



Office of the Mayor

David J. Cieslewicz, Mayor

City-County Building, Room 403
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3345
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mayor@cityofmadison.com
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March 16, 2010

Mr. William Kunkler
Fiore Companies, Inc.
150 East Gilman St
Madison, WI 53703

Mr. Mark Irgens
Irgens Development Partners, LLC
10700 Research Dr Ste One
Milwaukee, WI 53226

Dear Bill and Mark:

Thank you for your letter of March 8, 2010, regarding the Central Library Project.

I appreciate your candor in informing the City that Fiore/Irgens is unable to meet the budgeted amount for development of the project based on a condominium model. Now, we can concentrate on the public works model that the City has put forth as an alternative.

Your letter raises five issues that need to be addressed. First and most significantly, you state that Fiore/Irgens is no longer interested in purchasing the existing library site. This sale has been a key component of this project because, from your first proposal, Fiore stated that it would substantially redevelop most of the block. In fact, the total new value created by the redevelopment was the key factor in convincing me to support your proposal and to work to convince the Common Council and the public that this was the best path. If Fiore now wishes not to redevelop the current library site, the City will have to reevaluate the project and consider other options, including rehabbing the existing library.

Second, you state that West Washington Associates will have "approval rights over the final design and construction contractor selection." While the City is more than happy to consult with West Washington Associates and allow them to make suggestions, the final design approval must remain with the City. The choice of construction contractor is determined by the public bidding laws, which require the City to choose the lowest responsible bidder, and cannot be subject to approval of West Washington Associates.

Third, you detail approximately \$2.7 million in development fees, construction and design administration and development administration. With the City taking over as the developer, few if any of these costs will be incurred by Fiore/Irgens. Moreover, many of these costs are traditionally the costs of doing business by a developer, and the City is reluctant to set a precedent by paying costs on a project that does not move forward as planned. The City has

always taken the position that, if you provided us with a breakdown of hours worked and a reasonable fee, we would look at reimbursement for some past costs of Fiore/Irgens. You have not provided those figures. Nonetheless, in order to move things forward, the City is willing to offer \$100,000 for past costs incurred by Fiore/Irgens. Without detailed work records, we find it difficult to accept that compensable work – as opposed to the sort of work done by any developer hoping to get a project off the ground – could exceed this figure.

Fourth, you did not include any costs for loading docks, temporary or permanent, which are essential to the City's Central Library project. If we are to proceed, those loading docks are required and a cost figure must be agreed upon.

Fifth, you had originally stated that the cost for the existing structure was \$2.4 million. Our consultants estimated that figure at \$600,000. You later reduced your request to \$1.6 million. While we continue to consider the figure given by the City's consultants to be accurate, we are offering \$700,000 in an attempt to reach a compromise on these costs.

Subject to agreeing on the costs for a loading dock, the City is willing to offer the following amounts to proceed with the construction on West Washington:

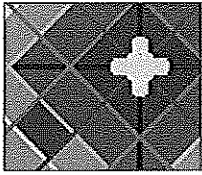
Air rights and other necessary easements:	\$ 4,130,000
Payments for existing structure in place:	700,000
8 Underground parking stalls:	200,000
Fiore/Irgens Costs to date:	<u>100,000</u>
TOTAL:	\$ 5,130,000

We look forward to meeting with you to continue the discussion.

Sincerely,


David J. Cieslewicz
Mayor

DJC/cjp



FIORE-IRGENS
VENTURE I, LLC

March 8, 2010

Mayor Dave Cieslewicz
City of Madison
210 MLK, Jr. Blvd., Room 403,
Madison, WI 53703-3342

RE: MADISON CENTRAL LIBRARY

Dear Mayor Cieslewicz:

In August 2009, as you were determining your capital budget request for the Central Library, Fiore-Irgens volunteered a reduction in its proposed price for a grey-box shell from \$27 million to \$23.9 million (plus construction period interest and future parking). This reduction was achieved by cost savings made possible in the current construction environment, as well as across-the-board decreases in professional fees. Presumably, this substantially reduced budget was relied upon by your staff in establishing the overall project budget request of \$37 million that was approved by the City Council in November 2009.

In a letter dated February 9, 2010, you subsequently demanded that Fiore-Irgens either effectively take an additional \$2 million reduction in the price for the turnkey shell (to \$23 million complete with construction period interest and future parking), or that it agree to sell the air rights to the City for a public works project that would exclude Fiore-Irgens from the development process.

Our team reconfirms that we cannot offer any further price reduction in the building shell without changes in the proposed project design and work scope delineation. As you know, we are very disappointed to be unable to continue development of Block66 under the City's proposed "public works" approach. Fiore does wish to see this project completed, however, and as a result might consider a sale of the West Washington Avenue site provided that reasonable compensation is provided for the site (including improvements in place) and for the efforts of our development team to conceive and initiate this project.

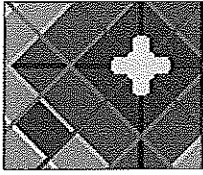
The proposed West Washington central library project as it exists today holds three significant components of value: 1) a basic location value similar to comparable development sites in Madison's Central Business District, 2) an incremental value provided by existing structural foundations that were engineered and constructed to permit 10-story vertical expansion, and 3) the investment by The Fiore Companies and Irgens Development Partners of thousands of hours into conceiving and developing this project over the past 20 months (described in our letter of February 17, 2010).

As you know, our November 2008 proposal for the grey-box building shell included the following compensation to the developer:

\$879,000	Development Administration (project conception and initiation)
\$421,000	Construction/Design Administration (design development and construction oversight), and
\$1,424,000	Developer Fee (overhead/profit including the "at-risk" developer return)

Since the City desires to undertake a public works project without our continued involvement as developer, we would require a project acquisition price of Seven Million Two Hundred Thousand Dollars (\$7,200,000) for the air





FIORE-IRGENS

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rights, improvements in place, 8 underground parking stalls, and development services provided to-date by Fiore-Irgens. (Architectural design copyrights belonging to EUA are not included.)

A sale of this site to the City would be contingent upon prompt negotiation and execution of a Condominium Use Agreement acceptable to West Washington Associates LLC, including approval rights over the final design and construction contractor selection.

Furthermore, under the public works structure you propose, Fiore-Irgens would no longer be in a position to purchase the existing library site. Nonetheless, we are confident that the site will be valuable to many others, and the City should be able to realize its fair value in the market.

Again, we encourage you to empower one or more of your staff to meet with us to discuss the details of your proposed public works process and determine a mutually agreeable approach to moving this project forward.

