

COLLABORATION AGREEMENT

This COLLABORATION AGREEMENT (the “*Agreement*”) is entered into effective as of the ____ day of **MONTH, YEAR** (the “*Effective Date*”) by and between the Madison Public Market Foundation, Inc., a Wisconsin non-stock corporation (“PMF”), and the City of Madison, a Wisconsin municipal corporation (the “City”), sometimes the “*Parties*,” and each sometimes, a “*Party*”.

RECITALS

WHEREAS, the Madison Public Market is planned to be located at the corner of First Street and East Washington Avenue, built as part of a public/private partnership that creates a mixed-use project which will replace the aging Washington Plaza strip retail mall;

WHEREAS, the Madison Public Market will be an approximately 30,000 square foot City-owned facility, operated by an independent non-profit operating organization;

WHEREAS, the City has selected PMF as the operator of the Madison Public Market;

WHEREAS, the Parties desire to collaborate and establish a process under which PMF and the City will collaborate in the development of the Madison Public Market, as further set forth in this Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, PMF and the City hereby agree as follows:

1. **PROJECT DEVELOPMENT.** During the Term, the Parties shall collaborate and work together in developing the Madison Public Market (the “Project”) pursuant to the terms set forth herein.

1.1. **PMF Responsibilities.**

1.1.1. **Development Responsibilities.** In connection with the development of the Project, PMF shall (subject to the other provisions of this Agreement):

1.1.1.1. Engage in best efforts to raise approximately \$2.5 million as part of the overall capital stack for the Project. Such fundraising may provide for naming rights within the Public Market, but the City must approve naming rights requested for the Project itself. Naming rights shall be governed by the provisions of Exhibit A;

1.1.1.2. Select vendors to occupy and operate inside the Project, and engage in negotiations to secure letters of intent as may be required by lenders for the Project;

1.1.1.3. Hire an executive director for PMF who has the credentials necessary to successfully operate the Project, subject to the City completing the City Responsibility contained in Section 1.2.1.1 and providing the Funds described in Section 5. PMF shall provide a representative of the PMDC, as defined in Section 1.2.2.2 with an opportunity to interview the potential director and provide feedback before hiring. PMF shall conduct a national search for an Executive Director with the assistance of a recruiting firm with the goal of hiring an Executive Director in the second quarter of 2019.

1.1.1.4. Advise the City in designing the Project, however, the Parties agree that the City is responsible for the final design of the Project. PMF shall designate one person to serve as a representative on the City's internal development team in designing the Project. At least thirty (30) days prior to submitting plans for land use approvals, the City shall provide plans to PMF for review. Upon receipt of the City's plans and specifications, PMF shall have fifteen (15) days to either approve the City's plans and specifications or provide notice to the City of material items that PMF requires to be changed. Thereafter the City shall revise and finalize the plans and specifications according to the material changes requested and resubmit to PMF, unless determined unreasonable or unduly expensive. Any modifications to the approved plans and specifications shall require PMF's prior approval in accordance with the procedure set forth above in this section, which approval shall not be unreasonably withheld or delayed, provided that the City may make minor corrections or changes to the plans and specifications by providing notice to PMF. The City shall further provide PMF with the opportunity to review the design, on the same terms as above, thirty (30) days prior to submitting a resolution to the Board of Public Works for approval of a public works contract for construction of the Project;

1.1.1.5. Cooperate with the City on the negotiation of an Operating Agreement between the City and PMF for the Project;

1.1.1.6. Cooperate with the City on the negotiation of a real estate lease from the City, or an affiliate entity, to PMF;

1.1.1.7. Support the Project's development efforts through provision of select team members, which members will provide input into, and have approval rights relating to the Project development process with respect to all matters materially affecting the timing, cost, and material parameters of the Project, or any funding by the City for the Project;

1.1.1.8. Share all necessary information with the City and its advisors; and

1.1.1.9. Allow the City to appoint three (3) members to the PMF board of directors. Such appointments shall be made by the Mayor.

1.1.2. Decision-making. All decisions made by PMF in respect of the development of each Project will be made in a manner that is consistent with standard of good faith and fair dealing, and best business judgment for projects of a similar nature and scope.

