



## MERCHANDISING AGREEMENT

This Merchandising Agreement (“Agreement”) is entered into in the City of Thousand Oaks, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Thousand Oaks, a California municipal corporation (“City”) and \_\_\_\_\_ (“Merchandiser”), subject to the following terms and conditions.

Merchandiser Information:

**Name:**

**Address:**

**Telephone:**

**E-mail:**

Brief description of merchandizing:

Merchandiser will be selling \_\_\_\_\_ during a scheduled \_\_\_\_\_ (“Event”) from \_\_\_\_\_ through \_\_\_\_\_ during operational hours at the Grant R. Brimhall Library located at 1401 E. Janss Road, Thousand Oaks, CA. 91362.

1. This Agreement shall begin from the date of this agreement and shall end on \_\_\_\_\_. City may terminate this Agreement at any time, with or without cause, by giving written notice to Merchandiser, specifying the date of termination.
2. Merchandiser is being given consent by the City to sell books, CDs, DVDs, cassettes, photos, video, or any other media during the Event. Merchandiser shall be solely responsible for obtaining any permits and/or licenses required to sell said material and for any and all federal, state, or local tax liability resulting from those sales. City shall have no responsibility to collect or pay for any tax revenue generated nor shall it be required to ensure that any or all required taxes are remitted properly.
3. Merchandiser shall be solely responsible for all music royalties in connection with the use or sale of music. Merchandiser warrants that it has obtained any and all necessary ASCAP, BMI, SESAC, or other similar licenses.

4. Merchandiser agrees that the City or the Grant R. Brimhall Library will not be required to provide any equipment to the merchandiser for the purpose of conducting sales transactions during the Event.
5. Merchandiser agrees that in carrying out the activities described above during the Event that Merchandiser is an independent contractor. Merchandiser and Merchandiser's agents, employees, subcontractors and other persons acting on Merchandisers behalf are not officers, employees, agents, or volunteers of the City.
6. Merchandiser shall not, without the written consent of City, assign this Agreement, or any interest therein to another party.
7. Upon request, Merchandiser shall provide samples of items to be sold, photos, and any other publicity materials for review and use by the City.
8. Merchandiser agrees to the indemnity, defense and hold harmless provisions set forth in Exhibit A.
9. Merchandiser agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to any and all activities of the Merchandiser pursuant to this Agreement.
10. Merchandiser acknowledges that Merchandiser has duly authorized the person executing this Agreement to do so on Merchandiser's behalf.
11. Merchandiser shall execute this Agreement and return it to the Grant R. Brimhall Library no later than one (1) week(s) prior to the date of Event described above. This Agreement shall not become effective until it is executed by both parties.
12. City and Merchandiser agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.
13. City and Merchandiser agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written. Any and all modifications to this Agreement shall be in writing and signed by the parties hereto.

CITY OF THOUSAND OAKS

MERCHANDISER

\_\_\_\_\_  
 Melissa Hurtado,  
 Interim Library Director

\_\_\_\_\_  
 Authorized Signature for Merchandiser

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

**EXHIBIT A**

**HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for Contractor's Damages.** Contractor holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Contractor's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Contractor, to Contractor's employees, to Contractor's contractors or subcontractors, or to the owners of Contractor's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) **Defense and Indemnity of Third Party Claims/Liability.** Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay City any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a tier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies.

\_\_\_\_\_ Initials, Library Director

\_\_\_\_\_ Initials, Merchandiser