

**MATCHING FUNDS AGREEMENT BETWEEN
AUSTIN PUBLIC LIBRARY FOUNDATION AND THE CITY OF AUSTIN**

This Matching Funds Agreement is entered into by the Austin Public Library Foundation, a Texas 501c non-profit corporation ("Foundation"), and the City of Austin, a Texas home rule municipality ("City"), for the purpose of establishing and maintaining accounts dedicated to operating and maintenance costs of the new central library.

WHEREAS, in May of 2007 the voters of the City of Austin approved the issuance of bonds to build a new central library;

WHEREAS, the Foundation and the City wish to collaborate to create a long-term source of funding to help pay for the costs of operating the new central library;

WHEREAS, the City Council passed a resolution on May 3, 2007, directing the City Manager to negotiate and execute an agreement with the Foundation under which the City would agree to deposit the proceeds from the sale of Block 21 into a special City account and accumulate the interest earnings resulting from such deposit in another special, restricted City account;

WHEREAS, the Foundation desires to set aside an annual amount equal to the City's interest income and to accumulate such funds over a ten-year period to provide an endowment that can also be used generate interest income to help pay for operating costs;

WHEREAS, ten years from the effective date of this agreement, the accumulated funds in the Block 21 Account, New Library Account and Matching Funds Account, which are defined below, are expected to total approximately \$20 million and could generate substantial interest earnings to help pay for the costs of operating the new central library;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties agree to the following terms:

A. Term: The term of this Agreement shall begin on July 1, 2008, and terminate on June 30, 2018, unless terminated earlier in accordance with the terms of this Agreement.

B) Establishment of Restricted City Accounts. Within thirty (30) days of the effective date of this Agreement, City agrees to establish a segregated, restricted City account dedicated to paying for operating and maintenance costs for the new central library ("New Library Account"). City shall also establish a separate City account, and shall deposit into such account Nine Million Nine Hundred Eighty Eight Thousand Six Hundred Forty Dollars and No Cents (\$9,988,640.00), which equals the amount of proceeds from the City's sale of the real property known as Block 21 ("Block 21 Account"). Block 21 is defined on Exhibit A, which is attached to and made a part of this Agreement.

The Block 21 Account shall be used exclusively to generate interest income or other revenue for deposit into the New Library Account. City shall provide prompt written notice to Foundation of the establishment of these two accounts after both parties execute this Agreement.

Each year during the term of this Agreement, City agrees to deposit quarterly all interest or other revenue generated by the Block 21 Account into the New Library Account. City shall maintain the New Library Account throughout the term of this Agreement and all funds in the account shall be designated for use for the new library's operating and maintenance expenses.

C) Establishment of Foundation Matching Funds Account

Within thirty (30) days of the effective date of this Agreement, the Foundation agrees to establish a segregated, restricted account, at either the City or at a financial institution approved by both parties ("Matching Funds Account"), provided, however, that institutions such as Bank of America, UBS, Merrill Lynch, and firms with financial strength similar to these institutions shall be deemed approved. If the account is established at a financial institution, Foundation shall provide to City prompt written notice of the establishment of this account and the initial deposit.

D) Annual Deposit of Matching Funds

Each year during the term of this Agreement, Foundation agrees to deposit into the Matching Funds Account an amount equal to or exceeding the amount of interest income earned by City in the Block 21 Account and deposited into the New Library Account during the twelve month period that ended on June 30th. The City shall notify the Foundation monthly throughout each year of the amount of interest income generated by the Block 21 Account. The annual matching funds shall be deposited as follows:

1) Beginning in 2009, the City shall, no later than August 1 of each year, send to the Foundation a written notice identifying the amount of interest income generated by the Block 21 Account and deposited into the New Library Account during the twelve month period that ended on June 30th. The notice to the Foundation shall also identify the balances in both accounts on June 30th of the preceding year.

2) The Foundation shall deposit into the Matching Funds Account an amount equal to or exceeding the amount deposited by City into the New Library Account no later than September 1 of each year, and shall provide City with a written report of such deposit by September 15.

Foundation agrees to use the Matching Funds Account for the purpose described in this Agreement and further agrees not to co-mingle the funds in the account with any other funds. Subject to the termination provisions of Sections F and I, the deposits and all interest or other revenue earned on the Matching Funds Account shall be maintained in the account throughout the term of this Agreement, and shall be used exclusively for operating and maintenance costs of the new library.

