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**City of Minneapolis**

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February 21, 2002

Chair Lisa Goodman  
and Members of the Community Development Committee  
Room 307, City Hall  
350 South Fifth Street  
Minneapolis, MN 55415

Re: New Central Library Project

Dear Chair Goodman and Members of the Community Development Committee:

Several Council Members have raised questions regarding various aspects of the new central library project ("Project"). In order to address the issues raised, it is necessary to review the relevant background information, various Charter provisions, and the previous Council actions.

**Background**

**A. General History**

In November 2000, the voters of Minneapolis approved a referendum in the amount of \$110 million for the purpose of building a new Minneapolis Central Library. The question that appeared on the ballot of the referendum approving the issuance of bonds in connection with the new Minneapolis Central Library reads, in relevant part, as follows:

Shall the City of Minneapolis be authorized to finance public library improvements ... by issuing general obligation bonds in an amount not to exceed ... \$110,000,000 for the new Central Library ... payable over a period of up to 30 years?

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Since that time, major contracts have been entered into including contracts for construction management services and architectural services for both an interim library and for a new library. In addition, on August 23, 2001, the Implementation Committee authorized staff to proceed in finding and negotiating for a site for interim Central Library operations. On October 9, 2001, the Library Board authorized appropriate library staff and consultants to enter into lease negotiations with the owners of Marquette Plaza for this purpose, subject to mutually acceptable terms and conditions. The lease negotiations were completed and leases were approved by the City Council on December 21, 2001 and by the Library Board on January 9, 2002.

Demolition and new construction are scheduled to begin November 1, 2002 and last through December 2005. The Library must move its collections and operations to various interim locations and vacate the current Central Library building by October 31, 2002.

## **B. Organizational Structure of Project and Related Council Actions**

### **1. Establishment of Implementation Committee**

The City of Minneapolis has had previous success on other large City projects (most recently the Minneapolis Convention Center Expansion Project) with the use of an advisory body to closely monitor the project and make recommendations to the City for necessary City actions associated with the project. Once the City and Library Board recognized the need to construct a new Central Library, the parties realized that each party had certain power and authority relating to a new library project.

#### **a. Library Board Powers**

The Minneapolis Library Board has a broad range of powers associated with its purposes. Chapter 17 of the Charter outlines the general and special powers of the Library Board. For example, Section 1 of that Chapter empowers the Library Board to "hire, or erect and maintain as it shall deem best, buildings suitable for the purposes contemplated by this act; but it shall never erect any buildings upon land to which it has not the title in fee simple." Section 1 of Chapter 17 also grants the Library Board "control of the expenditures of all monies collected by taxation or otherwise and placed to the credit of the library fund; and ... full power and authority to undertake and perform every act necessary or proper to carry out the spirit and intent of this act." Section 8 of Chapter 17 authorizes the Library Board to "purchase real estate for the purposes contemplated by this Chapter, whenever six (6) library directors [trustees] shall vote to make such purchase, and the Board may also sell and convey any of its real estate, but only when five (5) of the library directors [trustees] shall vote to make such sale." Section 15 of Chapter 17 authorizes the Library Board to Erect Buildings on Land Acquired: "Said Library Board may erect buildings on any land acquired as aforesaid--any prior provisions of any law to the contrary notwithstanding." Section 16 of Chapter 17 authorizes the Board to request the City to issue certain bonds: "In order to raise funds to adequately house its libraries and collections, the City of Minneapolis is authorized, through its City Council, upon request of the Library Board, to issue and sell from time to time negotiable bonds of the city in such sums as may be deemed necessary, but not exceeding five hundred thousand dollars (\$500,000.00) ... and to pledge the credit of the city for the payment thereof, principal and interest. The proceeds of such bonds shall be placed to the credit of the Library Board of such city, and shall be used by said Board to acquire or improve a site or sites and for the construction, furnishing and equipping of a building or buildings thereon; for housing its libraries and collections, and for such purposes only."

## **b. City Powers**

Similarly, the City has a broad range of power and authority related to the Project. For example, the City Council has the power and authority under Section 19 of Chapter 4 of the Charter to establish a Purchasing Department "having full charge of the purchase by the City and the several boards of the city of all supplies and materials ..."

The City Council also has the power to request the Board of Estimate and Taxation to issue bonds. Section 9 of Chapter 15 of the Charter provides as follows: "Upon the request of the City Council expressed by ordinance or resolution adopted by the votes of two-thirds of all members thereof, the Board of Estimate and Taxation in its discretion shall have power by a vote of at least five (5) of its members to incur indebtedness for municipal purposes...." If the bond proceeds are to be used by a board the expenditures of which are not controlled by the Council, Section 9 also requires in addition to the request of Council a like request adopted by at least two-thirds of the members of the governing board.

