

City of Seward, NE
Tuesday, September 1, 2015
Regular Session

Item G4

**CONSIDERATION OF AN AGREEMENT WITH THE
LIBRARY BOARD AND SEWARD LIBRARY FOUNDATION -
Becky Baker**

Administrative Report: Following presentation and review, a motion to approve the agreement would be in order.

Staff Contact:

AGREEMENT BETWEEN THE CITY OF SEWARD,
LIBRARY BOARD OF SEWARD NEBRASKA,
AND
THE SEWARD LIBRARY FOUNDATION

THIS AGREEMENT is entered into by and between the City of Seward, hereinafter referred to as “City,” doing business as Seward Memorial Library, hereinafter referred to as “Library” and the Seward Library Foundation, hereinafter referred to as “Foundation” as of the date of the Library’s execution below.

I.

The Library Board is an administrative board charged with overseeing the public library as designated in the City of Seward Municipal Code.

II.

The Foundation is a non-profit Nebraska corporation designated as tax exempt under 501(c)(3) of the Internal Revenue Code of 1986, and is organized for the purpose of soliciting and receiving gifts, bequests, grants and devises of property for the use and benefit of Seward Memorial Library consistent with its Articles of Incorporation as amended from time to time.

III.

Library and Foundation are desirous of setting forth in this Agreement the mutual responsibilities and understandings of the two organizations.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the Library and the Foundation do agree as follows:

1. Foundation’s Responsibilities, including but not limited to:
 - a. Library Programs/Services/Building Support. The Foundation may assist the Library by providing funds for the management, maintenance, and support of the various library programs and/or services established by the Library as well as for building and grounds maintenance and improvements that may arise from time to time.
 - b. Fundraising. The Foundation will conduct periodic fund drives, both general and project specific, for the purpose of obtaining charitable donations to be utilized in the provision of the Library’s programs and/or services within the Library’s designated area and in accordance with the Library’s mission and goals. The funds so raised may be utilized directly by the Foundation for these purposes or may be transferred to the Library, as from time to time may be determined by the Foundation, but in any event all funds so solicited and received shall be initially accepted in the name of the Foundation and the solicitations shall be conducted in the name of the Foundation. The name of the City of Seward shall not be used for the purpose of such solicitations and no prospective donor shall be advised that any such donation is being made to the City of Seward. Notwithstanding anything to the contrary contained herein, it is agreed that the Foundation is entitled to use the Foundation’s

name for the purpose of such solicitations and to advise prospective donors that such donation is being made to the Foundation.

- c. **Other Duties.** When the Library and Foundation mutually determine in writing that it is necessary and appropriate, the Foundation shall act as a conduit on behalf of the Library, with the approval of both parties, for contracting with other agencies of government, obtaining grants, or taking other actions in which it is necessary that an organization with a 501(c)(3) designation act as contractor, grantee, or otherwise. It is understood and agreed that any grant so submitted shall be in the name of the Foundation.

The Foundation may sign contracts for projects they are funding at the Library, with written consent from the Library Board. The Library Board may sign contracts for projects the Foundation is funding, with written consent from the Foundation.

- d. **Reports.** The Foundation shall provide the Library with its ~~annual audits~~ **Profit & Loss Statements** when requested by the Library in writing.

2. Library's Responsibilities, including but not limited to:

- a. **Meeting Space.** The Library shall provide space for meetings of the Foundation Board of Directors and for City meetings upon request.
- b. **Promotion.** The Library shall make the Library available to promote and/or advertise Foundation events, meetings, and/or products according to the extent allowed in the City of Seward Municipal Code and other governing law. The Library shall provide a link to the Foundation's web site from the Library's web site and may maintain the actual web site of the Foundation upon agreement of both parties.
- c. **Proposals.** The Library shall, on an as needed basis, provide proposals for funding consideration that meet the Foundation's guidelines and/or strategic plan. The Library shall also provide general advice and support to the Foundation.
- d. **Use of Funds.** The Library shall use funds raised by the Foundation to supplement government funding and not supplant government funding of the Library and use funds raised by the Foundation only for the purposes for which the funds were raised and given to the Library, including using any "restricted funds" for their intended purposes, with such limitations as provided by the City of Seward Municipal Code and other governing law.
- e. **Reports.** The Library shall provide the Foundation with an accounting report and/or invoices detailing the use of funds given to the Library by the Foundation at such times as are necessary and reasonably requested by the Foundation in writing.