1.1.3. Transfer Restrictions. PMF will not assign or otherwise transfer in whole or in part its interest in the Project or its development or acquisition without the prior written consent of the City.

1.2. City Responsibilities.

1.2.1. For the Project, the City shall (subject to the other provisions of this Agreement):

1.2.1.1. Negotiate the terms for purchasing the land upon which the Project will be developed, subject to the approval of the City of Madison Common Council (the “Common Council”);

1.2.1.2. Seek, or cause a third party to seek, New Market Tax Credit investors in order to finance the Project;

1.2.1.3. Pay or arrange for the payment of all development costs necessary for the Project, including without limitation expenses associated with permitting, environmental studies, land lease/option costs, and interconnection studies;

1.2.1.4. Design the Project, including architecture, engineering and landscaping, subject to Section 1.1.1.4;

1.2.1.5. Cooperate with PMF on the negotiation of an Operating Agreement between the City and PMF for the Project, which shall be subject to approval of the Common Council;

1.2.1.6. Cooperate with PMF on the negotiation of a real estate lease from the City, or an affiliate entity, to PMF, subject to the approval of the Common Council;

1.2.1.7. Advise PMF in hiring a director as provided in Section 1.1.1.3 through the PMDC as defined in Section 1.2.2.2. The City shall not have final decision making authority;

1.2.1.8. Pay all of the expenses associated with its due diligence activities including, without limitation, expenses associated with third party consultants and external and internal administrative expenses related to carrying out the duties stated in this Section;

1.2.2. Decision-Making

1.2.2.1. Standard. All decisions made by City in respect of the financing, development and construction of each Project shall be made in a manner that

is consistent with the standard of good faith and fair dealing, and best business judgment for projects of a similar nature and scope.

1.2.2.2. Process. The City is required to have approval of the Common Council (the “Common Council”) for all terms and conditions of contracts or other agreements related to the Project. Additionally, the Public Market Development Committee (“PMDC”) has been tasked with those certain duties stated in Resolution 16-00872 (the “Duties”) and is an advisory body to the Common Council. All decisions related to the Duties are subject to review by the PMDC, and where necessary, approval by the Common Council.

1.2.3. Waiver. Any of the above PMF Responsibilities or City Responsibilities may be waived by the other Party.

2. **SCHEDULE.**

2.1. The Parties shall abide by the Development Schedule in the attached Exhibit B. The Development Schedule may be amended from time to time without amending this Agreement upon mutual agreement of the parties. However, in the event this Agreement is amended to update the Development Schedule, all previous versions of the Development Schedule shall be considered null and void.

3. **TERM AND TERMINATION.**

3.1. **Term.** This Agreement shall come into effect on the Effective Date and shall remain in full force and effect for a period of one (1) year thereafter, unless otherwise agreed by the Parties or earlier terminated (the “*Term*”). The termination or expiration of this Agreement shall not affect the obligations which specifically survive termination or expiration this Agreement and remain governed by the terms and conditions of this Agreement.

3.2. **Notice and Opportunity to Cure**

3.2.1. Whenever any party to this Agreement alleges a default by the other, the party alleging the default shall provide written notice to the other specifying the nature of the default and the actions necessary to cure the default. Subject to Unavoidable Delays, if the alleged default is not cured within thirty (30) days after the defaulting party’s receipt of such notice (the “Cure Period”), the non-defaulting party may take any one or more of the actions set forth below.

3.2.2. The non-defaulting party may suspend its performance under this Agreement until it receives assurances from the defaulting party that the defaulting party will cure its default and continue its performance under this Agreement.

3.2.3. The non-defaulting party may elect to take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) day period, if the defaulting party provides the non-defaulting party with written assurances satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible. No notice of such election by the non-defaulting party shall be required.

3.2.4. Following the Cure Period, the Parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement. Unless otherwise resolved, designated members of the City and PMF shall meet within thirty (30) days of the date of expiration of the Cure Period and shall use their commercially reasonable efforts to resolve such dispute, which includes the parties exchanging documents upon reasonable request. Notwithstanding any other provision herein to the contrary, neither party shall commence any litigation against the other with respect to a dispute that was the subject of a Default Notice as described herein unless such Party in good faith attempted to follow the escalation provisions described herein.