Sincerely,

William Kunkler
Executive Vice President
The Fiore Companies, Inc.

Mark Irgens
Manager/President
Irgens Development Partners, LLC

May, Michael

From: Phair, Connie
Sent: Wednesday, February 24, 2010 3:15 PM
To: 'Kunkler, William'
Cc: 'Tripp Widder'; May, Michael; Piraino, Janet; Hoffman, Jeanne; Brassler, Dean; Marx, Don; Zwart, Jeanine
Subject: Central Library Project
Attachments: Letter from Mayor Cieslewicz-Central Library Project 24FEB10.pdf

Hello Bill,

Please find attached a response letter from Mayor Cieslewicz to your letter dated 2/17/2010. I have dropped the original letter in the mail to you.

Thank you,
Connie

Connie J. Phair

Office of Mayor Dave Cieslewicz
210 Martin Luther King, Jr. Blvd., Room 403
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www.cityofmadison.com

February 24, 2010

Mr. William Kunkler
Fiore Companies, Inc.
150 East Gilman St
Madison, WI 53703

RE: Central Library Project

Dear Bill:

Thank you for your February 17, 2010, letter in which you detail the pre-development work done by Fiore-Irgens on the Central Library project.

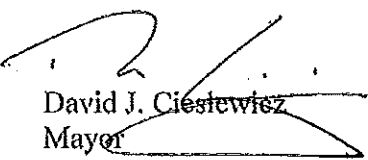
The City has always agreed that fair compensation for some of this work is appropriate. While we appreciate the level of specificity in your response, you did not tell us for which of these actions you were requesting compensation, the level of compensation requested or the team member to which the compensation might be paid. Nor was there any basis to evaluate the compensation request.

In order to evaluate and respond to your request, we need to receive from you a list of specific items, amounts, the party to be compensated and the basis for that compensation. When that is received we can then respond in writing and/or meet with you to discuss the request and any other options that may be available.

Your letter also specifically excluded compensation for and obtaining the right to use design work by EUA. The City needs to have that figure included in the request.

We share a desire to move forward, so your earliest response would be appreciated.

Sincerely,


David J. Cieslewicz
Mayor

DJC/ejp

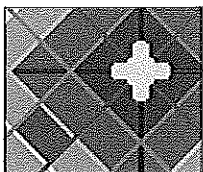
cc: Tripp Widder, President of the Madison Public Library Foundation Board of Directors
Michael May, City Attorney
Janet Piraino, Chief of Staff

May, Michael

From: Kunkler, William [bkunkler@fioreco.com]
Sent: Wednesday, February 17, 2010 9:30 AM
To: Mayor
Cc: Phair, Connie; May, Michael; Marx, Don
Subject: Response to clarification request
Attachments: Letter to Mayor 02172010.pdf

<<Letter to Mayor 02172010.pdf>>

Bill Kunkler, Executive Vice President
The Fiore Companies
608/255-5060



FIORE-IRGENS

VENTURE I, LLC

February 17, 2010

Mayor Dave Cieslewicz
City of Madison
Office of the Mayor
210 MLK, Jr. Blvd., Room 403,
Madison, WI 53703-3342

RE: MADISON CENTRAL LIBRARY

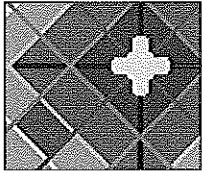
Dear Mayor Cieslewicz

We received your February 11, 2009 letter asking for clarification on the concept of “pre-development services” already provided by the Fiore-Irgens team. We are requesting fair and reasonable consideration and compensation for the services completed to-date by Fiore-Irgens. These services represent the effort to conceive, plan and initiate the project, assemble a team of professionals, prepare a comprehensive response to the RFP, establish a funding plan to solve the City’s budget gap, build support for the project within the business community and general public, and gain approval for the plan by the Selection Committee, Library Board, Mayor’s Office and City Council. This work represents a very substantial majority of the intellectual work product of the developer in creating a successful project, and this effort has brought significant value to the central library project.

The Fiore-Irgens team invested substantial time and resources to prepare a development concept in response to the City’s Request for Proposals. This effort began in May 2008 with exploration of alternatives to the T.Wall plan, and over a dozen schematic concepts were developed, detailed and analyzed by our team prior to submitting our proposal in November 2008. We also developed estimates of expected library space program requirements (which were not described in the RFP, nor available from Library administration), and we performed necessary engineering due diligence on the capacities of the existing structural foundations. After proposals were submitted, we identified and communicated numerous shortcomings in the Wall proposal, including HVAC design, floor loading and ceiling heights, and missing elevations, none of which had been identified or analyzed by City staff. We also challenged the estimated cost for temporary relocation. In addition, we were asked to make multiple presentations to the Selection Committee, Library Board, City Staff and the general public through April 2009.

In response to the City’s dilemma about the gap between *all* library proposals and the internal City budget for this project, our team retained tax counsel to research the availability of stimulus funds or other federal subsidies that could be made available for the new library. We presented you with a funding plan in mid-April 2009 that bridged the funding gap with i) reduction in the Shell and Interior construction cost due to the favorable construction climate (reducing the total budget to \$39.5 million), and ii) introduction of New Markets Tax Credit equity-model funding. We also researched and presented the opportunity to utilize Recovery Zone Bonds and/or Build America Bonds to subsidize the debt service, permitting greater borrowing power.





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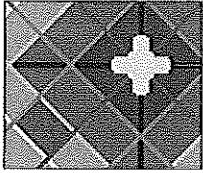
The Central Library Surplus Property Criteria and Selection Committee selected the Fiore-Irgens proposal on May 14, 2009, and this choice was approved by the Madison Public Library Board on June 5, 2009. After this approval, Fiore-Irgens worked to obtain confirmation of terms from U.S. Bancorp Community Development Corporation to provide equity capital for the New Markets Tax Credits. We then brought Stephen Kramer - their Senior Vice President for NMTTC and HTC Investments - up from St. Louis MO to meet on July 29th with City staff including Comptroller Dean Brassier.

We participated in three special discussion sessions with the City Council in July and August, and we continued to work with your political staff to advance approval for your capital budget request through September, October and early November. All of these efforts culminated in the Common Council's approval of the project budget on November 11, 2009.

