

Submitted by: Chair of the Assembly at the
request of the Mayor
Prepared by: Dept. of the Library
For reading: December 17, 2024

**ANCHORAGE, ALASKA
AR No. 2024-400**

1 **A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE APPROVING A**
2 **SUBGRANT AGREEMENT BETWEEN ANCHORAGE LIBRARY FOUNDATION**
3 **AND THE MUNICIPALITY OF ANCHORAGE AND APPROPRIATING TWO**
4 **MILLION THREE HUNDRED EIGHTY THOUSAND DOLLARS (\$2,380,000) AS A**
5 **STATE OF ALASKA SUBGRANT FROM THE ANCHORAGE LIBRARY**
6 **FOUNDATION (ALF), WHEN TENDERED, TO THE AREAWIDE GENERAL**
7 **CAPITAL IMPROVEMENT PROJECTS FUND (401) MAINTENANCE &**
8 **OPERATIONS DEPARTMENT, FOR IMPROVEMENTS TO ESTABLISH A**
9 **DOWNTOWN LIBRARY BRANCH.**

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12 **WHEREAS**, the Municipality of Anchorage and the Anchorage Library Foundation
13 (ALF) are working together to establish a downtown library branch within the bounds
14 of the Anchorage Original Townsite; and,

15
16 **WHEREAS**, ALF received a grant from the State of Alaska, Department of
17 Commerce, Community, and Economic Development for the construction /
18 renovation to establish a downtown library branch; and,

19
20 **WHEREAS**, in accordance with Anchorage Municipal Code section 6.10.045, the
21 Assembly may alter the library capital budget by majority vote; and

22
23 **WHEREAS**, the 2024 Capital Improvement Budget was approved by passage of
24 AO 2023-96 as amended; now, therefore,

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26 **THE ANCHORAGE ASSEMBLY RESOLVES:**

27
28 **Section 1.** The 2024 Capital Improvement Budget is hereby revised to include
29 the Downtown Library Project.

30
31 **Section 2.** That the Municipality is hereby approved to enter into a subgrantee
32 agreement with the Anchorage Library Foundation for the renovations and/or
33 construction of a downtown library branch.

34
35 **Section 3.** That an amount not to exceed TWO MILLION THREE HUNDRED
36 EIGHTY THOUSAND DOLLARS (\$2,380,000) is hereby appropriated as a State of
37 Alaska subgrant from the Anchorage Library Foundation, when tendered, to the
38 Areawide General Capital Improvement Projects Fund (401900), Maintenance &
39 Operations Department, for construction and/or renovations costs to establish a
40 downtown library branch.

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42 **Section 4.** This resolution shall be effective immediately upon passage and
43 approval by the Assembly.

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PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2024.

Chair of the Assembly

ATTEST:

Municipal Clerk

Department of Appropriation:
Maintenance & Operations \$2,380,000

DRAFT



MUNICIPALITY OF ANCHORAGE

Assembly Memorandum

AM No. 1003 - 2024

Meeting Date: December 17, 2024

1 **FROM: MAYOR**

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3 **SUBJECT: A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE**
4 **APPROVING A SUBGRANT AGREEMENT BETWEEN ANCHORAGE**
5 **LIBRARY FOUNDATION AND THE MUNICIPALITY OF ANCHORAGE**
6 **AND APPROPRIATING TWO MILLION THREE HUNDRED EIGHTY**
7 **THOUSAND DOLLARS (\$2,380,000) AS A STATE OF ALASKA**
8 **SUBGRANT FROM THE ANCHORAGE LIBRARY FOUNDATION (ALF)**
9 **TO THE AREAWIDE GENERAL CAPITAL IMPROVEMENT PROJECTS**
10 **FUND (401) MAINTENANCE & OPERATIONS DEPARTMENT, FOR**
11 **IMPROVEMENTS TO ESTABLISH A DOWNTOWN LIBRARY BRANCH.**
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13 The Anchorage Library Foundation (ALF) and Anchorage Public Library (APL) in
14 coordination with the administration are working together to establish a library branch
15 within the boundaries of the Anchorage Original Townsite. The Old City Hall Building is
16 the planned location of the Downtown Library Branch pending the outcome of the
17 engineering survey and design concept to be paid for by the grant.
18

