

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

**ANCHORAGE, ALASKA
AR No. 2024-401**

**A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE (MOA) AUTHORIZING
AN AGREEMENT BETWEEN THE ANCHORAGE LIBRARY FOUNDATION (ALF)
AND THE MUNICIPALITY OF ANCHORAGE FOR THE OPERATION OF A
DOWNTOWN LIBRARY BRANCH.**

WHEREAS, The MOA and ALF have worked together on plans to establish a
downtown library branch: and,

WHEREAS, ALF has the funding to make annual donations to the MOA to support its
operation of the Downtown Branch in large part due to a 2009 bequest from Janet
Cameron Goetz who made ALF the beneficiary of a charitable trust “for the sole
purpose of maintaining a new public library within the boundaries of the Anchorage
Original Townsite”: and,

WHEREAS, after the renovations and/or/construction the Downtown Library will be
owned and operated by the MOA for a minimum of twelve (12) years after the
completion of its obligations of the Subgrantee Agreement, including but not limited to
substantial completion of construction of the Downtown Library Branch; now,
therefore,

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. The MOA is hereby authorized to enter into a funding agreement with
ALF for twelve (12) years for the operation and maintenance of a downtown library
branch.

Section 2. This resolution shall be effective immediately upon passage and
approval by the Assembly.

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

Chair of the Assembly

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

Assembly Memorandum

AM No. 1004 - 2024

Meeting Date: December 17, 2024

1 **FROM: MAYOR**

2
3 **SUBJECT: A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE (MOA)**
4 **AUTHORIZING AN AGREEMENT BETWEEN THE ANCHORAGE**
5 **LIBRARY FOUNDATION (ALF) AND THE MUNICIPALITY OF**
6 **ANCHORAGE FOR THE OPERATION OF A DOWNTOWN LIBRARY**
7 **BRANCH.**
8

9 The Municipality of Anchorage (MOA), the Anchorage Library Foundation (ALF), and the
10 Anchorage Public Library are working together to establish a downtown library branch.
11 The Downtown Library Funding Agreement between MOA and ALF will formalize the
12 funding plan for MOA to own and operate a downtown library branch for a minimum of
13 twelve (12) years. The Downtown Branch will be open at least 32 hours per week per
14 the agreement.

15
16 ALF has funding to make annual donations up to \$450,000 annually, subject to
17 appropriation, to the MOA to support its operation of the Downtown Branch in large part
18 due to a 2009 bequest from Janet Cameron Goetz who made ALF the beneficiary of a
19 charitable trust for the operation of a downtown library branch.
20

21 Funding will be used exclusively to operate the downtown library branch. This includes
22 staff wages, building maintenance, inventory maintenance, supplies, special events, and
23 regular programming. Funding will not be used to support other Municipal operations,
24 including other library branches.
25

26 This agreement is contingent upon the successful construction of a Downtown Branch,
27 as detailed in the subgrantee agreement between the MOA and ALF.
28

29 **THE ADMINISTRATION RECOMMENDS APPROVAL.**

30
31 Prepared by: Mollie Roache, Anchorage Public Library
32 Approved by: Elizabeth Nicolai, Acting Director, Anchorage Public Library
33 Concur: Ona R. Brause, Director, OMB
34 Concur: Philippe Brice, CFO
35 Concur: Eva Gardner, Municipal Attorney
36 Concur: William D. Falsey, Acting Chief Administrative Officer
37 Concur: Rebecca A. Windt Pearson, Municipal Manager
38 Respectfully submitted: Suzanne LaFrance, Mayor

ANCHORAGE DOWNTOWN LIBRARY FUNDING AGREEMENT

This Anchorage Downtown Library Funding 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 grant proceeds obtained from the State of Alaska by ALF, as more fully set forth in the Subgrantee Agreement between the Parties dated _____, 2024 (“Subgrantee Agreement”).
- D. As a condition of ALF’s funding assistance under the Subgrantee Agreement, the MOA must construct the Downtown Branch and operate the Downtown Branch for a minimum of twelve (12) years. This Agreement sets forth the terms by which ALF will make annual funding donations in addition to the funding assistance under the Subgrantee Agreement.
- E. ALF has funding to make annual donations to the MOA to support its operation of the Downtown Branch in large part due to a bequest to ALF from Janet Cameron Goetz who made ALF the beneficiary of a charitable trust “for the sole purpose of maintaining a new public library within the boundaries of the Anchorage Original Townsite.” It is the intent of the parties to comply with the terms of the bequest.
- F. This Agreement sets forth the terms and conditions of that funding arrangement.

Incorporating the above recitals, the Parties agree as follows:

1. **Term.** The term of this Agreement shall be twelve (12) years (“Term”), commencing upon the MOA’s completion of its obligations under the Subgrantee Agreement, including but not limited to substantial completion of construction of the Downtown Branch.