3) It is understood and agreed by the City and the Foundation that the funds within the Matching Funds Account are not available to the City until the conclusion of the ten-year Agreement or the accumulation of Five Million Dollars (\$5,000,000) in matching funds, whichever occurs first. At such time, provided that the City and the Foundation have met their obligations as outlined in this Agreement, the funds within the Foundation's Matching Funds Account will be donated to the City for the creation of a dedicated account from which interest earnings will be designated for use for the new central library's operating and maintenance expenses. The parties agree that, if the amount of money in the Matching Funds Account reaches \$5,000,000 before the expiration date of June 30, 2018, this Agreement shall terminate following the Foundation's donation of the Matching Fund Account to City. The parties shall agree in writing on the effective date of termination.

4) It is further understood and agreed by the City and the Foundation that the Matching Funds Account provided by the Foundation is considered a dedicated fund, and the interest income from this dedicated fund may only be used to pay for operating and maintenance costs of the new central library.

E) Use of New Library Accounts for New Library

Funds may be expended from the interest earned on the New Library Account only for operations and maintenance costs for the new central library, and these eligible expenses will include the purchase of books and other materials, including needs related to the operations of the new central library. It is currently anticipated that the new library will open in 2013 or 2014. The parties acknowledge that future economic conditions may impact City's ability to budget for the additional staffing and supplies when it is preparing to open the new central library. If this occurs and City needs a portion of the New Library Account funds to adequately staff and supply the new central library, it may use such funds for this purpose. City will notify and consult with Foundation regarding such proposed expenditures.

At the time of the termination of this Agreement the City shall prepare and provide the Foundation with a final accounting of the funds deposited into and disbursed from the New Library Account. Any funds remaining in the New Library Account following the final accounting by the City shall be held in the New Library Account and reported to the City Council for disposition.

F) Term and Termination Either party may terminate this Agreement due to a default by the other party if the defaulting party fails to cure the default within forty-five (45) calendar days following written notice, or within a longer time period agreed to in writing by the parties. Notice of a default must specify the default. A party may also terminate this Agreement upon not less than thirty (30) days written notice if performance of its obligations hereunder are restricted or prohibited by changes in federal or state laws or regulations. This Agreement may also be terminated if both parties agree in writing,

provided that the termination conditions and effective date of the termination are included in such writing.

If the Agreement is terminated early due to a default, and the Matching Funds Account is a City account at the time of such termination, City shall pay Foundation an amount equal to the balance in the Matching Funds Account as of the termination date, and shall provide to Foundation a report specifying the following information for the current calendar year: account balance as of January 1 and as of the termination date, and amount of all interest or other revenue earned on the account during such calendar year. Except for the return of the Matching Funds Account as described above, neither party shall have any further obligation to the other following the effective date of termination. In the event of a termination of this Agreement resulting from a default, the sole and exclusive remedy shall be to have returned to each party the funds contributed by that party to the New Library Account (in the case of the City) and the Matching Funds Account (in the case of the Foundation).

G) Agreement Liaisons. Each party designates a liaison to serve as the contact person for any issues or concerns that arise with regard to this Agreement.

City:

Leslie Browder, Chief Financial Officer
City Hall
301 West Second Street, Third Floor
Austin, Texas 78701

Foundation:

Teresa Oppedal
President
Austin Public Library Foundation
P.O. Box 13201
Austin, Texas 78711

H) Grace Period to Provide Matching Funds. The parties acknowledge that economic conditions may occasionally impact the Foundation's ability to raise or donate matching funds in an amount sufficient to meet its annual obligation described in Section D above. In the event the Foundation is unable to deposit sufficient funds into the Matching Funds Account by September 1 of any year, Foundation shall provide written notice of such deficiency to City by September 15. The notice shall specify the amount that was deposited in the Matching Funds Account by the September 1 deadline and the reason for the deficiency. City agrees to give Foundation an additional sixty (60) calendar days to deposit the balance of the funds in the Matching Funds Account, and to notify the City in writing of the deposit. Failure to deposit sufficient matching funds by September 1 will not be deemed a default by Foundation if Foundation deposits the balance of the funds by the extended due date and provides notice of such deposit as described in this section.

