



## STAFF REPORT

<b>Report To:</b>	Board of Supervisors	<b>Meeting Date:</b>	August 1, 2019
<b>Staff Contact:</b>	Diane Baker and Todd Reese		
<b>Agenda Title:</b>	For Possible Action: Discussion and possible action regarding a Joint Operating Agreement between the Carson City Library, Carson City, Northern Nevada Development Authority (NNDA), and Adams Hub, LLC through which the Library will pay NNDA \$60,000 annually from the funds provided to the Library from the Hop and Mae Adams Foundation ("HMAF") for the creation and operation of a Business Retention and Expansion program. (Diane Baker, dbaker@carson.org and Todd Reese, treese@carson.org)		

**Staff Summary:** Through the Joint Operating Agreement, NNDA will develop, operate, and staff a Business Retention and Expansion Program ("Program") in cooperation with the Adams Hub for Innovation. The Library will pay NNDA \$60,000 annually from the funds provided to Library from HMAF to enable NNDA to fund a FTE to manage the Program. Separately, NNDA will lease space at the Adams Hub from Adams Hub, LLC and NNDA's lease payments, starting at \$2,000 per month, will support the Library's programming at the Adams Hub to provide support, assistance, and resources to local businesses. The initial term of the Joint Operating Agreement is through June 30, 2024, with automatic one-year extensions through June 30, 2039.

<b>Agenda Action:</b>	Formal Action / Motion	<b>Time Requested:</b> 10 minutes
-----------------------	------------------------	-----------------------------------

---

### **Proposed Motion**

I move to approve the agreement as presented.

### **Board's Strategic Goal**

Economic Development

### **Previous Action**

June 27, 2019 - The proposed Joint Operating Agreement was approved by the Carson City Library Board of Trustees.

### **Background/Issues & Analysis**

Under the existing donation agreement between HMAF and the Carson City Library, HMAF agreed to donate funds to the Library, and the Library agreed to fund two positions at the Adams Hub, an Adams Hub office manager and a position focused on business expansion and development. NNDA provides complementary services, that if done separately, will likely overlap with the Adams Hub positions. Therefore, the NNDA, Adams Hub, LLC, the Carson City Library, and Carson City have agreed to join forces to fund a Business Retention and Expansion Program. Under the agreements between the parties, NNDA will develop and operate the Program in cooperation with the Adams Hub for Innovation and the Library. Through the Program, NNDA will develop a tool box of resources for new businesses, identify businesses in the Sierra Region (Carson City, Douglas County, Lyon County, Mineral County, and Storey County) that may be able to make use of the resources, contact the businesses, and assist them with taking advantage of the various resources. Fifty

percent of the visits to businesses are required to be within Carson City. NNDA will have oversight of the program and report metrics back to the Library and Adams Hub, LLC. NNDA will supply one FTE to manage the Program, and the Library will pay NNDA \$60,000.00 annually, \$5,000 in advance of each month or \$15,000.00 in advance of each quarter, from the funds provided to Library from the HMAF to enable NNDA to fund the Program manager position. This will satisfy the Library's obligation to HMAF to supply a position focused on business expansion and development. The Library will continue Adams Hub services and programs to support business incubation and entrepreneur development including professional consultations, referrals, educational offerings and business information research and resources. The NewE program at the Carson City High School will continue with the new school year. Daily operation of Hub includes support of the incubator members, co-workers and drop-in clients. In conjunction with the Joint Operating Agreement, NNDA will be leasing space from Adams Hub, LLC at the Adams Hub, and NNDA's lease payments, starting at \$2,000 per month for the first year and increasing thereafter, will be directed to the Library's Adams Hub fund to support programming at the Adams Hub providing support, assistance, and resources to local businesses.

#### **Applicable Statute, Code, Policy, Rule or Regulation**

NRS Chapters 244 and 379

#### **Financial Information**

**Is there a fiscal impact?** Yes

**If yes, account name/number:** Business Development Fund / Professional Services Expense: 2326200-500309 (\$60,000). Business Development Fund / Lease Revenue: 2325080-463010 (\$24,000) from separate agreement between NNDA and Adams Hub, LLC for the lease of space at the Adams Hub.

**Is it currently budgeted?** Yes

**Explanation of Fiscal Impact:** Through the donation agreement with HMAF, the Library is obligated to use a portion of those funds to fund a business retention and expansion FTE for the Adams Hub. This joint operating agreement satisfies that obligation, directing \$60,000 of funds from the HMAF donation per year toward the FTE support. NNDA's lease payments will supply income to the Adams Hub account, beginning at \$24,000 per year (\$2,000 per month) in year one, and scheduled to increase by 3% per year thereafter. \$42,240 is currently budgeted in FY 20 for professional services - FY19 savings will be rolled forward during the first round of augmentations.

#### **Alternatives**

#### **Attachments:**

[19.06.10\\_Joint\\_Operating\\_Agreement.pdf](#)

[Executed Contract - Adams Hub \(1\).pdf](#)

#### **Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

Aye/Nay

2) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

## JOINT OPERATING AGREEMENT

This Agreement, dated this \_\_\_\_ day of \_\_\_\_\_, 2019, is entered into by and between Adams Hub, LLC, an Idaho LLC ("Adams Hub, LLC"); Northern Nevada Development Authority; a Nevada Non-Profit Cooperative Corporation ("NNDA"); Carson City, Nevada, a Consolidated Municipality ("City"); and the Carson City Library ("Library"). Adams Hub LLC, NNDA, City, and Library may be individually referred to as "Party" and collectively referred to as "Parties."