## **c. Resolution 98R-213 establishing Implementation Committee**

In recognition of the above, and building upon the previous successes of the City with an Implementation Committee as an advisory body, the Library Board and City adopted the advisory committee model. By Resolution 98R-213 passed by Council action of June 26, 1998, the City Council and the Library Board (presumably by similar action) established a "New Central Library Implementation Committee" to act in an advisory capacity to both the City and the Library Board relating to the need to construct a new Central Library.

## **2. Council Actions Relating to Implementation Committee and Project**

### **a. March 2, 2001 Council Action**

By action dated March 2, 2001, the City Council passed Resolution 2001R-080, approved a Project Organization Chart, and approved a Memorandum of Understanding (the "MOU") between the City and the Library Board "acting by and through their New Central Library Implementation Committee".

### **i. Resolution 2001R-080**

Resolution 2001R-080 recited, among other things, the agreement between the Library Board and City Council that the "design and construction of the New Central Library be a partnership and that final authority over the project be shared... as set forth in [the MOU]". The Resolution further states that the Implementation Committee will make recommendation for final approval by the Library Board and City Council and Mayor on the "major project decisions" including the following:

- Project program, budget and schedule
- Selection of the architect/engineer, construction manager and other major project consultants
- Schematic design plans and costs and major changes thereto
- Design development plans and cost and major changes thereto
- Project insurance program
- SWMBE participation program

- Selection of housing developer
- Change order management process

The Resolution further sets forth the membership of the IC as follows:

- Chairs – Mayor of the City of Minneapolis, President of the Minneapolis Public Library Board or designee
- two members of the Library Board
- two members of the City Council
- private sector representatives selected by the Library Board – two representatives with backgrounds as follows: Library user and Friends of the Library
- private sector representatives selected by the City Council/Mayor – two representatives with background or expertise in real estate development and facility construction of management.

The Resolution provides that the Director of the Library and City Coordinator are to serve as lead staff to the Implementation Committee.

## ii. MOU terms

The MOU approved by the Council action of March 2, 2001, outlines the roles and responsibilities of both the Library Board and the City ("City" is defined in the MOU to include both the Council and Mayor). Sections 3 and 4 of the MOU list the general duties of each party, and Sections 5 and 6 generally outline the advisory role of the IC. The MOU specifies the duties of the Library Board in Section 3 as follows:

- Section 3.1.** Work in Partnership with the City on the Project and requests the City's review and confirmation of Board decisions as set forth in this Agreement.
- Section 3.2.** Continue to use a new Central Library Implementation Committee to advise the Board and City and provide project oversight.
- Section 3.3.** Continue to co-chair and serve on the Implementation Committee and appoint two members from the private sector to serve on the Committee.
- Section 3.4.** Designate the Director of the Library to continue to serve with the City Coordinator as lead staff to the project.
- Section 3.5.** Request the Board of Estimate to issue and sell bonds to finance project costs as set forth in this Agreement.

Section 4.0 of the MOU outlines the duties of the City as follows:

- Section 4.1.** Work in the partnership with the Board on the Project and review and confirm the Board decisions as set forth in this Agreement.
- Section 4.2** Continue to use a new Central Library Implementation Committee to advise the Board and the City and provide project oversight.
- Section 4.3.** Continue to co-chair and serve on the Implementation Committee and appoint two members [from] the private sector to serve on the Committee.
- Section 4.4.** Designate the City Coordinator to continue to serve with the Director of the Library as lead staff to the project.

**Section 4.5.** Join the Board in its request to the Board of Estimate for the issuance and sale of bonds to finance project costs after review and confirmation of Project – related Board decisions.

Section 6 of the MOU provides for project approvals of the recommendations of the Implementation Committee in relevant part as follows:

**Section 6.2.** Implementation Committee recommendations shall be forwarded to the first regularly scheduled meeting of either the Board or designated Committee of the City...

**Section 6.3.** The Board or the City shall take action for its decisions to the other for confirmation.

Section 7 of the MOU purports to address the methodology for amending or canceling the MOU, and provides that both parties must agree to such amendment or cancellation:

**Section 7.0.** Cancellation. This Agreement may be cancelled by agreement of both parties. This Agreement may be amended at any time by agreement of both parties.

**b. May 18, 2001 Council actions**

By action dated May 18, 2001, the Council took several actions related to the Project, including adopting the scope, budget and schedule of the Project, approving “the New Central Library Project Manual, establishing the City as the fiscal and contracting agent for the project and establishing the roles and responsibilities of City and Library Finance departments, as described therein.”