19 ALF received a grant from the State of Alaska "Coronavirus Capital Projects Fund Grant"
20 for construction and/ or renovation costs for a downtown library branch which will include
21 the initial engineering survey and design concepts. APL is requesting permission for the
22 MOA to enter into a subgrantee agreement. The grant proceeds obtained from the State
23 of Alaska by ALF in the amount of \$2,500,000 will fund the construction and/ or
24 renovation of the Downtown library branch. ALF will use \$120,000 to cover administrative
25 costs, leaving \$2,380,000 as requested for appropriation. The MOA, per the subgrant
26 agreement, would be responsible for the construction and/or renovation of the building
27 and would retain ownership. The grant funds must be spent by December 31, 2026.
28

29 If projected construction/renovation costs for the library project exceed the amount of the
30 grant, ALF and APL will work together to devise a fundraising plan to cover further costs.
31 Should the Old City Hall Building prove to be an unsuitable location, the MOA, ALF, and
32 APL will work together to find an acceptable alternative.
33

34 In 2009, a bequest from Janet Cameron Goetz made ALF the beneficiary of a charitable
35 trust for the operation of a downtown library branch. Once construction and/or renovation
36 is completed, the MOA and ALF have drawn up an agreement which, pending Assembly
37 approval, will provide funding for the operation of a downtown library including staffing.
38 The proposed agreement states the MOA will operate the downtown library branch for a
39 minimum of twelve (12) years. In return, ALF will provide funding to be used exclusively
40 for the operation of a downtown library up to \$450,000 annually which may be
41 supplemented by grants or other outside funding.
42

1 The following budget detail is recommended for fund center 535500:
 2

| <u>Revenue</u> | <u>Account Name</u> | <u>Amount</u> |
|-----------------------|---------------------------|---------------|
| 401900-PF24012-405150 | State Grant Rev-Pass Thru | \$ 2,380,000 |

| <u>Expenditure</u> | <u>Account Name</u> | <u>Amount</u> |
|-----------------------|---------------------|---------------------|
| 401900-PF24012-570160 | Bldg Improvements | \$ 2,340,000 |
| 401900-PF24012-615202 | CS IGCs to Capital | \$ 40,000 |
| | TOTAL | \$ 2,380,000 |

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12 **THE ADMINISTRATION RECOMMENDS APPROVAL.**

13 Prepared by: Mollie Roache, Anchorage Public Library

14 Approved by: Elizabeth Nicolai, Acting Director, Anchorage Public Library

15 Concur: Ona R. Brause, Director, OMB

16 Fund certification: Philippe Brice, CFO

17 401900-5000XX- PF24012-405150 \$2,380,000

18 (State Grant Pass Through CIP when tendered)

19 Concur: William D. Falsey, Acting Chief Administrative Officer

20 Concur: Rebecca A. Windt Pearson, Municipal Manager

21 Respectfully submitted: Suzanne LaFrance, Mayor

DRAFT

SUBGRANTEE AGREEMENT

This Subgrantee Agreement, effective upon the date of mutual execution (“Effective Date”), is entered into by and between the Municipality of Anchorage (“MOA”) and the Anchorage Library Foundation, an Alaska nonprofit corporation (“ALF”) (each a “Party” and collectively the “Parties”).

RECITALS:

- A. The MOA owns the real property and building known as the Old City Hall Building located at 524 West Fourth Avenue Anchorage, Alaska 99501.
- B. The MOA has agreed to develop a portion of the Old City Hall Building into a downtown public library branch (“Downtown Branch”). The Old City Hall Building is the location of the Downtown Branch pending the outcome of the engineering survey and design concept. The MOA will own and operate the Downtown Branch for a term of at least twelve (12) years.
- C. The renovations/construction of the Downtown Branch will be partly funded using Two Million Five Hundred Thousand (\$2,500,000.00) (“Grant Payment”) in grant proceeds obtained from the State of Alaska by ALF, as more fully set forth in Grant Agreement # 21-CCP-06, inclusive of all attachments, amendments, and appendices (collectively the “Grant”) a copy of which is attached in full to this Agreement. The Grant is with the State of Alaska (“State”), Department of Commerce, Community, and Economic Development (“Department”) and is incorporated and made part of this Agreement.
- D. This Agreement sets forth the terms by which ALF will make the Grant Payment (each installment being a “Grant Payment” and collectively the “Grant Payments”) available to the MOA in furtherance of fulfilment of all terms and conditions of the Grant and working towards the ALF and MOA’s shared objective of maintaining a new public library within the boundaries of the Anchorage Original Townsite. The use of the Grant Payments for the purposes listed in the Grant is referred to as the “Work”.