Our work effort over the past twenty months has included:

- Work closely with architect to evaluate design alternatives and shape schematic design of project
- Advise on site use and improvements, selection of building systems and methods of project delivery.
- Monitor and coordinate activities of project team to assure timely response
- Develop capital budgets and evaluate financial feasibility
- Negotiate relocation option with existing tenant of new library site
- Review and reestablish project strategy as necessary
- Create of a virtual model permitting fly-around of the entire Block 66
- Present and defend the project at over 50 meetings, including public forums and private meetings with community leaders
- Analyze and critique RFP shortcomings of T.Wall proposal
- Research, analyze and communicate scope of savings from avoided library relocation costs
- Develop communication resources and assist City with public and media relations
- Research, analyze and communicate New Market Tax Credit funding opportunity which was not previously contemplated by the City (potentially bringing \$6.0 million in value to the project and the City)
- Obtain and present term sheet from U.S. Bancorp Community Development Corporation
- Prepare detailed re-pricing for shell in July 2009
- Analyze and critique proposed budget for library remodeling alternative
- Research, analyze and communicate tax increment potential on Phase II
- Identify, estimate and present potential cost saving options for City consideration in July/August 2009
- Revised project schedules; evaluate opportunities to reduce timeframe, overlap activities etc
- Create physical model with surrounding context at request of Council Leadership
- Prepare *Briefing Memorandum* for Common Council, dated August 21, 2009





FIORE-IRGENS

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- Prepare *Project Issues and Development Roles/Responsibilities* memo, dated December 18, 2009
- Continuously update the community of the progress of the project through blogs and other internet sources

The basis for “pre-development services” exists within the detailed development budget for the Fiore-Irgens library plan, which included the following components of developer services: Development Administration, Construction/Design Administration, and Developer Fee (overhead/profit including the “at-risk” developer return). Also, please bear in mind that the budget for developer services was based on an RFP schedule that promised a selection and approval by January 2009. As you know, this process took 10 months of additional effort prior before obtaining Council approval for the project.

Fiore-Irgens has an intellectual property right in the project concept that we created in response to the RFP. Detailed architectural and design work product belongs to Eppstein Uhen Architects, and is not included within the compensation sought for the developer services already provided by Fiore-Irgens.

In a meeting in August 2009, the City Attorney raised concerns about the technical requirements of the “public works” statutes. However, we were never given to understand that the Fiore-Irgens team would not be permitted to participate in this process. In fact, Attorney May confirmed at that meeting and subsequently that the City *could* directly engage the professional services of all firms comprising the Fiore-Irgens team, however the construction trade work itself would require an open bid process.

We trust that you recognize that we have invested a significant effort in creating and initiating this project, and we hope to be able to reach agreement with you on fair compensation for these efforts in order to permit the approved project to move forward under any option. We would like to meet with you to discuss and resolve this issue soon.

Sincerely,

FIORE-IRGENS VENTURE I, LLC

William Kunkler
Executive Vice President
The Fiore Companies, Inc.

Mark Irgens
Manager/President
Irgens Development Partners, LLC



May, Michael

From: Phair, Connie
Sent: Thursday, February 11, 2010 4:45 PM
To: 'Kunkler, William'
Cc: 'Tripp Widder'; May, Michael; Piraino, Janet; Hoffman, Jeanne; Brassler, Dean; Marx, Don; Zwart, Jeanine
Subject: Central Library Project
Attachments: Letter from Mayor Cieslewicz-Central Library Project 11FEB10.pdf

Hello Bill,

Please find attached a response letter from Mayor Cieslewicz to your email of 02/09/2010. I have dropped the original letter in the mail to you.

Thank you,
Connie

Connie J. Phair
Office of Mayor Dave Cieslewicz
210 Martin Luther King, Jr. Blvd., Room 403
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February 11, 2010

Mr. William Kunkler
Fiore Companies, Inc.
150 East Gilman St
Madison, WI 53703

RE: Central Library Project

Dear Bill:

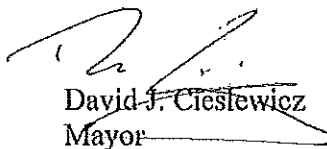
Thank you for your email note of February 9, 2010.

Before setting up a meeting to discuss the options outlined in my letter of February 9, 2010, the City needs some clarification on an item you raised. You asked what the City was willing to offer, in the public works model, for the air rights, the structure in place, and "pre-development services." While the City has some basis for agreeing to a figure for air rights and negotiating a value for the structure in place based upon figures previously considered by Fiore and HDR, we have no basis to suggest any value for "pre-development services." Before making any proposal related to such services, the City needs to know what it would be paying for and what it would obtain.

What amount would Fiore seek for such services? What services or products are included in the purchase by the City? How did Fiore arrive at the amount it seeks for each of those products or services? This should include any amounts sought for all architectural services by EUA and the right to use the products and results of those services, and any other pre-development work done by Fiore (such as structural studies and the like).

Once the City has this information, we should be in a position to make an offer to Fiore.

Sincerely,


David J. Cieslewicz
Mayor

DJC/cjp

cc: Tripp Widder, President of the Madison Public Library Foundation Board of Directors
Michael May, City Attorney
Janet Piraino, Chief of Staff

May, Michael

From: Kunkler, William [bkunkler@fioreco.com]
Sent: Tuesday, February 09, 2010 4:28 PM
To: Mayor
Cc: Mark Irgens
Subject: Review of Central Library Options

Dear Mayor,

I received your letter reiterating the options that you presented during our recent phone conversation. Might I suggest that we meet at Tripp Widder's offices to discuss this when he returns from his ski trip? I know that Mark Irgens wishes to be present, and I'd like to suggest that Don Marx also join us.

As stated in your letter, Fiore-Irgens has repeatedly affirmed its willingness to perform under its response to the City's RFP, which includes a purchase price for the grey box that we reduced from \$27 million to \$23.9 million in August 2009 (excluding construction period interest). We understand that you are now asking that this be further reduced to \$23 million (including construction interest). This is certainly a sizable gap that needs further discussion.

Fiore also acknowledges the structure you propose for a public works process that excludes both Fiore and Irgens from a continuing development role. In order to evaluate this option, we will need to understand what price you would be suggesting to compensate us for the air rights, including the structure in place and pre-development services already provided by Fiore-Irgens. Is there an amount you are proposing?

We certainly hope to work with you to find a mutually agreeable means of moving forward. How should we proceed?