**i. Project manual**

The project manual, in relevant part, describes the project scope as follows:

1. 400,000 square feet of Library space or Library functions
2. 10,000 square feet of retail space
3. “A significant and dramatic public space”
4. Further study to determine feasibility for Library patron parking
5. Planetarium
6. Approximately 200 housing units

On page 2 of the project manual, the project budget is summarized as follows:

1. Library budget. \$122.5 million.
2. Cost of planetarium to be determined through additional feasibility
3. Additional study to determine cost for the parking.
4. Infrastructure/ amenities cost of \$9 million

Section 2.1 on page 2 of the project manual provides a general description of the project organization and purports to outline the decision making authority of the City Council, Mayor, and Library Board of Trustees as follows:

Section 2.1. City Council, Mayor and Library Board of Trustees. The City Council, Mayor and Library Board of Trustees have final decision making authority over the project as set forth in the Resolution and memorandum of understanding adopted by the Board and City and as set forth in the City Charter and adopted change management procedures. Major decisions that will require Board and City approval include:

- The project program, budget and schedule and significant changes thereto
- The project organization, decision making process and change management procedures
- All contracts in excess of \$50,000 and changes thereto.
- Schematic and design development plans of cost estimates.
- The minority participation, goals and plans.
- The selection of the A/E & CM.
- Project insurance program.
- The selection of the housing developer.

It should be noted that the descriptions of the project scope and budget set forth in the project manual vary in wording slightly from the project scope and budget attached as Exhibits A and B to Petition 266956 referenced in the Council's May 18, 2001 action.

### **C. Specific Questions Raised**

The following section discusses issues and concerns that have been raised.

1. Must the central library project be constructed on two blocks?

Resolution 2201R-080 references a 2 block mixed-use project, including a housing development. Similarly, the project scope referenced in Petition 266956 and in the project manual approved by Council action of May 18, 2001, references a 2-block project.

Those references, however, must be viewed in the historical context of a perceived need to both (a) generate excess tax increment on a adjacent block to be used to fund certain quasi-public amenities, including perhaps skyways, underground parking and an enclosed public space, and (b) generate additional parking available to the library users. At the time the 2-block project concept was being developed by project staff, the determination was made that a housing project was the most feasible means of generating the needed tax increment in the time frame necessary to assist the project. At about the same time, the City was engaged in discussions about the need to create on-site affordable housing and the State was acting to significantly reduce tax increment. These two actions taken together significantly reduced, if not entirely eliminated, any excess tax increment available to fund other project costs.

Similarly, at that time in the project development, it was unclear whether the library's parking needs could be met entirely on-site. It now appears that most, if not all, library parking needs can be addressed on one block through

use of two levels of underground parking. For that reason and because the primary underlying financial need to simultaneously develop a 2-block project is gone, the City Council could now determine that the project is a one-block project.

2. What are the requirements, if any, with respect to a housing project?

See discussion above. Because the fiscal need to link any adjacent housing development with the Library Project is gone, it may make sense to amend the Charge to the IC to focus on the library /planetarium project on the south block and allow the City's normal development process to determine what development, if any, will occur on the north block.

3. What are the requirements, if any, with respect to a park?

Although at various times during the discussions of the project the word "park" has been mentioned, the underlying authority documents, including the Resolutions, the MOU and the project manual do not refer to a "park." Rather, the above authorizing actions generally refer to a "significant and dramatic public space". That public space has been described in some forums as "enclosed space", and does not imply, much less require, that a "park" be included as part of the project.

4. Who ultimately controls the respective blocks?

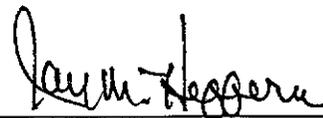
Title to the south block upon which the current library is located is vested in the Library Board of the City of Minneapolis. Title to the north block, sometimes referred to as the Nicollet Hotel site, is with the City of Minneapolis. As such, the respective owners ultimately "control" their own block.

5. What are the parties' roles with respect to the bond financing?

As the Charter provisions cited above make clear, although the referendum was a crucial step to authorize the issuance of \$110 million in bonds to finance the library project, the City Council must, by action of two-thirds of its members, request the Board of Estimate and Taxation to issue such bonds. The Library Board must, in addition to the request of City Council, similarly make request of such Board of Estimate by action of two-thirds of the members of the Library Board. Finally, the Board of Estimate and Taxation must, by vote of at least five of its members, agree to issue such bonds.

Very truly yours,

  
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John Moir  
City Coordinator

  
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Jay M. Heffern  
City Attorney

cc: Mayor R.T. Rybak  
Council President Paul Ostrow  
Council Members