred to as "the Friends" or Contractor.

WITNESSETH:

WHEREAS, Chapel Hill Public Library is a department of the Town of Chapel Hill; and

WHEREAS, the Town funds the staffing and operation of all Town Departments through its annual budget processes; and

WHEREAS, the Town recognizes the importance of charitable and endowment giving to supplement the Library's annual budget and support the Library's mission; and

WHEREAS, the Friends, a 501 (c)(3) non-profit membership organization was established in 1961, was incorporated in 2004, and is dedicated to the support of the Library; and

WHEREAS, the Friends is engaged in fundraising activities on behalf of the Library, including the receipt of gifts in the form of cash and non-cash items for the benefit of the Library; and

WHEREAS, it is in the mutual interest of the Town and the Friends to formalize their relationship to improve communication and coordinate efforts in support of Library services and in alignment with the fiscal policies and practices of the Town;

NOW, THEREFORE, in consideration of the above-stated premises and the mutual covenants and conditions hereinafter set forth, the Town and Friends agree as follows:

1. Duties of the Town: The Town agrees to
  - a. Provide office space and facilities for the Friends' ongoing operations
    - i. Grant the Friends use of Library Room 058 at no cost to the Friends while sorting, processing, and storing materials donated to the Library.
    - ii. Grant the Friends use of Library Room 035 at no cost to the Friends for its operation of a Used Book Bookstore.
    - iii. Grant the Friends of Library Meeting Rooms at no cost for Board and committee meetings, subject to room availability, scheduled in advance, and to provide staff support in making reservations as necessary.
    - iv. Maintain the library facility, landscape, and parking lots at no cost to the

Friends.

1. The Town will provide at no cost to the Friends a telephone line, internet access, utilities, and cleaning services, and will provide use of a photocopier for the Friends' business needs.
  - v. Grant the Friends access to the Library facility during regular hours of Library operation. Any use by the Friends outside of normal hours of operation may be granted for events in support of the Library if approved by the Director in advance of the event.
- b. Make Library facilities available to the Friends at no cost for planned fundraising events by the Friends on behalf of the Library.
- i. Events held on Library grounds must be approved by the Library Director in advance of any related contractual agreements made by the Friends for the event and prior to any announcements or marketing for the event.
  - ii. Library Director and library staff as she may designate will attend and participate in events.
  - iii. The Friends will directly contract and pay any third parties it hires for any such events and will, under existing Library use policies, assume responsibilities for such events in the same manner as other users under Town policies.
- c. Allow the use of Chapel Hill Public Library name: the Friends, consistent with parameters established herein, may conduct fundraising activities in the name of the Library. The fundraising activities must be:
- i. Consistent with the Library's mission and Friends' stated mission to further the excellence of the Library by raising money, sponsoring programs, and fostering interest in the Library.
  - ii. Mutually agreed upon in advance and coordinated with the Library Director or her designee, including joint design of campaigns, initiatives, endowments, and associated communications.
- d. Provide promotion and marketing support: The Library Director and Library staff as she may designate will include Friends events, initiatives, and information in Library and Town communication channels as appropriate and as jointly agreed.
- e. Provide an Ex Officio Seat on Library Advisory Board: The Library Advisory Board shall designate an ex-officio seat for a representative of the Friends, called the Friends Liaison. This seat is to further promote communication and information sharing among stakeholder groups connected to the Library.
- f. Grant the Friends the limited right to sell and otherwise dispense with items donated to the Library or withdrawn from the Library's collection of print and non-print

materials. Library reserves the right to first and sole use of all items donated to the Library at all times.

- g. Provide the Friends with a list of anticipated funding needs at the beginning of each year and an accounting of the use of provided funds at the end of the year.

2. Duties of the Friends: The Friends agrees to:

- a. Maintain its status as a not for profit organization under State law and an organization exempt from Federal income taxation under 501(c)(3) in support of Chapel Hill Public Library.
- b. Provide the following notifications to the Library Director or her designee:
  - i. Quarterly reports showing the Friends' revenues and expenditures.
  - ii. Quarterly reports showing activity and balance of Friends' assets.
  - iii. An annual report submitted to the Town by the last day of the fifth month following the close of the taxable year including:
    - 1. An accounting of the type and amount of support provided by the Friends to the Library
    - 2. A report on the annual activity of the Friends' assets
    - 3. A description of the Friends' investment policies and procedures
    - 4. A copy of the Friends' Form 990 that was most recently filed
    - 5. A copy of the Friends' governing documents, as most recently amended, to the extent not previously provided
    - 6. Evidence of Director's & Officers' insurance and fidelity bonding protecting the assets against malfeasance in an amount equal to the assets at the close of its annual fiscal year.
  - iv. An annual draft of the Friends' operating budget prior to adoption
  - v. Notification upon receipt of all gifts of \$500 or greater, including donor name, amount, and nature of gift
  - vi. Notification of all conditional gifts prior to acceptance. Conditional gifts must be approved by the Town
- c. Include Library staff in the governance and activities of the Friends:
  - i. The Library Director or designee will have a designated, ex officio seat on the Friends governing board.
  - ii. The Library Director or designee will be invited to all Friends committee meetings.
  - iii. The Library Director or designee will be notified in advance of any proposed changes to Friends Policies or Bylaws.
- d. Coordinate fund raising efforts with Library Director or her designee, including:
  - i. Mutual agreement on fundraising goals and priorities.
  - ii. Joint design of fund-raising, marketing and communications media,

including public recognition of gifts and Friends-funded projects within the Library building and on Library grounds.