Sincerely,
Bill

Bill Kunkler, Executive Vice President
The Fiore Companies
608/255-5060

May, Michael

From: Phair, Connie
Sent: Tuesday, February 09, 2010 3:00 PM
To: 'Kunkler, William'
Cc: 'Tripp Widder'; May, Michael; Piraino, Janet; Hoffman, Jeanne; Brassler, Dean; Marx, Don; Zwart, Jeanine
Subject: Central Library Project
Attachments: Letter from Mayor Cieslewicz-Central Library Project 09FEB10.pdf

Hello Bill,

Please find attached a letter from Mayor Cieslewicz regarding the Central Library project. I have dropped the original in the mail to you today.

Thank you,
Connie

Connie J. Phair
Office of Mayor Dave Cieslewicz
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February 9, 2010

Mr. William Kunkler
Fiore Companies, Inc.
150 East Gilman St
Madison, WI 53703

RE: Central Library Project

Dear Bill:

I am writing to follow up on our recent telephone conversation related to the Central Library Project, and the draft letters exchanged by the City and Fiore Companies in the first week of February.

The structure proposed in your draft letter of February 2, 2010 is not acceptable to the City. It proposes a hybrid of both public works and private development which the City Attorney informs me is, in many respects, illegal under the state's public works law. More importantly, it shifts nearly all the risk to the City of Madison, while retaining control and profits to the private Fiore Development Group.

The City will consider one of these options:

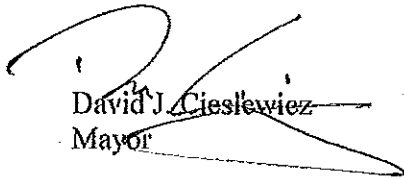
1. Public Works Project: The City and Fiore Development Group can negotiate the details of a public works style project along the lines outlined in the City's draft Letter of Intent sent to you on February 1, 2010. The City is willing to negotiate the details of that proposal, but the basic structure must be as outlined in that letter.
2. Condominium Development as Proposed by Fiore: You have stated several times that the Fiore Group remains willing to perform under its response to the City's RFP, including subsequent discussions, and to construct the core and shell of the new library under the condominium type arrangement, similar to the Sequoia Library model. It was the Fiore Group's decision in December – based upon your expressed concerns that Fiore could not meet the City's requirements – to suggest that the City move away from this model. In response, the City proposed a public works model as an alternative. Nonetheless, if the Fiore Group is willing to return to the condominium /Sequoia-type model, the City likewise is willing to work with that model. Under this arrangement, the Fiore Group must guarantee to deliver the core and shell and related portions of the condominium unit and common areas at a guaranteed price of no more than \$23,000,000. The items that the City expects to be included in the condominium delivery to the City are listed in the attached Exhibit A. This is important because a project coming in at a total cost of over \$37 million would require a 15 vote budget amendment which would have little chance for success.

3. Other Alternatives: If the Fiore Group and the City cannot agree to use option 1 or 2 (above), then the City will revert to looking at other options for a new central library. These options include remodeling of the existing library site, or obtaining a site for a new library either by purchase or exercise of condemnation powers.

As we discussed last Thursday, we share a common goal of commencing the project as soon as possible. If we can come to an agreement on options 1 or 2, I pledge to work with your group and City staff to gain all the necessary approvals as swiftly as possible.

Please let us know as soon as possible whether the Fiore Group is willing to agree to either option 1 or 2.

Sincerely,



David J. Cieslewicz
Mayor

DJC/cjp

cc: Tripp Widder, President of the Madison Public Library Foundation Board of Directors
Michael May, City Attorney
Janet Piraino, Chief of Staff

EXHIBIT A: CENTRAL LIBRARY CORE AND SHELL

1. Site Acquisition Costs. (Note: Offset by sale of existing Library which assumes Fiore will cover demolition costs).
2. Construction of Base Building including walls, windows, floors, roof, central HVAC, electrical, plumbing, elevators and loading dock.
3. Exterior Signage.
4. Eight parking spaces for the City.
5. Construction Administration and Developer's Services and Fees.
6. Cost for use of existing structure.
7. All A/E fees, costs and reimbursables.
8. LEED Silver Certification.
9. All miscellaneous fees and costs, including legal, title, accounting, insurance, government fees, etc.
10. Contingency Reserve.
11. Construction Period Interest. (City would work to provide regular payments to reduce.)
12. Delivery of unit with good title.

May, Michael

From: Kunkler, William [bkunkler@fioreco.com]
Sent: Tuesday, February 02, 2010 1:52 PM
To: Marx, Don; May, Michael
Cc: Ferderer, Lee; dcowell@irgensllc.com
Subject: ** CORRECTED ** Central Library Draft Letter of Intent 020210 (clean).doc
Attachments: Central Library Draft Letter of Intent 020210 (clean).doc

Don, as we discussed, the LOI version sent earlier had inadvertently deleted the existing structure provision. Please refer to this corrected version.

Thanks.

<<Central Library Draft Letter of Intent 020210 (clean).doc>>

February 2, 2010 DRAFT LOI City of Madison-Fiore RE Library

CONFIDENTIAL AND PRIVILEGED

Mr. William Kunkler	Mr. Mark Irgens
The Fiore Companies	Irgens Development Partners, LLC
150 East Gilman Street	1000 Research Drive, Suite One
Madison, WI 53703	Milwaukee, WI 53226

RE: Letter of Intent - Central Library
Real Estate Project No. 9043

Dear Bill and Mark:

The purpose of this letter of intent is to outline the principal terms and conditions of the purchase of air rights (the "Air Rights") by the City of Madison (the "City") from West Washington Associates LLC ("WWA"), an affiliate of The Fiore Companies, Inc. ("Fiore") for the construction of a new Central Library building and the purchase of the existing Central Library building by Fiore-Irgens Ventures I, LLC from the City for redevelopment of the site into a mixed-use project.

This Letter of Intent (LOI) is the first step in the sale of the properties, the development of the Central Library ("Phase I") and the development of the existing Central Library site ("Phase II"). Fiore-Irgens Venture I, LLC ("Fiore-Irgens") a joint venture between Fiore and Irgens Development Partners, LLC ("Irgens"), together with its team, which includes J. H. Findorff & Son Inc. ("Findorff"), and Eppstein Uhen Architects, Inc. ("EUA"), responded to a previous City RFP issued September 20, 2008 with a proposal dated November 21, 2008 that in compliance with the RFP included a condominium and construction of the shell and core portion of Phase I by the Fiore-Irgens team. Fiore-Irgens remains willing and able to perform as outlined in its RFP response. Nonetheless, this LOI presents a modified structure for the sale of the properties and the construction of the Phase I (shell, core and interiors) and the conditions upon which Fiore-Irgens would pursue the Phase II development.