### RECITALS:

WHEREAS, City has authority under NRS Chapter 379 to establish, construct, and maintain a county library and has established the Library and appointed the Carson City Library Board of Trustees ("Trustees"); and

WHEREAS, under NRS Chapter 244 City may enter into contracts and under NRCP Chapter 379 the Trustees may receive and administer gifts, grants, and trusts created for the Library; and

WHEREAS, the Adams Hub for Innovation, which was founded and funded by the Hop and Mae Adams Foundation, and through a grant by the Foundation is operated by the Library, is a business incubator and business development organization that provides business development resources that include advisors, strategists, coaches, and business referrals along with educational events including various speaker series, workshops, and related gatherings; and

WHEREAS, the establishment and operation of a business retention and expansion program is part of the Library's obligation to the Foundation in operating the Adams Hub for Innovation; and

WHEREAS, NNDA is the State designated Regional Development Authority for the Sierra Region of Nevada which includes Carson City, Douglas, Lyon, Mineral and Storey Counties, and has been conducting business retention and expansion programs in the Sierra Region for the last 39 years; and

WHEREAS Adams Hub LLC and the Library desire to enter into an agreement with NNDA to operate a business retention and expansion program, and this agreement sets forth the understanding of the parties related to the operation of a business retention and expansion program by NNDA for Adams Hub LLC and Library;

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and other good and valuable consideration, the Parties do agree as follows:

## 1. Scope of Agreement.

### 1.1. Creation of Business Retention and Expansion Program.

1.1.1. Library agrees to pay NNDA \$60,000.00 annually, \$5,000 in advance of each month or \$15,000.00 in advance of each quarter, from the funds provided to Library from the Hop and Mae Adams Foundation (“HMAF”), to create and maintain a dedicated Business Retention and Expansion Program (“Program”). Library will allocate said HMAF funds to NNDA before expending the funds for other purposes in support of the Adams Hub for Innovation. In the event that the HMAF funds are insufficient to fund this payment, neither City nor Library shall be required to supplement the HMAF funds, nor shall City or Library be liable for any portion of the \$60,000 payment.

1.1.2. Under a separate agreement between the Adams Hub, LLC and NNDA, NNDA will lease space at the Adams Hub for Innovation and will pay an amount of rent specified by that lease agreement. Until such time as NNDA is notified otherwise by Adams Hub, LLC, the Parties agree that said rent payments shall be made out to “Adams Hub” and delivered to the Library Director. The rent payments will be used solely to operate and support the Adams Hub for Innovation.

1.1.3. NNDA will provide a dedicated employee (the Program Manager) to run the Program.

1.1.4. NNDA will further provide a full-time effort to the Program, which in NNDA’s discretion, may include assigning additional staff to the Program as needed. At NNDA’s discretion, it may also hire a new employee that will be cross trained to allow continuity of the Program.

1.1.5. All parties will use reasonable efforts to create a cooperative spirit in their joint effort.

1.1.6. Sections 1.2 and 1.3 set forth the Parties’ general agreements concerning the Program goals and operation. As an independent contractor, however, NNDA may accomplish the Program goals using its own methods and means. NNDA will not be subject to the supervision or control of the City, Library, or Adams Hub, LLC, except that NNDA must provide a report of the metrics and results, as required by section 1.4.

### 1.2. Program Development and Information.

1.2.1 Through the Program, NNDA will establish a toolbox of programs and resources for companies and businesses and their affected employees. Resources in the toolbox should include the services of the Adams Hub for Innovation, the Library, NNDA, Western Nevada College, and any other community resources that are available.

1.2.2. The Adams Hub for Innovation and the Library will be responsible for the information and language for their portions of the toolbox, and will provide the information and language to NNDA on or before June 30, 2019. The Adams Hub for Innovation and the Library will update their information and language in a prompt manner as services are modified or added.

1.2.3. NNDA will make information about the tools in the toolbox available on its website. NNDA will develop a toolbox page which will be uploaded to the Adams

Hub for Innovation and Library websites. All web pages will include, as applicable, cross-links to the NNDA, Adams Hub for Innovation, and Library websites.

1.2.4. NNDA or the Program Manager will also create an informational marketing brochure or packet that can be left at a company or business after each meeting. The brochure or packet should refer companies to the NNDA, Adams Hub for Innovation, and/or Library websites for more information.

1.2.5. The Program Manager and, in NNDA's discretion, other NNDA representatives, will receive in-depth training from the Adams Hub for Innovation and the Library on the programs at the Adams Hub For Innovation and the Library that will be promoted as part of the Program so that the Program Manager and NNDA's other representatives can speak knowledgeably about these programs.

### **1.3 Program Outreach.**

1.3.1. The Program Manager and NNDA will identify companies and businesses doing business in the Sierra Region that could benefit from the resources in the Program.

1.3.2. When such a company or business is identified, the Program Manager or NNDA should contact the company or business and, if warranted, set up a meeting or make other arrangements to offer assistance to the company or business in connecting the company or business to resources in the Sierra Region, or Northern Nevada generally.

1.3.3. The Program Manager or NNDA should inform company or business and their affected employees about the resources in the toolbox. It is understood by the Parties that increasing awareness of these programs will lead to the successful retention/expansion of companies and as such, the Program Manager or NNDA should encourage participation in the available programs.

1.3.4. Any companies that wish to further pursue Adams Hub for Innovation or Library programs should be put in direct contact with the Adams Hub for Innovation and/or the Library.