2. **Annual Budget; Funding Amount.** On or before August 15th of each year of the Term, the MOA agrees to provide ALF with a draft budget for the Downtown Branch. ALF shall have not less than 30 days to review and comment on the draft budget. The Parties shall work in good faith to address any of ALF’s concerns related to the Downtown Budget. Once approved by ALF and the MOA Assembly, ALF agrees to provide up to Four Hundred Fifty Thousand Dollars (\$450,000) (each an “Annual Contribution Payment” and collectively the “Annual Contribution Payments”), subject to adjustment based on the CPI-U for the Anchorage area index. The Annual Contribution Payment shall be prorated for the first and last year of the Term if less than the full calendar year. ALF at any time may elect to make contributions in excess of the Annual Contribution Payment, in its sole discretion and which excess contribution may be conditioned upon separately negotiated terms. The Parties shall follow the same process as outlined above in this section for any midyear budget revisions.
3. **Funding Contingencies.** ALF’s obligation to pay the MOA the Annual Contribution Payment is contingent upon the occurrence of all of the following (“Funding Contingencies”):
 - a. **Construction.** Construction of the Downtown Library must be completed pursuant to the Subgrantee Agreement and the MOA shall not be in uncured default of the Subgrantee Agreement.
 - b. **MOA Obligations.** The MOA comply with all its obligations under this Agreement, including but not limited to the Funding Restrictions set forth in Section 4.
 - c. **Funding Sources.** ALF shall make the Annual Contribution Payments using a mix of restricted and unrestricted funds (“ALF Funds”). A portion of the Annual Contribution Payments will come from the Janet Cameron Goetz Charitable Trust, as reformed and restated (“Goetz Trust”), which requires the establishment of the Downtown Branch and its operation for at least 10 years. If the ALF Funds and funding streams experience catastrophic events, such as a stock market crash, or ALF does not receive the anticipated funding from the Goetz Trust, it shall not be required to fulfill its funding obligations under this Agreement until such time as it replenishes such revenue sources.
 - d. **Force Majure.** Time is of the essence with regard to this Agreement, however, neither party shall be responsible for a delay in its performance under this Agreement if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, pandemics, riots, strikes, lockouts or other industrial disturbances, or other events beyond the reasonable control of and without the fault or negligence of the claiming party (each a “Force Majure Event”), and provided the delayed party commences performance as soon as reasonably practicable after resolution of the Force Majure Event.

4. **Funding Restrictions.**

- a. **Uses.** The Annual Contribution Payments shall only be used for the continuous management and operation of the Downtown Branch in compliance with the terms of this Agreement and shall not be used to support other Municipal operations, including other library branches. The management and operation of the Downtown Branch includes, but is not limited to, operating expenses such as staff wages, building maintenance, inventory maintenance, supplies, special events, and regular programming. Notwithstanding the foregoing, if the Annual Contribution Payments are allocated to maintenance and repair, those expenses shall be for normal wear and tear and not on capital expenditures, unless previously consented to in writing by ALF in its sole discretion.
 - b. **Accounting.** The Annual Contribution Payments shall not be used for any other purpose except as set forth above. In order to ensure the Annual Contribution Payments are used in accordance with this Agreement, and the MOA will provide annual invoiced accounting of the operating expenses of the Downtown Branch and how much of the Annual Contribution Payments were used to support these expenses for the preceding year. Such accounting shall be provided to ALF no later than March 1st of each year of the Term. The invoiced accounting will include sufficient background and documentation to allow ALF to do its required diligence in ensuring it is properly disbursing and accounting for the funds it receives from the Goetz Trust and other restricted funding gifts. The MOA will also grant ALF reasonable access to all materials and records related to the operation of the Downtown Branch during the Term of this Agreement.
 - c. **Minimum Service Requirements.** The MOA must continually operate and maintain the Downtown Branch. It is the intent of the Parties that the Downtown Branch provide a comparable level of services as provided at other library branches, including operation of the Downtown Branch at least 32 hours per week. If the Annual Contribution Payment is insufficient for the MOA to meet the obligations and intent under this subsection (c) and the MOA does not allocate additional funding, then ALF and the Library Department staff shall work in good faith to determine what operational changes are acceptable to both parties to ensure continuous operation and maintenance of the Downtown Branch. Closures for Force Majeure Events are exceptions to operating requirements, provided that the MOA takes reasonable and prudent steps to recommence operations.
5. **Funding Only.** Notwithstanding other forms of participation that ALF may seek to engage in with regard to the Downtown Branch, this Agreement exclusively relates to the funding obligation described and nothing in this Agreement shall be construed to require or obligate ALF to operate, administer, or otherwise take any other actions or inactions with respect to the Downtown Branch, and nothing in this Agreement shall render ALF liable for any actions the MOA takes in operating the Downtown Branch.

6. **Taxes.** The MOA is solely responsible for any and all tax liability associated with the Annual Contribution Payments.
7. **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 thirty (30) 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 ninety (90) 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.
8. **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.
9. **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 Buyer or Seller 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 beyond the Subgrantee Agreement 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. 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.
- j. Waiver of Jury Trial. NO PARTY OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT, INCLUDING THROUGH CONSOLIDATION OF ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES; EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY CONSTITUTIONAL RIGHTS, AND SUBJECT TO NO EXCEPTIONS.
- 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.

- m. 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.
- n. 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.

[Signature Page to Follow]

Municipality of Anchorage

DATED: _____

By: _____

Its: _____

Anchorage Library Foundation

DATED: _____

By: _____

Its: _____

DRAFT