The terms and conditions are as follows:

1. The City shall purchase and WWA shall sell and convey by Warranty Deed the Air Rights above the existing parking structure located at 244 West Washington Avenue on the northeast corner of West Washington Avenue and Henry Street in Madison, Wisconsin, as shown and identified on the attached Exhibit A, for the construction of a new Central Library building (Phase I). The legal description for the Air Rights shall be determined by a survey provided by WWA at its sole cost and expense. The acquisition price of the Air Rights shall be \$4,130,000 paid in cash at closing. The City shall pay an additional amount for the structure upon which Phase I will be built, which amount

remains to be negotiated. The City shall also pay an additional amount for project initiation and predevelopment services already provided by Fiore-Irgens, such amount and timing of payment to be negotiated.

The purchase of the Air Rights by the City shall be contingent on the City obtaining all zoning, design, permits and entitlements and financing necessary for Phase I construction. WWA shall grant to the City temporary easements to provide access to the Phase I area during construction activities, and permanent easements for operation and maintenance activities upon the completion of construction activities including a permanent easement to use a to-be-constructed loading dock on the site of the existing Central Library building, at a cost and on terms to be negotiated. Fiore-Irgens shall agree to provide the City eight (8) parking stalls within the ramp to be constructed as part of the redevelopment of the existing Central Library building site provided a parking ramp of at least 300 stalls becomes part of the Phase II development. The cost of the parking stalls will be determined based on the actual pro-rata cost of the stalls so developed. Prior to completion of the ramp, WWA shall provide eight (8) parking stalls to the City from WWA's existing leased parking supply in the Overture Ramp at the same rate WWA pays for such stalls without markup. Prior to and as a condition of completing the sale, the City has the right to have the existing structure and plans inspected by a structural engineer, at the City's costs, to determine that the structure is sufficient to support the construction anticipated in Phase I and, if the structure is found to be inadequate, the City is under no obligation to proceed with the purchase (the "Site Contingency"). The purchase of Air Rights is also contingent upon negotiation and execution of mutually agreeable condominium agreements to permit coordinated development and maintenance of shared Block 66 facilities.

2. The City will construct Phase I as a public works project using a construction manager/agency model for both the core and shell construction and interior build-out. The City will use the following development approach:
 - a. The City will engage EUA as architect for building core and shell. The City has issued a RFQ for architectural services for interior programming and build-out. EUA has submitted a response to the City in that ongoing process. In light of the work done to date by EUA on the design of Phase I, the City will agree to one of the following as the outcome of the RFQ process:
 - i. If as a result of the RFQ process EUA is chosen to be the architect for both Phase I core and shell and interior programming and design, the City will enter into a contract with EUA for the design of the core and shell and interiors at a competitive market-based fee to be negotiated; or
 - ii. If another firm is chosen to be the interior architect as a result of the RFQ process, the City will enter into a contract with such architectural firm with the requirement that this firm retain the services of EUA upon terms mutually agreeable between the City and EUA for the design of the core and shell including fees as provided in the Fiore-Irgens budget.

It is expressly understood that any agreement between the City and EUA shall include a release of Fiore-Irgens from any and all claims with respect to the design work EUA has produced as of the date hereof.

- b. The City will engage Irgens as Project Manager for Phase I at a competitive market-based fee to be negotiated. This position will be more fully defined but shall include entitlement and other remaining development responsibilities, as well as the obligations traditionally performed by an Owner's Representative. It shall be the Project Manager's responsibility to represent the City on all matters related to the design and construction of Phase I.
 - c. The City will engage Findorff as Construction Manager (agency model) for Phase I at a competitive market-based fee to be negotiated. (This is similar to the management model utilized by the City on its Villager project.)
 - d. Following design of Phase I, the City will issue bid documents pursuant to the Wisconsin municipal bidding statute (sec. 62.15, Wis. Stats.) and related City ordinances, for Phase I construction work. Findorff shall be allowed to respond to bid packages and shall be entitled to be awarded construction work provided that any such work awarded Findorff shall meet the requirements of sec. 62.15, Wis. Stats. and related City ordinances.
3. Fiore-Irgens shall purchase and the City shall sell and convey by Warranty Deed fee title to the land and existing Central Library improvements located at 201 West Mifflin Street in Madison, Wisconsin ("Property"), as shown and identified on the attached Exhibit B, for redevelopment of the site into a mixed-use project (Phase II). The acquisition price of the Property shall be \$4,500,000 paid in cash at closing. The purchase of the Property by Fiore-Irgens shall be contingent upon Fiore-Irgens obtaining all zoning, design, permits and entitlements financing necessary for Phase II and shall be further contingent upon the City abating any hazardous materials existing upon the Property and demolishing the existing building to provide a cleared site for Phase II development. At the option of Fiore-Irgens, this sale may be combined with the sale set out in paragraph 1 to allow for an I.R.C Section 1041 like-kind exchange.

By executing this LOI, Fiore-Irgens warrants that it has the authority to make the sales and purchases set out above and that it has provided a copy of this LOI to the other members of the Fiore-Irgens team.

This is a "Letter of Intent" which does not constitute a definitive statement of all of the terms and conditions of the proposed transaction. This Letter of Intent is not intended to constitute an agreement to execute any contract in the future. If the parties enter into negotiations, either party may terminate such negotiations at any time. Neither party will be legally bound in any manner unless and until a contract has been prepared, executed and delivered between them.

By signing in the space provide below, the parties indicate their desire to begin drafting a definitive agreement or agreements. No binding agreement will exist between the City and Fiore unless and until the terms and conditions are approved by the Common Council of the City of Madison and Purchase and Sale Agreements are executed between the City and Fiore.

This LOI is subject to approval of the Common Council prior to negotiating further agreements.

Sincerely,

Donald S. Marx, Manager
Office of Real Estate Services

The proposal set forth in this Letter of Intent is acceptable to Fiore-Irgens. Collectively, we further certify that we have the full authority to execute this Letter of Intent on behalf of Fiore-Irgens.