3.2.5. Should the parties be unable to resolve the dispute under Section 3.2.4, then the non-defaulting party may cancel and terminate this Agreement, or take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the defaulting party, including any actions to collect any payments due under this Agreement or to pursue any claims for monetary damages at law or to enforce performance and observance of any obligation, agreement, or covenant to the defaulting party under this Agreement.

3.2.6. Nothing in this Section or Agreement shall be deemed to abrogate, terminate or otherwise limit the statutory provisions of §893.80, Wis. Stat.

4. **CONDITIONS.**

4.1. In order to complete the real estate and financial closings necessary for the Project, the Parties agree that the following conditions related thereto must be met for the Project to proceed:

4.1.1. All of the PMF Responsibilities and City Responsibilities must be complete or will be complete upon closing.

4.1.2. City's receipt of 2019 budget authorization for the Project.

4.1.3. City closing on real estate transfer.

4.1.4. The parties agreeing to an Operating Agreement.

4.1.5. City receiving a New Market Tax Credit allocation. Within 30 days of the City's receipt of a New Market Tax Credit Allocation, PMF shall provide preliminary indicators of adequate funding for the Project, including but not limited to, donor commitments.

4.1.6. City closing on New Market Tax Credit Financing.

4.1.7. Evidence of PMF having adequate financial resources to operate the Project upon construction. Evidence may be cash flows, pro formas, bank statements or other documents that establish such financial resources as determined in the reasonable discretion of the City.

4.1.8. PMF hiring an Executive Director and obtaining such financial resources deemed necessary by the PMF board of directors to move forward with operating the Project.

5. Predevelopment Funds. The City agrees to provide PMF with predevelopment funds in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) (the “Funds”) in order to pay certain expenses related to the PMF Responsibilities. Such Funds shall be subject to the City’s General Ordinances concerning affirmative action, workforce utilization, nondiscrimination and accessibility. PMF shall keep a record tracking the expenditure of the Funds which the City shall have access to upon reasonable request to inspect such record.

6. **NOTICES.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively received: (i) upon personal delivery to the Party to be notified, (ii) when sent by electronic mail or facsimile on the same Business Day, if sent during normal business hours of the recipient; if not, then on the next Business Day, (iii) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) calendar day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Either Party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes. Any communications between the Parties hereto or regular notices provided herein to be given shall be given to the following addresses:

City:

City of Madison
Director of Planning and Community and Economic Development
P.O. Box 2983
Madison, WI 53701-2983

With copy to:

City Attorney
City County Building, Rm. 401
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
Attn: Kevin Ramakrishna

To _____:

Company Name
Address
Telephone:
Facsimile:

with a copy (which shall not constitute notice) to:

Company Name
Address
Telephone:

Facsimile:

7. **MISCELLANEOUS**

7.1. **Successors and Assigns.** This Agreement shall be binding upon each of the Parties hereto and each of their permitted successors and assigns, if any. Neither Party may assign any or all of its or their rights or obligations under this Agreement, in whole or in part, to any other Person without obtaining the written consent or approval of the other Party; provided, however, that either Party may assign its rights to an Affiliate (which shall not constitute a release of such Party from its obligations and liabilities hereunder).

7.2. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

7.3. **Waiver.** No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

7.4. **Entire Agreement; Amendments; Attachments.** This Agreement and all exhibits and schedules hereto, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. The Parties may amend or modify this Agreement by a written instrument executed by and any such amendment or modification so effected shall be enforceable in all respects on the Parties to this Agreement.

7.5. **Severability.** Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

7.6. **Use of City Logo.** PMF shall not have the right to use the City's logo or name in any publicity or communication without written consent of the City of Madison.

7.7. **Governing Law; Consent to Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin, without regard to conflicts of law principles. The Parties agree that any dispute arising out of or in relation to this Agreement shall be brought in state court in Wisconsin. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding.

7.8. **Section Headings.** The Section headings are for the convenience of the Parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

7.9. **Counterparts.** This Agreement may be executed by facsimile or pdf and in one or more counterparts, each of which shall be deemed to be an original and be enforceable against the Party(ies) executing actually executing such counterpart, and all of which together shall be one and the same document.