1.3.5. The Adams Hub for Innovation will continue to have sole discretion and full review of potential Adams Hub for Innovation clients seeking to take advantage of Adams Hub for Innovation programs.

1.3.6. NNDA and the Library will work with the various other library systems within the Sierra Region to promote the Adams Hub for Innovation as a connector for companies and businesses in the region. Adams Hub for Innovation and the Library will be the referral point for NNDA for inquiries regarding library systems in the Sierra Region.

1.3.7. At least 50 percent of the company or business visits should take place within Carson City.

1.3.8. Travel, mileage, per diem, and lodging costs will not be charged to the Adams Hub, LLC, the Adams Hub for Innovation, the Library, or the City.

### **1.4. Program Reporting.**

1.4.1. The Program Manager or NNDA should conduct a short survey with each company or business that is visited to gather information about companies doing business in the region.

1.4.2. The Program Manager or NNDA will track the following information on the Program:

- o the number of companies or businesses identified that are doing business within the Sierra Region;
- o the number of companies contacted by phone or email;
- o the number of company visitations (including a notation as to whether they are located in Carson City or elsewhere in the Sierra Region);
- o the number of referrals to a resource; and
- o the number of follow up meetings.

1.4.3. The Program Manager or other designated NNDA staff will compile the survey data and the tracking information and provide it to NNDA, Adams Hub, LLC, and the Library, via mail, email, or other appropriate means, in a monthly tracking report due on the 15th of each month for the previous month. The intent of the above is to satisfy the requirements of Business Retention portion of the grant given by the Hop & Mae Adams Foundation.

2. **Effective Date.** This Agreement becomes effective on June 1, 2019.

3. **Term.** This Agreement shall have an initial term lasting until June 30, 2024. After the initial term, the contract shall automatically renew for successive one-year terms until June 30, 2039.

4. **Termination.**

4.1. The Parties may mutually agree to terminate this Agreement, with or without cause, at any time.

4.2. In the event that any Party is unsatisfied with the performance of any other party as it relates to this Agreement, the Party must utilize the dispute resolution procedures in this Agreement. If the dispute resolution procedures are unable to produce an agreed upon resolution, any Party may terminate this Agreement by giving the other Parties six months prior written notice of its election to terminate this Agreement.

4.3. In the event that HMAF ceases to provide funds to the Library for the operation and support of the Adams Hub for Innovation, the Library's and City's obligations in this agreement shall terminate and Library and City shall be released from this Agreement. Library's and City's obligations shall be assumed by Adams Hub, LLC, and this Agreement shall continue between Adams Hub, LLC and NNDA, unless otherwise agreed by Adams Hub, LLC and NNDA.

5. **Dispute Resolution.** If at any time a dispute should arise under this Agreement, the dispute must be set forth in writing and will be subject to the following procedures:

5.1. The dispute will initially be sent to all parties under the notice provision below.

5.2. Upon receipt of notice of a dispute, the President and CEO of NNDA and the Library Director of the Library must meet within 14 calendar days to discuss the

dispute and identify a resolution plan. The resolution plan or notice of the failure to reach a resolution must be provided to all parties.

5.3. In the event that the President and CEO and Library Director fail to reach a resolution, the dispute will be referred to a committee consisting of the President and CEO of NNDA; the Executive Board Chairman of NNDA; Library Director of the Library; Managing Member of Adams Hub, LLC, and the Mayor of City, or the Mayor's designee. The committee must meet within 21 days of notice of the failure to reach a resolution under the prior step and attempt to reach a resolution. Notice of any resolution must be provided to all parties.

6. **Renegotiation.** The terms of this Agreement may be renegotiated any time after the initial term by giving the other Parties 30 days prior written notice of a request to renegotiate the terms.

7. **Public Records Requests Made to City or Library.** Pursuant to NRS 239.010, City or Library information or documents may be open to public inspection and copying. City or Library will have the duty to disclose particular information or documents, unless they are made confidential by law or a common law balancing of interest. Adams Hub, LLC or NNDA may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that the designating Party thereby agrees to indemnify and defend City or Library for honoring such a designation. The failure to so label any document that is released by City or Library shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

8. **Indemnification.** To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the other's right to participate, any other Party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying Party, its officers, employees and agents.

9. **Limited Liability.** City and Library do not waive and intend to assert any and all available NRS chapter 41 immunity in all cases. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Agreement. The contract liability of the Parties under this Agreement does not include punitive damages.

10. **Insurance.** NNDA and the Program Manager are independent contractors, not employees of City, Library, or Adams Hub, LLC. All parties must carry their own policies of insurance and pay all applicable taxes and fees. The Parties shall have no liability except as specifically provided in this Contract. The general liability insurance policy that NNDA is required to maintain under the lease between NNDA and Adams Hub, LLC, must by endorsement name the Carson City Library and Carson City, Nevada, and their officers, employees and immune contractors as additional insureds for all liability arising from this Agreement. NNDA must submit an Additional Insured

Endorsement (CG20 10 or C20 26) signed by an authorized insurance company representative to Carson City Purchasing and Contracts.

11. **Breach.** Failure of any Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties are not exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages and reasonable attorney's fees and costs.

12. **Waiver.** No waiver of any right or remedy shall be effective unless in writing. A waiver of any right or any party's failure to insist on strict compliance with the terms of this Agreement shall not operate as a waiver of any other right or remedy.

