MADISON PUBLIC LIBRARY MUSIC FIVE YEAR LICENSING AGREEMENT

This Music License Agreement (hereinafter the “AGREEMENT”) is made and effective this ___ day of, ________________ 20__. 

BETWEEN: The Madison Public Library (hereinafter “Madison PL”), a public library organized and existing under Chapter 43 of the Wisconsin Statutes as an agency of the City Of Madison, with its main library located at: 201 W. Mifflin Street, Madison WI 53701 

AND 

__________________________________ (hereinafter “LICENSOR”), an individual/musical group, 

with a mailing address of: ______________________________________________________________. 

Email Address: ______________________________________________________________. 

Telephone Number: ______________________________________________________________.
WHEREAS, the LICENSOR is the holder of the copyright to an album or collection of musical RECORDINGS, or the owner thereof, identified herein and Madison PL is a public library which desires to make available the music of LICENSOR to the Patrons in the direct service area of the Madison PL and the Patrons of the 53 member libraries in the South Central Library System (hereinafter “PATRONS” or in the singular, “PATRON”).

RECITALS

A. LICENSOR represents and warrants to Madison PL that he/she/they are the sole and exclusive owner of certain musical RECORDINGS which are described in Exhibit “A” attached hereto and incorporated herein by this reference (hereinafter referred to as “RECORDINGS”).

B. LICENSOR represents and warrants with respect to the RECORDINGS described in Exhibit “A” that LICENSOR has obtained and paid for any and all rights, clearances or licenses required for the use of any music or other proprietary material used in the RECORDINGS.

C. Madison PL maintains a physical presence at 201 W. Mifflin Street, Madison WI 53701, as well as a website accessible through the World Wide Web, which site is currently (subject to change) www.madisonpubliclibrary.org

D. Madison PL wishes to obtain a license to use the RECORDINGS in connection with its website and LICENSOR wishes to grant Madison PL such a license subject to the terms and conditions set forth in this AGREEMENT. LICENSOR understands that for the pendency of the term defined in this AGREEMENT, Madison PL intends to make the RECORDINGS available for streaming and permanent download to PATRONS.

E. LICENSOR represents and warrants that it has full and unrestricted power and authority to enter into this AGREEMENT and to grant Madison PL the license to use the RECORDINGS as set forth in this AGREEMENT.

F. MADISON PL represents and LICENSOR agrees, that the terms “PATRON” or “PATRONS” include not only those who are patrons of the MADISON PL but also those individuals who are library cardholders of the 53 member libraries in the South Central Library System.

NOW THEREFORE, in consideration of the promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties, and for other good and valuable consideration, each intending to be legally bound hereby, do promise and agree as follows:

1) GRANT OF LICENSE.

   a) LICENSOR hereby grants to Madison PL the non-exclusive right and license to make the RECORDINGS available to Madison PL and to PATRONS for a period of five (5) years following execution of this AGREEMENT, and for the period of any extensions or renewals of this agreement, as provided for herein,
for permanent download.

b) Once any RECORDING is downloaded by or added to the personal collection of any PATRON the license is perpetual to that PATRON. Madison PL will provide written warning to PATRONS not to copy and provide the RECORDING to others, but Madison PL cannot and will not be responsible for ensuring such behavior does not occur and will have no liability with regard to or arising from the same.

c) The license granted herein shall be royalty-free (other than the licensing fee set forth herein) and shall last for a period of five (5) years following execution of this AGREEMENT, or for the period of any extensions or renewals of this agreement, as provided for herein, after which the license to make the RECORDINGS available for PATRON download shall be terminated.

d) Madison PL is granted herein the right to place, embed, integrate or include samples or portions of the RECORDINGS in Madison PL’s website design and include the RECORDINGS using any technologies or methodologies now known or hereafter developed that integrates the RECORDINGS into the design or content of Madison PL’s website, in order to promote the service.

e) LICENSOR hereby grants Madison PL the right to use the name of LICENSOR and the composer and artists involved in the RECORDINGS in connection with Madison PL’s website and in promotional material. LICENSOR represents and warrants that it has the full right and permission to grant such licenses and permissions from all such individuals.

2) COMPENSATION FOR LICENSE.

a) In consideration of the license granted herein, Madison PL agrees to pay a one-time license fee to LICENSOR in the amount of $__________.00.

b) Such license fee shall be due and payable within thirty (30) days following execution of this AGREEMENT and receipt of the RECORDINGS in a digital or physical format acceptable to Madison PL. The right to use the RECORDINGS shall commence immediately upon execution of this AGREEMENT.