Incorporating the above recitals, the Parties agree as follows:

1. ALF Responsibilities.
 - a. Payment Method. ALF shall administer the Grant and oversee the MOA’s use of the Grant Payment to ensure consistency with the Grant and this Agreement. The MOA acknowledges the Grant sets forth the payment methodology, which is contemplated on a cost reimbursable basis, subject to exceptions in Attachment B of the Grant. Each Party is solely responsible for any and all tax liability, if any, arising from or related to that Party’s receipt and expenditure of the Grant Payment.

- b. Reporting. Subject to the MOA's responsibilities to timely provide and supplement the information required, ALF shall satisfy the reporting requirements set forth in the Grant.
 - c. Cooperation. ALF agrees to cooperate with reasonable requests from the MOA regarding the Grant administration and shall act in good faith as an intermediary with the Department, provided such cooperation is consistent with the Grant and does not cause ALF to adopt a position that increases its risk of liability.
 - d. Retention of Grant Funds. ALF will keep One Hundred Twenty Thousand (\$120,000) of Grant Funds to partially offset expenses incurred by ALF related to the Grant in accordance with the budget attached as **Exhibit A**.
2. MOA Responsibilities.
- a. Grant Obligations. The MOA agrees to accept all obligations of the Grant as if it were Grantee, except to the extent that such obligations are expressly retained by ALF under this Agreement. This assumption of obligations includes, but is not limited to providing the outcomes set forth in the Grant; contracting for, overseeing and administering the contract labor contemplated in the Grant and in accordance with the Grant; using the Grant Payments strictly in accordance with the Grant; timely providing sufficient information for ALF to meet the reporting requirements of the Grant; meeting the recordkeeping requirements of the Grant; and meeting all terms and conditions of the Grant.
 - b. Books and Records. In addition to providing the Department access to the MOA's books and records related to the Grant, in accordance with the Grant, the MOA shall provide reasonable access to ALF and shall abide by the document retention requirements of the Grant. Notwithstanding the forgoing right of access, the parties agree that the MOA shall not communicate directly with the Department related to the Grant or this Agreement unless required by law or agreed to by ALF, it being the intention of the Parties that at all times ALF shall be the sole point of communication with the Department.
 - c. Representations and Warranties. The MOA represents and warrants MOA has the expertise, ability, and capacity to fulfill the obligations under the Grant and this Agreement; that it will only use the Grant Payments in strict accordance with the Grant and in furtherance of the Work; that it is familiar with the reporting and recordkeeping requirements associated with Coronavirus Capital Projects Fund Grants; and that it will comply with the terms of the Grant.
 - d. Prior Authorization. The MOA shall keep ALF apprised of MOA's progress in performing the Work. ALF has no responsibility to pay MOA for work performed outside the scope of the Grant or without prior ALF approval.