13. **Remedies.** Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages. Except when using the dispute resolution procedures detailed above, in any dispute or lawsuit between the parties in connection with this Agreement, the prevailing party will be entitled to recover its' reasonable attorney fees and costs in such proceeding from the other party. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees under this Agreement or by the court, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.

14. **Notices.** All notices or other communications required or permitted to be given under this Agreement must be in writing and shall be deemed to have been duly given if delivered personally by hand, by email with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Parties at the address set forth below:

**FOR CITY AND LIBRARY:**

Library Director  
Carson City Library  
900 North Roop St.  
Carson City, NV 89701  
Tel: (775) 887-2244

**FOR ADAMS HUB, LLC:**

Steve Neighbors  
Managing Member  
Adams Hub, LLC  
111 W Proctor St,  
Carson City, NV 89703  
Tel: (208) 562-4100

**FOR NNDA:**

President and CEO  
Northern Nevada Development Authority  
704 W. Nye Lane, Suite 201,  
Carson City, NV 89703  
Tel: (775) 883-4413

Any Party may from time to time, by notice in writing served upon the other Parties as described above, designate a different mailing address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

**15. Entire Agreement; Modification.** This Agreement, together with the Exhibits, constitutes the entire agreement of the Parties and is the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. The term "agreement" as used herein shall be deemed to include all Exhibits. All Exhibits attached hereto are hereby incorporated by reference and made a part of this Agreement. Where the terms of any Exhibits conflict with the provisions of this Agreement, this Agreement shall govern. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement is binding upon the Parties unless the same is in writing and signed by the Parties.

**16. Severability.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if the provision did not exist, the provisions will not be construed to render any other provision or provisions of this Agreement unenforceable, and the remaining terms of this Agreement will continue in full force and effect.

**17. Nevada Law; Jurisdiction.** The law of the State of Nevada applies in interpreting and construing this Agreement. Except for the dispute resolution procedures detailed above, the Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State Of Nevada in Carson City.

**18. Ownership of Property.** This Agreement does not contemplate a transfer of any real or personal property or ownership interest between the Parties. Any and all real and personal property presently owned by either Party will remain owned by that Party's upon completion or termination of this Agreement.

**19. No Third-Party Beneficiary.** It is specifically agreed between the Parties that none of the provisions this Agreement create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this Agreement any right to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.

**20. Records.** Each Party agrees to keep and maintain, under general accepted accounting principles, full, true and complete records and documents pertaining to this Agreement and to present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained.

21. **Separate Entities; Independent Contractor.** The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, to convey ownership of any asset, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of another Party. Each Party is and continues to be separate and distinct from any other Party. NNDA is an independent contractor that agrees to perform the services herein according to its own methods and without subjection to the supervision or control of the City, Library, or Adams Hub, LLC, except as to the results, and not as to the means by which the services are accomplished. NNDA shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Neither NNDA or Adams Hub, LLC, nor any of their employees, agents, or representatives, shall be considered employees, agents, or representatives of City or Library.

22. **Successors; Assignment.** This Agreement shall bind the heirs, executors, administrators, successors, and assigns of the respective parties. No Party may assign, transfer or delegate any rights, obligations, or duties under this Agreement without the prior written consent of the other Parties.

23. **Authority to Sign.** The Parties represent and warrant that the person executing this Agreement on behalf of each respective Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth herein.

24. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

25. **Force Majeure.** No Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below.

**CITY AND LIBRARY:**

---

Diane Baker, Interim Library Director

---

Date

---

Robert Crowell, Mayor

---

Date

Approved as to form:

---

Deputy District Attorney

---

Date

**NNDA:**

---

Rob Hooper, President and CEO

---

Date

**ADAMS HUB, LLC:**

---

Steve Neighbors, Managing Member

---

Date

**DONATION AGREEMENT**

**BETWEEN THE HOP & MAE ADAMS FOUNDATION, CARSON INCUBATOR 1, L.L.C.,  
AND THE CARSON CITY LIBRARY BOARD OF TRUSTEES,**

**FOR THE PURPOSE OF A SPECIAL LIBRARY SERVICES PROGRAM FOR  
ECONOMIC DEVELOPMENT IN CARSON CITY**

A handwritten signature in blue ink, appearing to read "J. F. S." followed by a stylized surname.

## TABLE OF CONTENTS

1. DEFINITIONS .....	4
2. RECITALS .....	5
3. PURPOSE .....	5
4. TERM .....	5
5. SCOPE AND CONSIDERATION .....	6
6. RESTRICTED USE FOR LEASE .....	6
7. STATUS OF INDEPENDENT CONTRACTOR .....	6
8. CERTAIN DUTIES OF THE LIBRARY .....	6
9. CERTAIN DUTIES OF THE HMAF & THE INCUBATOR .....	8
10. INDEMNIFICATION .....	8
11. INSURANCE .....	9
12. DAMAGE AND RESTORATION .....	9
13. ALTERATIONS AND IMPROVEMENTS .....	10
14. OWNERSHIP OF IMPROVEMENTS .....	11
15. RIGHT OF CANCELLATION .....	11
16. VACATING THE PREMISES .....	11
17. THIRD PARTY RIGHTS .....	12
18. EXCLUSIVE .....	12
19. NOTICES .....	12
20. MEDIATION .....	12
21. GOVERNING LAW .....	13
22. SOPHISTICATED PARTIES AND DRAFTING PRESUMPTION .....	13
23. SEVERABILITY .....	13



24. ENTIRE AGREEMENT .....	13
25. TAXES AND OTHER GOVERNMENTAL OBLIGATIONS.....	13
26. PUBLIC RECORDS.....	13
27. PROPER AUTHORITY AND BINDING EFFECT .....	14
28. ACKNOWLEDGEMENT AND EXECUTION.....	14

A handwritten signature in blue ink, appearing to read "J. J. [Signature]".