3) TERM OF LICENSE.

a) This license agreement shall be effective upon execution of this AGREEMENT by both parties.

b) The license granted hereunder to use the RECORDINGS within the scope and terms set forth herein shall be perpetual, though the RECORDINGS shall only be made available to new PATRONs for the first five (5) years following execution of this AGREEMENT.

c) RENEWAL. MADISON PL is granted the right to make the RECORDINGS available to PATRONs for an additional five (5) year period provided that MADISON PL pays an additional license fee to LICENSOR in the amount of $__________.00, prior to the expiration the initial five (5) year period provided in Paragraph 3) b), above, of this AGREEMENT. All provisions of this
AGREEMENT applicable to the initial five (5) year period shall apply with equal force to the additional five (5) year period.

4) REPRESENTATIONS AND WARRANTIES. LICENSOR makes the following representations and warranties to Madison PL, which representations and warranties shall apply during the term of this AGREEMENT and shall continue to apply following the termination of this AGREEMENT. LICENSOR shall indemnify and hold Madison PL, the Madison PL Board of Directors, the City of Madison, along with the officers and employees, past, present and future, of each, harmless from and against claims made against Madison PL, the Madison PL Board of Directors, the City of Madison, along with the officers and employees, past, present and future, of each relating to the representations and warranties of LICENSOR made herein.

a) LICENSOR is the sole and exclusive owner of the RECORDINGS and the copyrights and other proprietary rights contained therein. LICENSOR represents and warrants, that to the extent that LICENSOR is the songwriter or composer of any or all of the musical works embodied in the RECORDINGS whether in whole or in part (i.e. as a co writer), LICENSOR has the full right, power and authority to grant the rights set forth in this AGREEMENT notwithstanding the provisions of any agreement that LICENSOR may have entered into with any Performing Rights Organization (an organization that provides intermediary functions, including as a primary function, royalty collection between copyright holders and parties who wish to use copyrighted works publicly; Performing Rights Organizations include, but are not limited to ASCAP, BMI and SESAC) whether based in the United States or elsewhere, or any music publisher, and that LICENSOR is solely responsible for taking all steps necessary to inform such Performing Rights Organization or music publisher of LICENSOR’S grant of a license to MADISON PL and its partners or licensees for the public performance and communication to the public of RECORDINGS, including clips or samples, and that no fees or payments of any kind whatsoever shall be due to any Performing Rights Organization or music publisher for the use of the RECORDINGS when publically performed, communicated or otherwise transmitted by MADISON PL or its partners or licensees.

b) The RECORDINGS do not infringe upon or violate the copyrights, trademarks, patents, or other proprietary rights of any other party. LICENSOR represents and warrants that the use or other exploitation of RECORDINGS, including, but not limited to musical works embodied in RECORDINGS by MADISON PL or its partners or licensees as contemplated by this AGREEMENT will not infringe or violate the rights of any third party, including without limitation, any privacy rights, publicity rights, copyrights, contract rights or any other intellectual property of proprietary rights.

c) LICENSOR has the unrestricted right and power to enter into this AGREEMENT and to license the RECORDINGS to Madison PL as provided herein including, but not limited to, all musical works embodied in the RECORDINGS, and that LICENSOR is authorized to provide the RECORDINGS to MADISON PL. For the avoidance of doubt, if LICENSOR is acting on behalf of an artist, band, group, a limited liability company, corporation or other entity, LICENSOR hereby
represents and warrants to MADISON PL that LICENSOR is fully authorized to enter into this AGREEMENT on behalf of such artist, band, group, limited liability company, corporation or other entity, and to grant all of the rights and assume and fulfill all of the obligations, covenants and representations and warranties set forth in this AGREEMENT).

d) LICENSOR represents and warrants that LICENSOR has not assigned any rights in and to the sound recordings embodied in the RECORDINGS to any third party (e.g. a record label) that obtained exclusive rights in and to such RECORDINGS. There are no other agreements, court orders or the provision of any law or administrative rule that interfere with LICENSOR’s right to license the RECORDINGS hereunder.

e) LICENSOR has obtained all necessary consents, permissions, licenses and other documents from recording companies, composers, musicians, musician unions and other labor unions, copyright owners and others with any interest in the RECORDING or who performed on the RECORDINGS, at LICENSOR’s sole cost and expense and will indemnify and hold Madison PL, the Madison PL Board of Directors, the City of Madison, along with the officers, employees, past, present and future, of each harmless from and against any and all claims, suits, threats, demands, actions and causes of action brought directly or indirectly by any of these parties. LICENSOR represents and warrants that LICENSOR has permission to use the name and likeness of each identifiable person whose name or likeness is contained or used within the RECORDINGS and such individual’s identifying or personal information (to the extent such information is used or contained in the RECORDINGS as contemplated by the AGREEMENT.

f) LICENSOR represents and warrants that LICENSOR has paid for any and all: a) royalties and other sums due to artists (featured and non-featured), authors, coauthors, copyright owners and co owners, producers, engineers, and any other royalty participants from sales or other uses of the RECORDINGS; and/or b) mechanical royalties or other sums payable to music publishers and/or authors or coauthors of musical RECORDINGS embodied in the RECORDINGS from sales or other uses of the RECORDINGS.

