

**LATE MATERIAL**

Item#: 19a

Meeting Date: 05-03-18

**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**

## 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

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ECONOMIC DEVELOPMENT IN CARSON CITY**

This Donation Agreement is made and entered into this \_\_\_\_ 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. The \$200,000 per year may also be used to gain matching funds or 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.
- 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.

## **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 (~~"Indemnitees"~~) from, and against, any, and all: liability, ~~loss,~~ 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) (~~collectively "Liability"~~) of every nature, whether actual, alleged or threatened, arising out of or in connection with ~~its~~ 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, ~~and~~ defend with counsel acceptable to HMAF (which acceptance will not be unreasonably withheld) and hold harmless the 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 ~~are caused as a result of~~ 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 value of the Hub is approximately \$2,000,000 with approximately \$100,000 of personal property inside, including furniture and fixtures.~~

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.

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 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: \_\_\_\_\_

**APPROVAL AS TO FORM  
Carson City District Attorney**

By: Iris Yowell  
Carson City District Attorney's Office

By: \_\_\_\_\_  
Deputy District Attorney

Dated: \_\_\_\_\_

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

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

By: \_\_\_\_\_  
Co-Trustee

By: \_\_\_\_\_  
Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**CONTRACT ACCEPTANCE AND EXECUTION:**

The Carson City Library Board of Trustees for Carson City, Nevada at their publicly noticed meeting of \_\_\_\_\_ 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: \_\_\_\_\_  
JEREMY HAYS, TRUSTEES CHAIR

DATED this \_\_\_ day of \_\_\_\_\_, 2018.