**DONATION AGREEMENT**

**BETWEEN THE HOP & MAE ADAMS FOUNDATION, CARSON INCUBATOR 1, L.L.C.,  
AND THE CARSON CITY LIBRARY BOARD OF TRUSTEES,  
FOR THE PURPOSE OF A SPECIAL LIBRARY SERVICES PROGRAM FOR  
ECONOMIC DEVELOPMENT IN CARSON CITY**

This Donation Agreement is made and entered into this 1<sup>st</sup> day of May, 2018, by and between the Hop & Mae Adams Foundation, Carson Incubator 1, LLC, and the Carson City Library Board of Trustees for the purpose of a program for Economic Development in Carson City.

**WITNESSETH****1. DEFINITIONS**

Capitalized terms used throughout this agreement have the meanings given to them in this section unless otherwise specified.

- 1.1 **Adams Hub** (also referred to as the "Hub"): The property, building, furniture, and fixtures located at, on, or within, 111 W. Proctor Street, in Carson City, Nevada.
- 1.2 **City**: The Consolidated Municipality of Carson City.
- 1.3 **Director**: The Carson City Library Director
- 1.4 **Economic Development**: A special library services program, facilitated by the Carson City Library, of business incubation, entrepreneur development, and business retention programs at the Adams Hub in Carson City.
- 1.5 **HMAF**: The Hop & Mae Adams Foundation: 5598 North Eagle Road #102, Boise, Idaho, 83713.
- 1.6 **Incubator**: Carson Incubator 1, LLC, an entity under the umbrella of the HMAF and the fee title owner of 111 W. Proctor Street, Carson City, Nevada.
- 1.7 **Library**: The Carson City Library, and Carson City Library employees, agents, and volunteers working with or under the supervision of the Trustees or the Director.
- 1.8 **Trustees**: The Carson City Library Board of Trustees, the governing body of the Carson City Library.



## 2. RECITALS

Whereas the Carson City Library Board of Trustees is authorized by NRS Chapter 379 to enter into a lease agreement respecting real and personal property for Carson City Library purposes;

Whereas NRS Chapter 379 also authorizes the Trustees to receive gifts and establish a special fund for said gifts;

Whereas NRS Chapter 379 additionally authorizes the money in the gift fund to be used for special library services;

Whereas the HMAF is a charitable foundation that provides grants to support a wide variety of important causes in and around Carson City, Nevada;

Whereas the Incubator is the owner of the property known as the Adams Hub;

Whereas the HMAF and the Incubator in conjunction with each other wish to support a program facilitated through the Library for Economic Development in Carson City;

Whereas to support the program for Economic Development in Carson City, the HMAF has committed to donating \$200,000 per year for a period of three years; and, the Incubator has committed to donating a lease valued at \$176,190 per year for a period of three years to the Trustees for use by the Library;

Whereas as the program for Economic Development is in line with the Library's mission to educate the citizens in Carson City, as it is the intent of the program to educate and support startup businesses, entrepreneurs, consultants, and freelancers in the challenging work of creating and building a new company;

Now therefore, the Trustees therefore accept the donations to support the program for Economic Development in Carson City; and

In consideration of the above, the parties agree to the following:

## 3. PURPOSE

The Trustees acknowledge and accept the generous donations of the HMAF and the Incubator to enable the Library to carry out a special library program for Economic Development in Carson City. This agreement serves to document the intentions and the rights and responsibilities of the parties.

## 4. TERM

This agreement, upon execution, is effective for a period of three years, unless sooner terminated pursuant to the terms within the document.



## 5. SCOPE AND CONSIDERATION

**5.1** During the term of this agreement the Hub will be leased for use by the Library to operate and manage all parts of the Hub, as the Library deems appropriate, and to perform any act deemed necessary or desirable for the operation and management of the Hub so long as it is for the purpose of Economic Development. The lease to use the Hub, with an annual value of \$176,190, is donated to the Library by the Incubator for the three-year term of this agreement.

**5.2** The HMAF will also provide an annual donation to the Library of \$200,000 per year for three years, for a total of \$600,000 to further the program for Economic Development. Funds not already allocated for operating expenses for the subsequent fiscal year may be used to gain matching funds or grants for the improvement or enhancement of the Economic Development efforts. Funds allocated for operating expenses for the subsequent fiscal year may be used as in-kind matches for grants for the improvement or enhancement of the Economic Development efforts. The first payment of \$200,000 will be provided within 15 days of the execution of this agreement, and each subsequent payment of \$200,000 will be provided within 15 days of the anniversary date of this agreement.

**5.3** In exchange, the Library agrees to abide by the purpose for which the donations are intended, and be responsible for the operation and management of all parts of the Adams Hub, in the Library's program for Economic Development in Carson City.

## 6. RESTRICTED USE FOR LEASE

It is understood and agreed that the Library's right to occupy and operate the Hub, as granted herein, shall continue only so long as the Library is in compliance with the terms of this agreement.

## 7. STATUS OF INDEPENDENT CONTRACTOR

The parties agree that each are fulfilling their obligations under this agreement as an independent contractor, and as such, is not an agent or employee of the other party. Additionally, nothing contained in this agreement shall be deemed or construed to create a legal partnership, nor joint venture, nor to create relationships of an employer-employee or principal-agent.