I) Foundation acknowledges and agrees that the City budget is established and approved by City Council on a fiscal year basis, and that neither City management nor City Council has the authority to bind or restrict the budget or financial decisions of future City Councils, or to commit City revenues beyond the current fiscal year. The parties therefore agree that, notwithstanding any other provision of this Agreement, in the event the City Council decides to close either the Block 21 Account or the New Library Account or to use funds in either account for a purpose other than the purposes described in this Agreement, City shall provide prompt written notice of such decision to Foundation. Foundation may then choose to terminate this Agreement by providing at least thirty (30) days written notice to City.

The parties further agree that, if Foundation exercises its right to terminate this Agreement under this Section I, as of the effective date of termination all funds in the Matching Funds Account may be used by Foundation for any purpose, and neither party shall have any further obligation to the other under this Agreement. If the Matching Funds Account is a City account at the time of termination, City shall pay Foundation an amount equal to the balance in the Matching Funds Account as of the termination date, and shall provide to Foundation a report specifying the following information for the current calendar year: account balance as of January 1 and as of the termination date, and amount of all interest or other revenue earned on the account during such calendar year.

It is understood and agreed by City and Foundation that, following termination of this Agreement, the City may use the funds in the Block 21 Account for any purpose and shall have no further obligations to Foundation regarding this account.

J) Amendment. This Agreement may be amended only in a written document signed by authorized representatives of each party. All agreements between the parties regarding the subject matter of this Agreement are set forth in this document, and there are no additional terms or verbal agreements between the parties.

K) Governing Law and Venue. This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in the City of Austin, Texas. Venue for any dispute or action arising out of or relating to this Agreement shall be in Travis County.

L) Notice Requirements. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given immediately if delivered in person to the address set forth in this section for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address specified below.

Foundation Address. The address of Foundation for all purposes under this Agreement shall be:

Teresa Oppedal (or her successor in office)

President
Austin Public Library Foundation
P.O. Box 13201
Austin, TX 78711

City Address. The address of the City for all purposes under this Agreement and for all notices shall be:

Marc Ott, City Manager (or his successor in office)
City of Austin
301 West Second Street, Third Floor
Austin, Texas 78701

With copy to (registered or certified mail with return receipt is not required):

Leslie Browder, CFO (or her successor)
City of Austin
302 West Second Street, Third Floor
Austin, Texas 78701

Change of Address. Each party may change the address for notice to it by giving written notice of the change.

M) Immunity or Defense. It is expressly understood and agreed by the parties that neither the execution of this Agreement, nor any conduct of any representative of either party relating to this Agreement shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit.

N) No Joint Enterprise. The relationship of Foundation and City under this Agreement is not and shall not be construed or interpreted to be a joint enterprise or joint venture. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party or which shall hold itself out to be binding on the other party. The parties expressly agree that each party is an independent contractor, and that each party assumes all of the rights, obligations and liabilities applicable to it as an independent contractor.

O) Assignment. Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party.

P) Legal Authority. The person or persons signing this Agreement on behalf of each party warrants that he, she or they have been duly authorized by their respective entities to sign this Agreement on behalf of the entity and to bind the entity validly and legally to all terms, performances, and provisions in this Agreement. Each party warrants that the party

possesses the legal authority to enter into this Agreement and to perform the duties described herein.

Q) Non-Waiver of Default. One or more acts of forbearance by any party to enforce any provision of this Agreement or any payment, act or omission by any party shall not constitute or be construed as a modification of this Agreement or a waiver of any breach or default which then exists or may subsequently exist.

R) Reservation of Rights. If either party to this Agreement breaches this Agreement, the other party shall be entitled to any and all rights and remedies provided for by Texas law and any applicable Federal laws or regulations.

S) No Third Party Beneficiaries. This Agreement sets out the agreements and obligations between City and Foundation only, and does not obligate City or Foundation in any way to any third party. This Agreement creates no third party beneficiary rights as between City and any of Foundation's subcontractors or between Foundation and any of City's subcontractors.

CITY OF AUSTIN, A Texas Home Rule Municipality

By:_____

Title:_____

AUSTIN PUBLIC LIBRARY FOUNDATION

By:_____

Title:_____

Exhibit A

The legal description of Block 21 is:

Lots 1 through 12, Block 21, of the Original City of Austin, Travis County, Texas, according to the map or plat of record in the General Land Office of the State of Texas together with the area within the alley traversing said Block which was vacated by Ordinance recorded under Document No. 1999086902 of the Official Public Records of Travis County, Texas.