FIORE-IRGENS VENTURE I, LLC

BY: THE FIORE COMPANIES, INC., member

_____ Date: _____
William Kunkler, its Executive Vice President

BY: IRGENS DEVELOPMENT PARTNERS, LLC, member

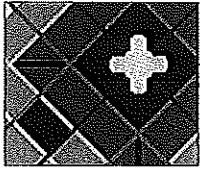
_____ Date: _____
Mark Irgens, its President

May, Michael

From: Kunkler, William [bkunkler@fioreco.com]
Sent: Tuesday, February 02, 2010 1:16 PM
To: Marx, Don
Cc: May, Michael; dcowell@irgensllc.com; Ferderer, Lee
Subject: LOI comments
Attachments: Don Marx 02022010.pdf; Central Library Draft Letter of Intent 020210 (clean).doc; Central Library Draft Letter of Intent 020210 (redlined).doc

<<Don Marx 02022010.pdf>> <<Central Library Draft Letter of Intent 020210 (clean).doc>> <<Central Library Draft Letter of Intent 020210 (redlined).doc>>

Bill Kunkler, Executive Vice President
The Fiore Companies
608/255-5060



FIORE-IRGENS
VENTURE I, LLC

February 2, 2010

Mr. Donald S. Marx
Manager
Office of Real Estate Services
215 Martin Luther King Jr. Blvd.
Room LL100
Madison, WI 53703

Dear Mr. Marx:

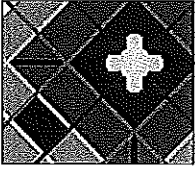
Fiore-Irgens Venture I, LLC ("Fiore-Irgens") is in receipt of the draft Letter of Intent ("LOI") for the proposed City of Madison ("City") Central Library development.

Our intention in suggesting the alternative "public works" delivery method has always been geared toward providing the City with the most effective and efficient method for completing for the Project. We never envisioned this alternative delivery as a means to disassemble the Fiore-Irgens team. As we have always stated, Fiore-Irgens remains committed, willing, and able to deliver the originally proposed turn-key library condominium shell & core at the previously proposed price.

We assume the City recognizes the benefits of maintaining the Fiore-Irgens team as part of the process in developing, designing, and constructing the Project. Therefore, we have marked up the draft LOI received yesterday to be more consistent with the alternative delivery method proposed by Fiore-Irgens. The key differences between our proposed approach and the City's LOI are as follows.

- The members of the Fiore-Irgens team remain involved in the project including The Fiore Companies, Irgens Development Partners, Eppstein Uhen Architects, and J.H. Findorff & Son.
- Fair compensation is anticipated to Fiore-Irgens for the work and value created to date. This includes project initiation/conceptualization, financial engineering, entitlements, design concepts, and preconstruction service.





FIORE-IRGENS
VENTURE I, LLC

If these two underlying principals can be incorporated into the project structure, we feel that mutually agreeable specific terms can be reached in quick fashion.

If these concepts cannot be incorporated, the original delivery method proposed by Fiore-Irgens of a turn-key library condominium shell & core remains available to the City. We look forward to your feedback on our proposed changes to the LOI. Thank you for your time and cooperation.

Sincerely,

FIORE-IRGENS VENTURE I, LLC

William Kunkler
Executive Vice President
The Fiore Companies, Inc.

Mark Irgens
Manager/President
Irgens Development Partners, LLC

February 2, 2010 DRAFT LOI City of Madison-Fiore RE Library

CONFIDENTIAL AND PRIVILEGED

Mr. William Kunkler	Mr. Mark Irgens
The Fiore Companies	Irgens Development Partners, LLC
150 East Gilman Street	1000 Research Drive, Suite One
Madison, WI 53703	Milwaukee, WI 53226

RE: Letter of Intent - Central Library
Real Estate Project No. 9043

Dear Bill and Mark:

The purpose of this letter of intent is to outline the principal terms and conditions of the purchase of air rights (the "Air Rights") by the City of Madison (the "City") from West Washington Associates LLC ("WWA"), an affiliate of The Fiore Companies, Inc. ("Fiore") for the construction of a new Central Library building and the purchase of the existing Central Library building by Fiore-Irgens Ventures I, LLC from the City for redevelopment of the site into a mixed-use project.

This Letter of Intent (LOI) is the first step in the sale of the properties, the development of the Central Library ("Phase I") and the development of the existing Central Library site ("Phase II"). Fiore-Irgens Venture I, LLC ("Fiore-Irgens") a joint venture between Fiore and Irgens Development Partners, LLC ("Irgens"), together with its team, which includes J. H. Findorff & Son Inc. ("Findorff"), and Eppstein Uhen Architects, Inc. ("EUA"), responded to a previous City RFP issued September 20, 2008 with a proposal dated November 21, 2008 that in compliance with the RFP included a condominium and construction of the shell and core portion of Phase I by the Fiore-Irgens team. Fiore-Irgens remains willing and able to perform as outlined in its RFP response. Nonetheless, this LOI presents a modified structure for the sale of the properties and the construction of the Phase I (shell, core and interiors) and the conditions upon which Fiore-Irgens would pursue the Phase II development.

The terms and conditions are as follows:

1. The City shall purchase and WWA shall sell and convey by Warranty Deed the Air Rights above the existing parking structure located at 244 West Washington Avenue on the northeast corner of West Washington Avenue and Henry Street in Madison, Wisconsin, as shown and identified on the attached Exhibit A, for the construction of a new Central Library building (Phase I). The legal description for the Air Rights shall be determined by a survey provided by WWA at its sole cost and expense. The acquisition price of the Air Rights shall be \$4,130,000 paid in cash at closing. The

City shall also pay an additional amount for project initiation and predevelopment services already provided by Fiore-Irgens, such amount and timing of payment to be negotiated.

The purchase of the Air Rights by the City shall be contingent on the City obtaining all zoning, design, permits and entitlements and financing necessary for Phase I construction. WWA shall grant to the City temporary easements to provide access to the Phase I area during construction activities, and permanent easements for operation and maintenance activities upon the completion of construction activities including a permanent easement to use a to-be-constructed loading dock on the site of the existing Central Library building, at a cost and on terms to be negotiated. Fiore-Irgens shall agree to provide the City eight (8) parking stalls within the ramp to be constructed as part of the redevelopment of the existing Central Library building site provided a parking ramp of at least 300 stalls becomes part of the Phase II development. The cost of the parking stalls will be determined based on the actual pro-rata cost of the stalls so developed. Prior to completion of the ramp, WWA shall provide eight (8) parking stalls to the City from WWA's existing leased parking supply in the Overture Ramp at the same rate WWA pays for such stalls without markup. Prior to and as a condition of completing the sale, the City has the right to have the existing structure and plans inspected by a structural engineer, at the City's costs, to determine that the structure is sufficient to support the construction anticipated in Phase I and, if the structure is found to be inadequate, the City is under no obligation to proceed with the purchase (the "Site Contingency"). The purchase of Air Rights is also contingent upon negotiation and execution of mutually agreeable condominium agreements to permit coordinated development and maintenance of shared Block 66 facilities.