## 8. CERTAIN DUTIES OF THE LIBRARY

The Library shall, for the purpose of Economic Development:

- 8.1** Operate, manage, and maintain the Hub in a safe and efficient manner, as a public facility.
- 8.2** Employ such staff as necessary to operate and manage the Hub in an efficient, professional and orderly manner.
- 8.3** Establish rules applicable to Hub occupants, guests, and attendees, and enforce the same.

A handwritten signature in blue ink, appearing to read "J. W. [Signature]".

- 8.4 Rent, at its discretion, the offices inside the Hub to third parties.
- 8.5 Establish all fees, rents, and charges for the use of or services provided in the Hub.
- 8.6 Collect those fees and rents at its discretion, and reinvest any revenue collected into Economic Development.
- 8.7 Operate the Hub on the Library's own credit and hold harmless the HMAF and the Incubator from any and all claims, demands or liability on account thereof.
- 8.8 Furnish, without cost to the HMAF, additional equipment as necessary for the suitable operation of the Hub. The HMAF and the Incubator shall not be responsible for any debts incurred by the Library in the performance of the terms agreed upon herein.
- 8.9 Assume full responsibility and expenses for electric, gas, water, utilities, sewer, garbage, telephone service and repair, fire system monitoring, and intrusion alarm monitoring and repair, and internet.
- 8.10 Provide, at its expense, maintenance according to the triple-net commercial lease standards, except as otherwise provided in section 9.2 and after the requirements of sections 8.11 and 9.1 are completed.
- 8.11 Hire a person to conduct a thorough inspection of the Hub to inform the Incubator and the HMAF of any immediate or deferred maintenance issues within 30 day of the execution of this agreement.
- 8.12 Upon termination or expiration of this agreement, surrender the Hub in as good condition as when received, ordinary wear and tear excepted.
- 8.13 Meet with the HMAF, at least once annually, to review compliance with agreement.
- 8.14 Agree to retain HMAF as a tenant of the Hub subject to the standard rent and standard incubator rules established by the City.
- 8.15 Agree to retain the Carson City Arts and Culture Director as a tenant of the Hub in the studio space in the rear of the Hub.
- 8.16 Agree to use the Adams Hub name during the term of this agreement, subject to the indemnification in accordance with section 10 of this agreement.
- 8.17 Abide by all other duties and responsibilities in this agreement that are not specifically listed in this section.

A handwritten signature in blue ink, appearing to read "ewg", is located in the bottom right corner of the page.

## 9. CERTAIN DUTIES OF THE HMAF AND THE INCUBATOR

The HMAF and the Incubator, jointly and severally shall:

- 9.1 Repair any immediate and deferred maintenance issues identified by the inspection noted in section 8.11, within 30 days for repairs under \$5,000, and 60 days for repairs over \$5,000.
- 9.2 Provide at its sole expense proper and reasonable maintenance and repair of the roof, foundation; building exterior; mainline plumbing; and the HVAC (heating, ventilation and air conditioning) system.
- 9.3 Allow the Library to use the Adams Hub name for the purpose of Economic Development, subject to the indemnification provisions in section 10, during the term of this agreement.
- 9.4 Allow the Library to rent the office space inside the Adams Hub at its discretion for the purpose of Economic Development. This includes allowing the spaces to be rented, at its discretion, to tenants who are fulfilling other purposes, so long as the offices used for other purposes are rented at fair market value and the rents collected are reinvested into the overall purpose of Economic Development.  
Space may also be rented for joint purposes (partial Economic Development and partial other purposes) and be considered as fulfilling the purpose of Economic Development at the Library's discretion so long as any rent collected at the Library's discretion is reinvested into the overall purpose of Economic Development.
- 9.5 Abide by all other duties and responsibilities in this agreement that are not specifically listed in this section.
- 9.6 Meet with the Director, at least once annually, to review compliance with the agreement.

## 10. INDEMNIFICATION

10.1 The HMAF and the Incubator expressly assume liability for and agree at their own expense, to indemnify, defend with counsel acceptable to the Trustees (which acceptance will not be unreasonably withheld), and hold harmless, the Library and City employees, officers, officials, agents, and volunteers from, and against, any, and all: liability, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) of every nature, whether actual, alleged or threatened, arising out of or in connection with HMAF's and/or the Incubator's ownership, possession, use, operation, and/or management of the Hub.

10.2 The Trustees agree, to the extent permitted by law and subject to the maximum liability and provisions of NRS chapter 41, to indemnify, defend with counsel acceptable to HMAF (which acceptance will not be unreasonably withheld) and hold harmless HMAF and



the Incubator as well as each respective entities' employees, officers, managers, trustees, agents and volunteers from any and all claims and damages of any and all sort, where such claims or damages whether actual, alleged, or threatened, arising out of or in connection with the Library and/or City in its possession, use, operation and/or management of Hub.

## 11. INSURANCE

The HMAF and the Incubator have provided the value of the Hub, including personal property located within it, to the Library.

**11.1** The Trustees will, at the board's own cost and expense, maintain Commercial General Liability Insurance written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) including but not limited to bodily injury and property damage insurance for third parties with a limit of not less than \$1,000,000 each occurrence. The Trustees will list the HMAF and the Incubator as additional insureds under its Commercial General Liability insurance on its policy with respect to liability arising out of the ownership, maintenance or use of the premises leased to the Library.