7.10. **No Third Party Beneficiaries.** This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

7.11. **No Joint Venture.** Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties.

7.12. **Costs.** Except as otherwise specifically provided elsewhere in this Agreement, each Party shall pay all of its own costs and expenses, including the fees and costs of its attorneys, consultants, contractors and representatives, incurred in connection with this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of and on the date first above written.

CITY OF MADISON, WISCONSIN
A municipal corporation

By: _____
Paul R. Soglin
Mayor

By: _____
Maribeth Witzel-Behl
City Clerk

APPROVED:

David P. Schmiedicke
Finance Director

APPROVED AS TO FORM:

Michael P. May, City Attorney

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

MADISON PUBLIC MARKET FOUNDATION, INC.
A Wisconsin non-stock corporation

By: _____
[Name]
[Title]

EXHIBIT A
NAMING RIGHTS POLICY

Naming of Interior and Exterior Spaces (excluding building name)

- Naming opportunities will be available at the Madison Public Market as identified by the Madison Public Market Foundation, and approved by the PMDC, and could include such areas as meeting rooms, vendor areas, equipment, gardens and other interior and exterior spaces.
- Naming opportunities are available for individuals, families, foundations, non-profit organizations and corporations making a significant contribution to the project.
- The Madison Public Market Foundation will be responsible for determining the manner in which the name is recognized (e.g. signage).
- The Madison Public Market Foundation will provide a list of the interior and exterior naming opportunities and costs, and a list of selected donors, to the City for review and approval.

Naming of Building

- The Common Council of the City of Madison may approve a name for the Madison Public Market building in coordination with the Madison Public Market Foundation.
- The building may be named to honor an individual for a significant contribution in keeping with the nature and mission of the public market. The name should be generally recognized within the community and be able to stand the test of time.
- The building may be named for a donor who requests naming rights and who makes a significant contribution to the public market as defined as at least 51% of the fundraising goal in Section 1.1.1.1.
- Naming rights shall not be granted to corporations or religious organizations.

EXHIBIT B
DEVELOPMENT SCHEDULE

Term Sheet and TIF Agreement with Property Owner

- **October 30, 2018** – Intro of Council resolutions to approve term sheet for land purchase and TIF Agreement
- **November 1, 2018** – PMDC discussion of resolutions
- **October 8, 2018** – Finance Committee discussion of resolutions
- **November 20, 2018** – Council action on resolutions
- **March 31, 2019**– Finalize Purchase and Sales Agreement
- **October 31, 2019** – Closing

Public Market Design

- **September 28, 2018** – Staff team recommendation on selection of A/E team
- **October 30, 2018** – Intro of Council resolutions to approve contract with A/E Team
- **November 1, 2018** – PMDC discussion of resolution
- **October 8, 2018** – Finance Committee discussion of resolutions
- **November 20, 2018** – Council action on resolutions
- **February 28, 2019** – Finalize Schematic Design
- **April 30, 2019** – Finalize Design Development Plans
- **July 31, 2019** – Finalize Construction Documents

Land Use Approvals

- **March 31, 2019** – Submit Application for Land Use Approvals
- **October 31, 2019** – Receive Land Use Approvals
- **December 31, 2019** – Receive Building Permits

Bidding and Construction

- **August 31, 2019** – Finalize BID Documents
- **September 30, 2019** - BPW approval to advertise
- **October 31, 2019** – Council approval to advertise
- **November 30, 2019** - Release BID
- **December 31, 2019** – Select Contractor
- **January 31, 2020** – Groundbreaking
- **March 31, 2021** – Complete Construction

Operating Agreement

- **October 31, 2018** – Approval of City/Foundation Collaboration Agreement
- **March 31, 2018** – Finalize Public Market Operating Agreement
- **October 31, 2019** – Hire Public Market Executive Director

Vendors/Leases

- **June 30, 2019** - Develop Vendor Selection Guidelines
- **December 31, 2019** – Develop Vendor Selection Policies and Procedures
- **June 30, 2020** – Letters of Intent with potential vendors
- **October 31, 2020** – Signed Leases with potential vendors