2. The City will construct Phase I as a public works project using a construction manager/agency model for both the core and shell construction and interior build-out. The City will use the following development approach:
 - a. The City will engage EUA as architect for building core and shell. The City has issued a RFQ for architectural services for interior programming and build-out. EUA has submitted a response to the City in that ongoing process. In light of the work done to date by EUA on the design of Phase I, the City will agree to one of the following as the outcome of the RFQ process:
 - i. If as a result of the RFQ process EUA is chosen to be the architect for both Phase I core and shell and interior programming and design, the City will enter into a contract with EUA for the design of the core and shell and interiors at a competitive market-based fee to be negotiated; or
 - ii. If another firm is chosen to be the interior architect as a result of the RFQ process, the City will enter into a contract with such architectural firm with the requirement that this firm retain the services of EUA upon terms mutually agreeable between the City and EUA for the design of the core and shell including fees as provided in the Fiore-Irgens budget.

It is expressly understood that any agreement between the City and EUA shall include a release of Fiore-Irgens from any and all claims with respect to the design work EUA has produced as of the date hereof.

- b. The City will engage Irgens as Project Manager for Phase I at a competitive market-based fee to be negotiated. This position will be more fully defined but shall include entitlement and other remaining development responsibilities, as well as the obligations traditionally performed by an Owner's Representative. It shall be the Project Manager's responsibility to represent the City on all matters related to the design and construction of Phase I.
 - c. The City will engage Findorff as Construction Manager (agency model) for Phase I at a competitive market-based fee to be negotiated. (This is similar to the management model utilized by the City on its Villager project.)
 - d. Following design of Phase I, the City will issue bid documents pursuant to the Wisconsin municipal bidding statute (sec. 62.15, Wis. Stats.) and related City ordinances, for Phase I construction work. Findorff shall be allowed to respond to bid packages and shall be entitled to be awarded construction work provided that any such work awarded Findorff shall meet the requirements of sec. 62.15, Wis. Stats. and related City ordinances.
3. Fiore-Irgens shall purchase and the City shall sell and convey by Warranty Deed fee title to the land and existing Central Library improvements located at 201 West Mifflin Street in Madison, Wisconsin ("Property"), as shown and identified on the attached Exhibit B, for redevelopment of the site into a mixed-use project (Phase II). The acquisition price of the Property shall be \$4,500,000 paid in cash at closing. The purchase of the Property by Fiore-Irgens shall be contingent upon Fiore-Irgens obtaining all zoning, design, permits and entitlements financing necessary for Phase II and shall be further contingent upon the City abating any hazardous materials existing upon the Property and demolishing the existing building to provide a cleared site for Phase II development. At the option of Fiore-Irgens, this sale may be combined with the sale set out in paragraph 1 to allow for an I.R.C Section 1041 like-kind exchange.

By executing this LOI, Fiore-Irgens warrants that it has the authority to make the sales and purchases set out above and that it has provided a copy of this LOI to the other members of the Fiore-Irgens team.

This is a "Letter of Intent" which does not constitute a definitive statement of all of the terms and conditions of the proposed transaction. This Letter of Intent is not intended to constitute an agreement to execute any contract in the future. If the parties enter into negotiations, either party may terminate such negotiations at any time. Neither party will be legally bound in any manner unless and until a contract has been prepared, executed and delivered between them.

By signing in the space provide below, the parties indicate their desire to begin drafting a definitive agreement or agreements. No binding agreement will exist between the City and Fiore unless and until the terms and conditions are approved by the Common Council of the City of Madison and Purchase and Sale Agreements are executed between the City and Fiore.

This LOI is subject to approval of the Common Council prior to negotiating further agreements.

Sincerely,

Donald S. Marx, Manager
Office of Real Estate Services

The proposal set forth in this Letter of Intent is acceptable to Fiore-Irgens. Collectively, we further certify that we have the full authority to execute this Letter of Intent on behalf of Fiore-Irgens.

FIORE-IRGENS VENTURE I, LLC

BY: THE FIORE COMPANIES, INC., member

_____ Date: _____
William Kunkler, its Executive Vice President

BY: IRGENS DEVELOPMENT PARTNERS, LLC, member

_____ Date: _____
Mark Irgens, its President

May, Michael

From: May, Michael
Sent: Monday, February 01, 2010 4:35 PM
To: 'bkunkler@fioreco.com'
Cc: Piraino, Janet; Brasser, Dean; Hoffman, Jeanne; Marx, Don; Whitney, James; Harmon, Ray; Dimick, Barb; 'Tripp Widder'
Subject: Confidential: Central Library Draft LOI
Attachments: MPM Clean Central Library Draft Letter of Intent 020110.doc

Bill:

Please excuse my delay. Attached is the City's initial draft of the Letter of Intent to outline the structure for proceeding on the Central Library project. I will give you a call to discuss one item.

You should be aware that the media have already inquired about this. I do not think we have a reasonable basis to deny access under the public records law. However, I wanted you to get a copy and have a chance to forward to your partners before we send a copy to the media. I will be doing that tomorrow.

Contact me or Don Marx if you have questions.

Michael P. May
City Attorney
City of Madison
210 Martin Luther King Jr. Blvd., Rm. 401
Madison, WI 53703
608/266-4511
FAX:608/267-8715
mmay@cityofmadison.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

This electronic message is intended only for the designated recipient(s). It may contain privileged or confidential information and should not be disclosed to third parties without our express permission. If you are not the intended recipient, you have received this message in error and review, dissemination or copying of this message is prohibited. If you have received this message in error, please notify the sender immediately, delete the original message and destroy any electronic or printed copies of this message. Thank you.

February __, 2010 DRAFT LOI City of Madison-Fiore RE Library 020110(MPM)

CONFIDENTIAL AND PRIVILEGED

Mr. William Kunkler
The Fiore Companies
150 East Gilman Street
Madison, WI 53703

RE: Letter of Intent - Central Library
Real Estate Project No. 9043

Dear Bill:

The purpose of this letter of intent is to outline the principal terms and conditions of the purchase of air rights (the "Air Rights") by the City of Madison (the "City") from The Fiore Companies, Inc. ("Fiore") for the construction of a new Central Library building and the purchase of the existing Central Library building by Fiore from the City for the redevelopment of the site into a mixed-use project.