- iii. Collaborative planning of use of Town facilities for fundraising events.
  - iv. Collaborative design of processes and procedures for the sale of donated and withdrawn items.
  - v. Friends will not, in any of its promotional activities, provide information indicating that contributions directly to the Library are not tax-deductible
- e. Maintain Friends operating expenditures below 20% of annual revenue from fundraising efforts. Operating expenditures are defined as all operational expenditures except distributions to the Library, independent audit or accounting fees, tax, investment, and legal expenses.
  - f. Pledge an annual gift to the Library, disbursed in four quarterly payments. The amount of the pledge shall be mutually agreed upon by Library and Friends.
  - g. In the event the Friends is dissolved, all remaining assets shall be distributed to the Town to be used for the benefit of the Library in accordance with the Friends' Articles of Incorporation and applicable state law.
3. Representations on Tax Deductibility: Contributions directly to the Library are, under current law, tax deductible in the same manner as contributions to the Friends. The Parties agree that the Friends will not, in any of its promotional activities, provide information indicating that contributions directly to the Library are not tax-deductible.
  4. Indemnification and Hold Harmless: The Contractor agrees to indemnify and hold harmless the Town of Chapel Hill and its officers, agents and employees from all loss, liability, claims or expense (including reasonable attorneys' fees) arising from bodily injury, including death or property damage to any person or persons caused in whole or in part by the negligence or willful misconduct of the Contractor except to the extent same are caused by the negligence or misconduct of the Town.
  5. Insurance Provisions:
    - a. The Town requires evidence of Contractor's current valid insurance for Comprehensive General Liability in the amount of \$1,000,000 per occurrence and further requires that the Town be named as additional insured.
    - b. The Town requires evidence of subcontractor insurance (if applicable) in the amounts stated below during the duration of the project and further requires that the Town be named as additional insured for Comprehensive General Liability and Business Automobile policies. The required coverage limits are: 1) Comprehensive General Liability and Business Automobile - \$1,000,000 per occurrence, and 2) Workers' Compensation - \$100,000 for both employer's liability and bodily injury by disease for each employee and \$500,000 for the disease policy limit.

- c. Non-Discrimination: The Friends contractually agree to administer all functions pursuant to this Agreement without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.
- d. Federal and State Legal Compliance: The Friends must be in full compliance with all applicable federal and state laws, including those on immigration.
- e. E-Verify: To the extent required by law, the Friends shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, should the Friends utilize a subcontractor(s), the Friends shall require the subcontractor(s) to comply with the requirements of Article 2, Chapter 64 of the General Statutes. Pursuant to North Carolina General Statute § 143-133.3 (c)(2), contracts solely for the purchase of apparatus, supplies, materials, and equipment are exempt from this E-Verify provision.
- f. Amendment: This Agreement may be amended in writing by mutual agreement of the Town and the Friends.
- g. Termination of Agreement: Either party may terminate this Agreement at any time by giving the other party thirty (30) days written notice of termination prior to the end of the term as described herein.
- h. Interpretation/Venue: This Agreement shall be construed and enforced under the laws of North Carolina. The courts and the authorities of the State of North Carolina shall have exclusive jurisdiction over all controversies between the parties which may arise under or in relation to this Agreement. In the event of any dispute between the parties, venue is properly laid in Orange County, North Carolina for any state court action and in the Middle District of North Carolina for any federal court action. Contrary to any provision that may be contained in any exhibit attached hereto the Town shall not consent to 1) resolving any dispute by means of arbitration and/or 2) waiver of a trial by jury.
- i. Termination of Nonprofit: In the event that the Friends shall cease to exist as an organization or fails to provide the services described or shall significantly reduce its services or accessibility to the Library during the term of this Agreement; or in the event that the Friends shall fail to render a satisfactory accounting as provided herein, then and in that event the Town may terminate this Agreement; resume control of all space and property provided by the Town for the Friends' use; and call for any funds received and held by the Friends on behalf of Library to be surrendered to the Town for the benefit of the Library.

- j. Severability: The parties intend and agree that if any provision of this Agreement or any portion thereof shall be held to be void or otherwise unenforceable, all other portions of this Agreement shall remain in full force and effect.
- k. Term: This Agreement, unless amended as provided herein, shall be effective until June 30, 2020.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties hereunto cause this Performance Agreement to be executed in their respective names.

**FRIENDS OF THE CHAPEL HILL PUBLIC LIBRARY**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME & TITLE

\_\_\_\_\_  
ATTEST

\_\_\_\_\_  
PRINTED NAME & TITLE

**TOWN OF CHAPEL HILL**

\_\_\_\_\_  
DEPARTMENT HEAD OR DEPUTY/TOWN MANAGER

\_\_\_\_\_  
PRINTED NAME & DEPARTMENT

ATTEST BY TOWN CLERK:

\_\_\_\_\_  
TOWN CLERK

TOWN SEAL

**Town Clerk** attests date this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved as to Form and Authorization

\_\_\_\_\_  
TOWN LEGAL STAFF

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
FINANCE OFFICER

\_\_\_\_\_  
DATE