- f. Meetings. The Library will have representatives at Department Head meetings, City Council meetings (when necessary), and City retreats.
 - g. Website. The Library is responsible for maintaining and updating the City's website.
3. City's Responsibilities, including but not limited to:
- a. Library Budget. The City of Seward approves the final budget for the Library as submitted by the Board. This budget includes but is not limited to general maintenance funds for the building, general program funds, computer replacements, staff, materials, and other expenses necessary for the operation of the Library.
 - b. Personnel. The City is the final authority for all hiring of Library staff and maintains authority over all issues related to personnel management. Library staff is expected to adhere to the policies and procedures set out in the City personnel manual and will be compensated in the same manner as other City employees.
 - c. Accounting and Payroll Services. The City regularly provides financial statements of the Library's transactions and handles all matters related to Library employee payroll and retains equipment and inventory lists.
 - d. Maintenance. The City is responsible for snow removal from the grounds, general maintenance of the grounds, and provides a janitor (shared by several City departments) for interior maintenance.
 - e. Meetings. City staff may participate in Library Board or Seward Library Foundation meetings.
4. Foundation Expenses. All correspondence of the Foundation shall be on Foundation letterhead, and the Foundation shall pay all direct costs of paper, printing, postage, and copying; provided, however, the Foundation may utilize the Library's copying equipment subject to the reimbursement by the Foundation for all accrued costs.
5. No Compensation. It is understood and agreed by and between the Library and the Foundation that the purpose of this Agreement is to further the mutual goals of the Foundation and the Library by improving the provision of library programs and/or services within the Library's designated area and neither party shall provide monetary compensation to the other party for any of the activities or services rendered, performed, or provided by either, except for reimbursement as provided in paragraph 4 or as may hereafter be agreed upon in writing.
6. Independent Contractor. The Library is interested only in the results produced by this Agreement. The Foundation has sole and exclusive charge and control of the manner and means of performance. The Foundation shall perform as an independent

contractor and it is expressly understood that neither the Foundation nor any of its Directors are employees of the City of Seward.

7. Insurance. The Foundation agrees to maintain general liability insurance with an insurer licensed by the State of Nebraska that will protect both the Foundation and library from claims of damages because of injuries, including death, suffered by persons and liability from damages to property which may arise from the work performed under this Agreement, either by the Foundation, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. The parties agree that the limits of liability for the insurance which the Foundation shall procure shall be not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate. The City of Seward shall be an additional named insured.
8. Indemnification. To the fullest extent permitted by law, the Foundation shall indemnify, defend, and hold harmless the Library, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused by the intentional or negligent act of omission of Foundation of anyone for whose acts any of them may be liable. This section will not require the Foundation to indemnify or hold harmless the Library for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Library.

To the fullest extent permitted by law, the Library shall indemnify, defend and hold harmless the Foundation, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused by the intentional or negligent act of omission of Library of anyone for whose acts any of them may be liable. This section will not require the Library to indemnify or hold harmless the Foundation for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the Foundation.

The Library does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

9. Nebraska Law. This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflict of law.
10. Integration, Amendments, Assignment. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended

only by written agreement of ~~both~~ **ALL** parties. This Agreement may not be assigned without the prior written consent of the other party ~~IES~~.

11. Severability & Savings Clause. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.
12. Term. The term of this Agreement shall commence upon execution. ~~and shall continue until completion of all of the obligations of this Agreement, but in no event longer than 4 years after the date of execution by Library.~~ **REVIEW OF THIS AGREEMENT MAY TAKE PLACE AT ANY TIME BY ANY PARTY, BUT CHANGES SHALL REQUIRE APPROVAL FROM ALL PARTIES.**
13. Termination. ~~Either~~ **ANY** party may terminate this Agreement at any time by giving written notice to the other party ~~IES~~ of such termination at least 30 days before the effective date of termination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the Library below.

SEWARD MEMORIAL LIBRARY:

Library Board President

Date

SEWARD LIBRARY FOUNDATION:

Foundation President

Date

CITY OF SEWARD:

Mayor

Date