- e. Third-Party Relationships. The MOA shall ensure that all third-party contracts related to the Grant comply with the terms and conditions of the Grant and that any protections afforded to the MOA under such agreements are also provided to the State, Department and ALF. Pursuant to Section 15 of Attachment C of the Grant, none of the work specified in this Grant Agreement shall be contracted by the Grantee without prior approval of the Department.
3. Performance of Work. ALF assumes no liability for the safety of the MOA and its employees, contractors, subcontractors, agents and invitees. Before commencing the performance of the Work, MOA shall obtain all permits and licenses as may be necessary and, before and during the performance of the Work, give all notices and comply with all applicable laws, ordinances, rules and regulations of every kind and nature whether in effect now or later, promulgated by any federal, state, local or other governmental authority (collectively "Laws"), relating to the performance of the Work.
 4. Indemnification.
 - a. MOA. To the fullest extent permitted by law, MOA shall indemnify, protect, defend (with counsel satisfactory to ALF) and hold harmless ALF, its, successors, heirs and assigns, employees, officers directors, agents, and advisers, as well as the State and Department (collectively "ALF Indemnitees"), from and against any and all claims, demands, actions, causes of action, liabilities, penalties, fines, damages, losses, costs and expenses (including attorneys' fees, expert fees and costs) (collectively "Claims") arising, from or related to the Downtown Branch and the MOA's use of any funding provided by ALF pursuant to this Agreement, as well as for any default under this Agreement, regardless of where such action or inaction occurred, except to the extent of the sole or gross negligence, or willful misconduct of ALF. In the event a Claim was caused by the concurrent or joint negligence of the ALF Indemnitees, defined below, the MOA's indemnification obligations under this Agreement with respect to such Claim shall be limited by the extent of the negligence of the ALF Indemnitees.
 - b. ALF. To the fullest extent permitted by law, ALF shall indemnify, protect, defend (with counsel satisfactory to the MOA) and hold harmless the MOA, its, successors, heirs and assigns, employees, stockholders, officers directors, agents, and advisers (collectively "MOA Indemnitees"), from and against any and all Claims arising out of, relating to or incidental to breach of this Agreement by ALF, its employees and agents' breach. In the event a Claim was caused by the concurrent or joint negligence of the MOA Indemnitees, ALF's indemnification obligations under this Agreement with respect to such Claim shall be limited by the extent of the negligence of the MOA Indemnitees.
 - c. Third Parties. The MOA shall ensure that the State, Department, and ALF are all listed as indemnified parties under any contract between the MOA and any third-party related to the Work and Grant.

5. Insurance. MOA shall maintain insurance coverage at its sole cost meeting the requirements of the Grant. The insurance shall name ALF as an additional insured on its policies in addition to the Department, and shall contain a waiver of subrogation against the Department and ALF. Any insurance of MOA shall be primary and non-contributory to any coverage carried by ALF. Insurance effected or procured by the MOA will not reduce or limit its contractual obligation to indemnify and defend the Indemnitees from Claims.

6. Default. The failure of either party to fulfill their respective obligations under this Agreement shall constitute a breach. Upon written notice from the non-breaching Party, the breaching Party shall have seven (7) days to cure a monetary breach or ten (10) days to cure a nonmonetary breach, except if it is not possible to cure a nonmonetary breach within that timeframe, and the breaching party timely commences the cure, the breaching party shall have a reasonable time to pursue the cure to completion, not to exceed sixty (60) days. In the event such breach is not timely cured, each Party reserves all rights under law and may terminate this Agreement, sue for damages, cure a non-monetary breach, and seek reimbursement. Both parties waive the right to seek punitive or consequential damages.

7. General Provisions.

- a. Applicable Law. The Agreement shall be governed by the laws of the State of Alaska, without regard to its conflict of laws principles. Venue shall be in the state court of competent jurisdiction in Anchorage, Alaska.
- b. Notices. All notices, waiver, election, approvals and demands required or permitted to be given shall be in writing, mailed postage prepaid, certified mail, return receipt requested, or transmitted by email to the address for each party, set forth below, as may be updated by the parties with notice. Any notice shall be effective upon the earlier of personal delivery, the delivery of an email to the other party's email address (effective on the day the email is sent), or if mailed as provided, on the earlier of actual receipt or three (3) days after the date deposited in the mail.

MOA: 3600 Denali Street
Anchorage AK 99503
Attn: Elizabeth Nicolai, Acting & Assistant Director
(elizabeth.nicolai@anchorageak.gov)

ALF: 3600 Denali Street
Anchorage, Alaska 99503
Attn: Shanna Allen, Executive Director
(shanna.allen@librarychampion.com)

- c. Entire Agreement; Amendment. The Agreement represents the entire agreement between the Parties relating to ALF's funding obligations related to the Grant and supersedes any prior understandings, agreements or representations, written or oral, relating to that subject matter. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions

or inducements to the execution or in effect between the Parties, except as expressly provided. This Agreement may be modified or amended only by a written instrument executed by all Parties.