5) COPYRIGHT NOTICES/RETAINED RIGHTS.

a) Madison PL shall place on its website a notice of copyright relative to the RECORDINGS and credits to the songwriters and artists performing in the RECORDINGS.

b) LICENSOR shall retain the copyright to the RECORDINGS and all right, title, and interest in and to the RECORDINGS, including the right to publish, distribute, publicly perform, modify, enhance, change and improve, and all other exclusive rights of the copyright owner, except only for the right of license granted to Madison PL hereunder.

c) Madison PL hereby agrees to and acknowledges the rights retained by LICENSOR hereunder and acknowledges that the LICENSOR shall retain all exclusive rights of the LICENSOR and holder of a copyright or other proprietary rights.
d) LICENSOR shall have the sole right to pursue any party that infringes upon the LICENSOR’s copyright or other proprietary rights in and to the RECORDINGS and shall bear all expenses of prosecuting such infringement actions against third parties. In no way shall MADISON PL be responsible for policing and prosecuting said rights.

6) NO ASSIGNMENT. Neither this AGREEMENT nor any right, interest, duty, or obligation hereunder may be assigned by the parties hereto, except that MADISON PL is granted the right to contract with partners or licensees, including but not limited to Murfie, Inc., for the operation of MADISON PL’s website, yaharamusic.org, which website will contain the RECORDINGS.

7) GOVERNING LAW. In interpreting the terms of this AGREEMENT, the parties agree that the laws of the state of Wisconsin shall be applicable. All suits permitted to be brought in any court shall be in Wisconsin.

8) CLAIMS. MADISON PL and LICENSOR agree that, notwithstanding any other rights the party may have under law or equity, any cause of action arising out or related to this AGREEMENT, or the use of MADISON PL’s website, excluding a claim for indemnification or a claim under Paragraph 4) herein, entitled “Representations and Warranties”, must commence within one year after the cause of action accrues, or such cause of action is permanently barred.

9) MADISON PL’s RIGHT OF REMOVAL OF RECORDINGS. Madison PL reserves the right, in its sole and absolute discretion, to remove any of Licensor’s RECORDINGS from downloading if: a) if LICENSOR cannot document LICENSOR’s rights therein upon MADISON PL’s request and to Madison PL’s satisfaction; b) the RECORDINGS violate the intellectual property rights or other protected interests of a third party; c) if the RECORDINGS are the subject of a takedown notice by a party claiming to own the rights therein, or d) is the subject of any fraudulent activity, or for any other reason in MADISON PL’s sole and absolute judgment is necessary to protect the interests of MADISON PL and any of its partners or licensees. MADISON PL shall have no liability to LICENSOR for removal of any of the RECORDINGS from MADISON PL’s website or the website of any partner or licensee of MADISON PL.

a) REMOVAL OF RECORDINGS AT THE REQUEST OF LICENSOR. LICENSOR may request MADISON PL to remove any of LICENSOR’s RECORDINGS from downloading and streaming, and MADISON PL shall give due consideration to the reasons for LICENSOR’s request for removal. However, the final decision to remove a RECORDING from downloading and streaming shall be at the sole and absolute discretion of MADISON PL.

10) ENTIRE AGREEMENT. This AGREEMENT contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and replaces all prior discussions, agreements, proposals, understandings, whether orally or in writing, between the parties related to the subject matter of this AGREEMENT. This AGREEMENT may be changed, modified, or amended only in a written agreement that is duly executed by authorized representatives of the parties. If any provision(s) hereof is deemed to be illegal or unenforceable by a court of competent jurisdiction, the enforceability and effectiveness of the remainder of the AGREEMENT shall not be affected.
and this AGREEMENT shall be enforceable without reference to the unenforceable provision(s). No party’s waiver of any breach or accommodation to the other party shall be deemed to be a waiver of any subsequent breach.
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates set forth above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof. By signing below, licensor represents and warrants that licensor is the sole and exclusive owner of the RECORDINGS and all copyrights and other proprietary rights contained therein.

By:

THE MADISON PUBLIC LIBRARY

LICENSOR

Greg Mickells, as Director, Madison Public Library
LICENSOR’s Printed Name:

EXHIBIT A

RECORDINGS

Album or Song Title(s):

Artist:

Date Released:

Registration Copyright Numbers (If Applicable):