**11.2** The Trustees will also maintain Commercial Property Insurance covering the building, fixtures, and equipment and contents (personal property), based on the current, estimated replacement cost value of such property. Coverage shall, at minimum, cover the perils insured under the ISO special class of loss form CP 10 30. The value of the Hub is approximately \$2,000,000 with approximately \$100,000 of personal property inside, including furniture and fixtures. The Trustees may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this Commercial Property Insurance. The Trustees may, at its option, purchase insurance to cover its own personal property.

**11.3** The Incubator shall be included as an insured with the applicable loss payable endorsement under the commercial property insurance with respect to its interest in such property insured.

**11.4** The Trustees shall also maintain boiler and machinery/equipment breakdown insurance covering the building, fixtures, equipment, tenant improvements and betterments, and the Library's personal property for loss or damage caused by the explosion of steam boilers or equipment breakdown.

**11.5** The Trustees, the Incubator, and the HMAF hereby waive any recovery of damages against each other (including their employees, officers, directors, agents, or representatives) for loss or damage to the building, tenant improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance required above.

**11.6** All such coverage to be provided by insurance carriers must be currently rated by A.M. Best as "A-VII" or better.



## **12. DAMAGE AND RESTORATION**

### **12.1 Total Destruction:**

If the buildings or other improvements on the premises licensed under this agreement or the personal property should be totally destroyed (i.e., damage in excess of partial destruction as defined in Section 11.2) by fire or other casualty or a force majeure occurrence, the Trustees shall have the option, to be exercised in writing within sixty (60) days of such destruction, to either (a) terminate this agreement in which event the parties shall have no further obligations hereunder, or (b) elect to repair and restore the Hub, subject to the availability of insurance proceeds to restore the building, improvements and personal property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and personal property existed prior to their total destruction.

### **12.2 Partial Destruction:**

If the buildings or other improvements in the Hub licensed for use under this agreement or the personal property should be partially damaged by fire or other casualty or a force majeure event, then the Trustees shall, subject to the availability of insurance proceeds (it being understood and acknowledged that the Trustees shall have no obligation to repair or restore any portion of the Hub if insurance proceeds are not available to fully restore the same), restore the buildings, improvements and personal property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and personal property existed prior to their damage or destruction. For purposes of this section, the term "partially damaged" means: (a) damage to the extent of one third or less of the value of the buildings, improvements and personal property at the Hub. If the insurance proceeds made available to the Trustees are not sufficient to fully restore the premises, then the Trustees may terminate this agreement upon written notice to the HMAF and the Incubator in which event the parties shall have no further liability hereunder. In addition, notwithstanding anything in this section to the contrary, if, as a result of the partial destruction of the premises, the Trustees are unable to make full and productive economic use of the Hub and, in the Trustees' reasonable determination, the full and complete restoration of the Hub will take in excess of one hundred eighty (180) days, then the Trustees may, upon written notice to the HMAF and the Incubator, within sixty (60) days after the partial destruction occurs, terminate this agreement, in which event the parties shall have no further obligations hereunder.

## **13. ALTERATIONS AND IMPROVEMENTS**

**13.1** The Trustees have inspected the Hub and hereby accepts the Hub in its present Condition subject to the provisions in 8.11 and 9.1.

**13.2** In the event that the Trustees wish to make improvements to the Hub, the board may do so after the written approval of the HMAF and the Incubator.



13.3 The Trustees or the board's designee shall keep the premises and said improvements free and clear of liens for labor and materials and shall hold the HMAF and the Incubator harmless from any responsibility in respect thereto.

**14. OWNERSHIP OF IMPROVEMENTS**

14.1 All temporary improvements, furnishings, and equipment purchased, constructed or installed on the premises by the Trustees shall be the personal property of the Trustees and the Trustees shall have legal title thereto during the term of this agreement.

14.2 Upon the expiration, termination, or default of this agreement, title to all permanent improvements constructed on the premises shall vest in the HMAF and the Incubator.

14.3 Title to all temporary improvements such as supplies, furnishings, inventories, and removable equipment and other personal property not originally provided by the HMAF and the Incubator shall remain the Trustees' and the Trustees shall have the right to remove such items, so long as removal does not damage the Hub.

14.4 The Trustees shall consider any reasonable offer from the HMAF and the Incubator to buy above items from the Trustees upon expiration or termination of this agreement.

**15. RIGHT OF CANCELLATION**

15.1 The Trustees may exercise a unilateral termination right of this agreement at any time for any reason during the term of this agreement. If such termination is elected, it will be considered a no-fault termination. However, the Trustees will refund the prorated portion of the \$200,000 grant already paid for the year to the HMAF. If the Trustees elect to terminate the agreement under this provision, it will issue a written notice of intent to vacate the premises with not less than thirty days' notice to the HMAF and the Incubator.

15.2 If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party notice of such Cause. If the Cause is remedied within thirty days, the notice shall be null and void.

15.3 If such Cause is not remedied within the specified period, the party giving notice shall have the right to terminate the agreement upon expiration of such remedy period. The rights of termination referred to in this agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party at law or in equity.

**16. VACATING THE PREMISES**

16.1 In the event of the termination of this agreement for any reason other than expiration, the Library shall peaceably vacate the Hub within such time as may be specified in the written notice to vacate, except in cases where continued presence of the Library would cause



immediate injury or damage to the Library or other persons, in which case vacation may be immediate.