- d. Fees and Expenses. Each Party will pay its own fees and expenses incurred in connection with this Agreement, including attorney's fees. In any legal action brought by either party to enforce any of the terms of this Agreement, the prevailing party shall be entitled to all costs and expenses incurred in connection to that action, through all levels of appeal and collections, including, but not limited to, actual, reasonable attorneys' fees.
- e. Severability. If any provision of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made unenforceable by limitation, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.
- f. Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.
- g. Time is of the Essence; Headings; Drafting. Time is of the essence with every provision. Section headings are for convenient reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection. The Parties have participated jointly in the negotiation of this Agreement. If an ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties.
- h. Further Assurances. Each Party agrees that it will without further consideration execute and deliver such other documents and take such other action, as may be reasonably requested by the other Party to consummate more effectively the purposes or subject matter of this Agreement.
- i. Dispute Resolution.
 - i. For disputes arising from this Agreement that do not trigger the dispute or jurisdiction provisions of the Grant, the Parties agree to meet and discuss in good faith any dispute arising out of this Agreement. If the Parties are unable to reach a mutual written resolution of the dispute within thirty (30) days of meeting, then the Parties agree to non-binding mediation in

Anchorage, Alaska. The Parties shall jointly agree on a mediator and shall share equally the cost of the mediation, except each Party shall pay its own attorney's fees. If the Parties are unable to reach a mutual written resolution of the dispute through mediation, then the Parties are free to pursue any remedies available to them in equity and at law.

ii. In the event the dispute or jurisdiction provisions of the Grant are triggered, both Parties expressly consent to those provisions of the Grant.

j. Section Intentionally Blank.

k. Remedy. In the event a Party defaults, the non-defaulting Party or Parties, as applicable, shall have the right to seek any rights and remedies under law. All remedies, either under this Agreement or by law or otherwise afforded to any Party, shall be cumulative and not alternative.

l. Relationship of the Parties; No Third-Party Beneficiaries. Nothing contained in this Agreement shall be deemed to create a joint venture, partnership or other fiduciary relationship between the Parties, and neither Party shall be deemed the agent of the other. The provisions of this Agreement are and will be for the benefit of the Parties only and not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. The MOA shall have no authority to incur any expense or liability on behalf of ALF. Subject to strict compliance with the terms of the Grant, the MOA shall determine the manner and methods of performance of the Work, and ALF shall not be responsible for any acts of the MOA or its subcontracts. No federal or state tax or other withholdings or benefits shall be deducted from the compensation paid to the MOA pursuant to this Agreement.

m. Termination. In the event that the Grant terminates, this Agreement shall terminate and neither Party shall have further responsibility to the other except to the extent expressly surviving this Agreement. Obligations that survive under the express terms of the Grant shall be deemed to survive under this Agreement. For avoidance of doubt, and without limiting any other surviving obligations, termination of the Grant or this Agreement shall not terminate any insurance, indemnification, or payment responsibility to the other that accrued or the basis for which arose prior to termination.

n. Assignment; Binding Effect. No Party may assign this Agreement or any of its rights, interests, or obligations without the prior written approval of the other Parties. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties, and each Party warrants and represents to the other that the individual signing below is authorized to bind the Party to this Agreement.

- o. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. This Agreement may be signed and transmitted by electronic means and still be treated as an original.
- 8. Department Consent. This Agreement is subject to and conditioned upon the prior written approval of the Department and shall be null and void in the event the Department declines to provide such approval.
- 9. MOA Consent. By signing this Agreement, the MOA warrants and represents that it has authority to enter into this Agreement. No further approvals are required to sign this Agreement, notwithstanding future Assembly approvals required to approve specific subcontractors performing the Work and to appropriate funds.

[Signature Page to Follow]

Municipality of Anchorage

DATED: _____

By: _____

Its: _____

Anchorage Library Foundation

DATED: _____

By: _____

Its: _____