This Letter of Intent (LOI) is the first step in the sale of the properties, the development of the Central Library (Phase I) and the development of the existing Central Library site (Phase II). Fiore and its team of Findorff & Son, Inc. (Findorff), Epstein Uhen Architects, Inc. (EUA), and Irgens Development Partners (Irgens) responded to a previous City RFP with a proposal that included a condominium and construction of a portion of Phase I by the Fiore team. This LOI presents a modified structure for the sale of the properties and the construction of Phase I.

The terms and conditions are as follows:

1. The City shall purchase and Fiore shall sell and convey by Warranty Deed the Air Rights above the existing parking structure located at 244 West Washington Avenue on the northeast corner of West Washington Avenue and Henry Street in Madison, Wisconsin, as shown and identified on the attached Exhibit A, for the construction of a new Central Library building (Phase I). The legal description for the Air Rights shall be determined by a survey provided by Fiore at its sole cost and expense. The acquisition price of the Air Rights shall be \$4,130,000 paid in cash at closing. The City shall pay an additional amount for the structure upon which Phase I will be built, which amount must be negotiated. The purchase of the Air Rights by the City shall be contingent on the City obtaining all zoning, design, permits and entitlements and financing necessary for Phase I construction to commence. Fiore shall grant to the City temporary and permanent easements to provide access to the Phase I area during construction activities, and for operation and maintenance activities upon the completion of construction activities, including a permanent easement to use a to-be-constructed loading dock on the site of the existing Central Library building. Fiore shall agree to provide the City eight (8) parking stalls within the ramp to be constructed as part of the

redevelopment of the existing Central Library building site. The cost of the parking stalls shall be \$200,000 (\$25,000 per stall). Prior to the completion of the ramp, Fiore shall provide eight (8) parking stalls, at no cost, to the City in Fiore's existing parking structure located immediately below the Air Rights acquired by the City. Prior to and as a condition of completing the sale, the City has the right to have the existing structure and plans inspected by a structural engineer, at the City's costs, to determine that the structure is sufficient to support the construction anticipated in Phase I and, if the structure is found to be inadequate, the City is under no obligation to proceed with the purchase.

2. The City will construct Phase I as a public works project using a general contractor for both the core and shell construction and interior build-out. The City will use the following development approach:
 - a. The City has issued a RFQ for architectural services for the design of the Phase I core and shell and interior programming and build-out. EUA has submitted a response to the City in that ongoing process. In light of the work done to date by EUA on the design of Phase I, the City will agree to one of the following as the outcome of the RFQ process:
 - i. If EUA is chosen as a result of the RFQ process, the City will enter into a contract with EUA for the design of the core and shell, with the requirement that EUA partner with another architectural firm with library design experience; or
 - ii. If another firm with library design experience is chosen as a result of the RFQ process, the City will enter into a contract with the architectural firm with library design experience with the requirement that this firm retain the services of EUA for the design of the core and shell; or
 - iii. If another firm is chosen for the entire Phase I design, the City or the other firm will purchase from EUA the core and shell design it has completed to date for Phase I.
 - iv. If the City and EUA cannot agree on any of the three options above, the City will retain another firm to do the entire design of the shell and interior for Phase I.
 - b. The City will issue a Request for Proposals ("RFP") for a Project Manager for Phase I. This position will be more fully defined in the RFP, but shall combine some of the obligations traditionally performed by an Owner's Representative and a Construction Manager for Phase I. It shall be the Project Manager's responsibility to represent the City on all matters related to the design and construction of Phase I to be certain that Phase I is properly constructed. Findorff or Irgens may submit a response to the RFP.
 - c. Following design of Phase I, the City will issue bid documents pursuant to the Wisconsin municipal bidding statute (sec. 62.15, Wis. Stats.) and related City ordinances, seeking a general contractor for Phase I. Findorff may respond to the request for bids, provided that no person may serve as Project Manager and also be general contractor or provide any construction services.
3. Fiore shall purchase and the City shall sell and convey by Quit Claim Deed fee title to the land and existing Central Library improvements located at 201 West Mifflin Street in Madison, Wisconsin (the "Property"), as shown and identified on the attached Exhibit B, for the redevelopment of the site into

a mixed-use project (Phase II). The acquisition price of the Property shall be \$4,130,000 paid in cash at closing, which closing shall occur within two months of the City moving its library into the Phase I building. Prior to or within two months of closing the City shall be responsible for abating any hazardous materials found in the existing Central Library building. At the option of Fiore, this sale may be combined with the sale set out in paragraph 1 to allow for an in-kind transfer. Fiore is responsible for demolition of the existing Central Library building.

By executing this LOI, Fiore warrants that is has the authority to make the sales and purchases set out above and that it has provided a copy of this LOI to the other members of the Fiore team.

This is a "Letter of Intent" which does not constitute a definitive statement of all of the terms and conditions of the proposed transaction. This Letter of Intent is not intended to constitute an agreement to execute any contract in the future. If the parties enter into negotiations, either party may terminate such negotiations at any time. Neither party will be legally bound in any manner unless and until a contract has been prepared, executed and delivered between them.

By signing in the space provide below, the parties indicate their desire to begin drafting a definitive agreement or agreements. No binding agreement will exist between the City and Fiore unless and until the terms and conditions are approved by the Common Council of the City of Madison and Purchase and Sale Agreements are executed between the City and Fiore.

This LOI is subject to approval of the Common Council prior to negotiating further agreements.

Sincerely,

Donald S. Marx, Manager
Office of Real Estate Services

The proposal set forth in this Letter of Intent is acceptable to The Fiore Companies, Inc. I further certify that I have the full authority to execute this Letter of Intent on behalf of The Fiore Companies, Inc.

THE FIORE COMPANIES, INC.

William Kunkler, Executive Vice President

Date: _____

CENTRAL LIBRARY PUBLIC WORKS STRUCTURE

December 15, 2009

1. Preparation of Letter of Intent or Memorandum of Understanding setting out structure and essential terms.
2. Council approval of new structure and LOI.
3. Preparation of purchase and sale agreement for library air rights and easements and for sale of existing library.
 - a. Purchase of air rights including legal description and elevations for new library.
 - b. Sale of existing library (in-kind exchange?).
 - c. Easements for building supports, HVAC, loading areas, elevator core, ingress and egress.
 - d. Parking spaces for new library.
 - e. Contingencies.
 - f. Prices and times of payments and final deeds; closing contingencies.
4. Any temporary rights of access for construction; use of crane.
5. Title work.
6. City architect/engineer parallel track for preparation of bid documents.
7. City determination of owner's representative.
8. Bidding and construction.
9. Financing and NMTC on a parallel track.