**16.2** Upon the expiration or earlier termination of this agreement, the Trustees shall return the real and personal property located at the Hub in the same or better condition, excepting normal wear and tear, than when it was received by the Trustees. The HMAF and the Incubator agree to have the Hub and all personal property, fixtures, and equipment located within the Hub appraised at the time this agreement is executed and to supply the Trustees with a schedule and current value of the same.

### **17. THIRD PARTY RIGHTS**

This Agreement is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any person not a party hereto.

### **18. EXCLUSIVE**

This is an exclusive agreement between the Trustees and Licensee during the term of the agreement.

### **19. NOTICES**

Except as otherwise specified, all notices under this Agreement shall be in writing.

*HMAF & INCUBATOR*  
Notice to Licensee shall be addressed to:

Steve Neighbors, Co-Trustee  
Hop & Mae Adams Foundation  
5598 North Eagle Road #102  
Boise, Idaho, 83713

Notice to Trustees shall be addressed to:

Library Board of Trustees  
Attention: Sena Loyd, Library Director  
900 N. Roop Street  
Carson City, Nevada, 89701

### **20. MEDIATION**

The parties hereto shall use their best efforts to settle any dispute, claim, question, or disagreement arising from or relating to this agreement or breach thereof. Any dispute, claim, question, or disagreement that is unable to be resolved by following the procedures outlined in this agreement shall, agree to meet and confer regarding the dispute with the following people in attendance: the Library Director, HMAF Co-Trustee Steve Neighbors, and the appropriate Deputy District Attorney for Carson City. Should the issue remain unresolved, the parties agree to submit to non-binding mediation before pursuing any remedies in a court of law.

**21. GOVERNING LAW**

This agreement shall be governed, interpreted and construed in accordance with the laws of the State of Nevada. The parties agree and consent to venue in the First Judicial District Court in Carson City, Nevada.

**22. SOPHISTICATED PARTIES AND DRAFTING PRESUMPTION**

The parties agree that each has had their respective counsel review this agreement and are sophisticated entities, and as such this agreement shall be construed as if it was jointly drafted.

**23. SEVERABILITY**

If any provision contained in this agreement is held to be invalid, void, or unenforceable by a court of law or in equity, the provisions of this agreement not adjudicated as such will remain in full force and effect. The non-enforceability of any such provision shall not be held to render any other provision or provisions of this agreement unenforceable.

**24. ENTIRE AGREEMENT**

This agreement and any exhibits specifically recited herein constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, and discussions, that may have been made in connection with this agreement. Unless an integrated attachment to this agreement specifically displays a mutual intent to amend a particular part of this agreement, general conflicts in language between any such attachment and this agreement shall be construed consistent with the terms of this agreement.

**25. TAXES AND OTHER GOVERNMENT OBLIGATIONS:**

All parties to this contract agree that they are solely responsible for the payment of any federal, state, or local, taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court incident to their respective duties under this agreement.

**26. PUBLIC RECORDS:**

Pursuant to NRS 239.010, information or documents received from the HMAF or the Incubator as it relates to this transaction may be open to public inspection and copying. The Trustees will have the duty to disclose such information or documents received from the HMAF

A handwritten signature in blue ink, appearing to read "JES/J".

or the Incubator unless a particular record is made confidential by law or a common law balancing of interests outweighs the strong public interest in disclosure of the information. The HMAF or the Incubator may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that the HMAF and the Incubator agree to indemnify and defend the Trustees for honoring such a designation. The failure to so label any document that is released by the Trustees shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

## 27. PROPER AUTHORITY AND BINDING EFFECT

The parties hereto represent and warrant that the person executing this agreement on behalf of each party has the full power and authority to do so. This agreement is binding upon the Trustees, The HMAF, the Incubator and their respective successors.

## 28. ACKNOWLEDGMENT AND EXECUTION

This agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one agreement. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

IN WITNESS WHEREOF, the parties hereto have set their hands and subscribed their signatures as of the date and year indicated.

### ORIGINATING DEPARTMENT

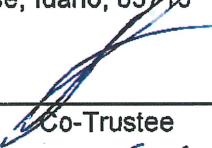
Carson City Library

Sena Loyd, Director  
Carson City Library

By:   
Director

Dated: 5/7/18

Hop & Mae Adams Foundation  
Steve Neighbors, Co-Trustee  
Hop & Mae Adams Foundation  
5598 North Eagle Road #102  
Boise, Idaho, 83713

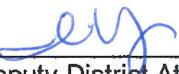
By:   
Co-Trustee

Dated: 5/7/18

### APPROVAL AS TO FORM

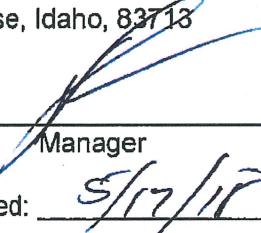
Carson City District Attorney

By: Iris Yowell  
Carson City District Attorney's Office

By:   
Deputy District Attorney

Dated: 5-9-18

Carson Incubator, LLC  
Steve Neighbors, Manager  
5598 North Eagle Road  
Suite #102  
Boise, Idaho, 83713

By:   
Manager

Dated: 5/7/18

**CONTRACT ACCEPTANCE AND EXECUTION:**

The Carson City Library Board of Trustees for Carson City, Nevada at their publicly noticed meeting of May 3 approved the acceptance of the attached Contract hereinbefore identified as CONTRACT No. \_\_\_\_\_. Further, the Trustees authorize the Chair to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY LIBRARY BOARD OF TRUSTEES

By: JEREMEY HAYS, TRUSTEES CHAIR

DATED this 11<sup>th</sup> day of May, 2018.

