

**AGREEMENT BETWEEN
THE CITY OF MADISON
AND THE
MADISON PUBLIC LIBRARY FOUNDATION, INC.**

**RE: GOVERNING RELEASE OF FUNDS FOR THE
CENTRAL LIBRARY PROJECT**

11/10/11

THIS AGREEMENT is entered into between the Madison Public Library Foundation, Inc. ("Foundation"), and the City of Madison, Wisconsin ("City").

RECITALS:

1. Madison Public Library Foundation, Inc., ("Foundation") is an independent, duly organized Wisconsin non-stock corporation recognized as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code and dedicated to receiving gifts for the support of the Madison Public Library.

2. The City of Madison, Wisconsin, is a Wisconsin municipal corporation located in Dane County, Wisconsin, and owns and operates the Madison Public Library.

3. The Foundation has received, and expects to continue to receive, gifts for the purpose of constructing a new central library within the City of Madison ("Central Library").

4. The City will enter into contracts and pay the costs of the design and construction of the Central Library, utilizing gifts which have been or will be received by the Foundation and other sources of funds. The estimated total cost of the Central Library Project is \$29.5 million, of which the City will fund \$21.0 million and the Foundation will use its best efforts to fund \$8.5 million through a community-wide capital campaign ("Campaign").

5. This agreement governs the arrangements between the Foundation and the City for the transfer of funds from the Foundation to the City for the design and construction of the Central Library.

NOW, THEREFORE, the Foundation and the City agree as follows:

1. The recitals set forth above are incorporated herein as part of the Agreement.
2. The Foundation will transfer to the City on at least a quarterly basis any and all funds then held by the Foundation and received for purposes of the design and construction of the Central Library, subject to the Foundation's ability to set a reasonable level to be held by it in its financial accounts for anticipated Campaign costs and expenses. The Foundation believes that a reasonable level will be approximately two hundred fifty thousand dollars (\$250,000). In the event the City wishes the Foundation to transfer additional sums held by it to the City, the City may request a transfer. The Foundation shall not invest these funds in any instrument with a maturity that would restrict its ability to make the needed transfers, subject to the Foundation's right to retain funds for Campaign costs and expenses. This restriction is necessary so that funds are not invested in longer term commitments than is appropriate for the City's cash flow needs for payment of the costs of design and construction of the Central Library. Attached to this Agreement as Exhibit A is a preliminary estimate of the time for construction and the necessary funds needed for design and construction payments. The City agrees that its funds shall be expended first.
3. Notwithstanding any other provisions of this Agreement, the Foundation shall transfer to the City on or before December 15, 2012, a total of four million one hundred thousand dollars (\$4.1 million). The City may expend those funds immediately for costs of the Central Library Project.
4. The City shall invest in its pooled investments and separately account for all funds received from the Foundation for the design and construction of the Central Library. The City will credit to the Foundation's account a proportionate share of earnings from the investment. Returns shall be allocated based on the average daily balance of the funds from the Foundation on deposit. The City will provide the Foundation with a quarterly report of earnings credited to its account. Once transferred to the City, the funds shall be available to the City for the Central Library Project once City funds have been expended

5. The City and the Foundation recognize that all of the Foundation's share of the funds necessary for the Central Library Project may not be available at the time the funds are needed for construction, since pledges may be paid over several years. In that event, the City may borrow to complete the project on a timely basis, and the Foundation will continue to transfer to the City funds collected as a result of the Campaign until it has paid its share of the Central Library Project.

6. All notices and communication between the parties pursuant to this Agreement shall be made to the following persons.

FOR THE FOUNDATION: Jenni Collins, Executive Director

Madison Public Library Foundation, Inc.

126 South Hamilton Street

Madison, WI 53703

FOR THE CITY:

David Schmiedicke, Finance Director

City of Madison

210 Martin Luther King Jr. Blvd, Room 406

Madison, WI 53703

7. This Agreement constitutes the entire agreement of the parties and may only be modified or supplemented by an additional writing between the parties. This Agreement shall be governed by Wisconsin law.

8. The Foundation agrees that it will not discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The Foundation further agrees to comply with any and all applicable ordinances of the City of Madison, recognizing that the Foundation is an independent organization.

9. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or the Foundation shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other, or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or the Foundation therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

10. In the event a party shall default in any of the covenants, agreements, commitments or conditions herein contained, the other party shall give written notice of such default, and if any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof, the non-defaulting party may, at its option and in addition to all other rights and remedies which it may have at law or in equity, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the defaulting party under this Agreement.

11. This Agreement is effective January 1, 2012, and terminates upon the Foundation completing its transfer of its share of funding for the Central Library Project.

MADISON LIBRARY FOUNDATION, INC.

By
Title:

EXHIBIT A: CENTRAL LIBRARY PROJECT SCHEDULE AND CASH NEEDS

[To be drafted]

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