

# CONTRACT FOR PURCHASE OF SERVICES

between the City of Madison and Lothan Van Hook DeStefano Architecture LLC  
(Architect)

1. **PARTIES.**

This is a Contract between the City of Madison, Wisconsin, hereafter referred to as the "City" and Lothan Van Hook DeStefano Architecture LLC hereafter referred to as "Contractor" or "Architect."

The Architect is a:  Corporation  Limited Liability Company  General Partnership  LLP  
(to be completed by Architect)  Sole Proprietor  Unincorporated Association  Other: \_\_\_\_\_.

2. **PURPOSE.**

The purpose of this Contract is as set forth in Section 3.

3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

Architect will perform the following services and be paid according to the following schedule(s) or attachment(s):

Attachment 1 - Scope of Services and Schedule of Payments

4. **TERM AND EFFECTIVE DATE.**

This Contract shall become effective upon execution by the Mayor, (or the Purchasing Agent, if authorized) on behalf of the City of Madison, unless another effective date is specified in the Attachment(s) incorporated in Section 3, however in no case shall work commence before execution by the City of Madison. The term of this Contract shall be as stated in Attachment 1.

5. **ENTIRE AGREEMENT.**

This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 3 (hereafter, "Agreement" or "Contract") is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties.

6. **ASSIGNABILITY/SUBCONTRACTING.**

Architect shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by Architect and employees of Architect. Notwithstanding the foregoing, Contractor shall have the right to engage the services of Subconsultants as set forth in Exhibit A.

7. **DESIGNATED REPRESENTATIVE.**

- A. Architect designates Mary Ann Van Hook as Contract Agent with primary responsibility for the performance of this Contract. In case this Contract Agent is replaced by another for any reason, the Architect will designate another Contract Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 15, Notices.
- B. In the event of the death, disability, removal or resignation of the person designated above as the Contract agent, the City may shall accept another person as the Contract agent.

8. **PROSECUTION AND PROGRESS.**

- A. Services under this Agreement shall commence upon written order from the City to the Architect. This order will constitute authorization to proceed, unless another date for commencement is specified elsewhere in this Contract including documents incorporated in Section 3.
- B. The Architect shall complete the services under this Agreement within the time for completion specified in the Scope of Services, including any amendments. The Architect's services are completed when the City notifies the Architect in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Architect, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Architect. If at any time the Architect believes that the time for completion of the work should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Architect shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.
- C. Services by the Architect shall proceed continuously and expeditiously through completion of each phase of the work.
- D. Progress reports documenting the extent of completed services shall be prepared by the Architect and submitted to the City with each invoice under Section 24 of this Agreement, and at such other times as the City may specify.
- E. The Architect shall notify the City in writing when the Architect has determined that the services under this Agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Architect, acknowledging formal acceptance of the completed services.

9. **AMENDMENT.**

This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.

10. **EXTRA SERVICES.**

The City may require the Architect to perform extra services or decreased services, according to the procedure set forth in Section 24. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total Contract price, as set forth in Section 23, unless the Contract is amended as provided in Section 9 above or as stated in Attachment 1.

11. **NO WAIVER.**

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

12. **NON-DISCRIMINATION.**

In the performance of work under this Contract, the Architect agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Architect further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

13. **AFFIRMATIVE ACTION.**

**A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):**

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 13.A.) at the time the Request for Exemption in 13.B.(2) is made.

**B. Articles of Agreement, Request for Exemption, and Release of Payment:**

**The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:**

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

\*As determined by the Finance Director

\*\*As determined by the Department of Civil Rights

(1) Exempt Status: In this section, "Exempt" means the Contractor is exempt from the Articles of Agreement in section 13.B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights ("Department") makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 13.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$25,000 in annual aggregate business with the City in the calendar year. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 13.B.(5) UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (check one):

- A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than twenty-five thousand dollars (\$25,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

14. SEVERABILITY.

It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

15. NOTICES.

All notices to be given under the terms of this Contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

Natalie Erdman

(Department or Division Head)

215 Martin Luther King, Jr. Blvd, Room LL 100

Madison, WI 53703

FOR THE ARCHITECT:

Mary Ann Van Hook (Managing Principal)

Lothan Van Hook DeStefano Architecture LLC

57 West Grand, Suite 300

Chicago, IL 60654

16. STATUS OF ARCHITECT/INDEPENDENT/TAX FILING.

It is agreed that Architect is an independent Contractor and not an employee of the City, and that any persons who the Architect utilizes and provides for services under this Contract are employees of the Architect and are not employees of the City of Madison.

Architect shall provide its taxpayer identification number (or social security number) to the Finance Director, 210 Martin Luther King Jr. Blvd, Room 406, Madison, WI 53703, prior to payment. The Architect is informed that as an independent Contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this Architect for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Architect. The Architect is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this Contract.

17. GOODWILL.

Any and all goodwill arising out of this Contract inures solely to the benefit of the City; Architect waives all claims to benefit of such goodwill.

18. THIRD PARTY RIGHTS.

This Contract is intended to be solely between the parties hereto. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

19. AUDIT AND RETAINING OF DOCUMENTS.

The Architect agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Contract. Any other reports or documents shall be provided within five (5) working days after the Architect receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Architect for a period of three (3) years after completion of all work under this Contract, in order to be available for audit by the City or its designee.

20. CHOICE OF LAW AND FORUM SELECTION.

This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

21. COMPLIANCE WITH APPLICABLE LAWS.

The Architect shall become familiar with, and shall at all times comply with and observe applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Architect and its agents and employees.

22. **CONFLICT OF INTEREST.**

- A. The Architect warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.
- B. The Architect shall not employ or Contract with any person currently employed by the City for any services included under the provisions of this Agreement.

23. **COMPENSATION.**

The terms of compensation are as expressly stated in Articles VII and VIII of Attachment 1.

24. **BASIS FOR PAYMENT.**

- A. The Architect shall submit invoices, on the form or format approved by the City and as may be further specified in Section 3 of this Contract. The City will pay the Contractor in accordance with the schedule, if any, set forth in Section 3. The final invoice, if applicable, shall be submitted to the City within three months of completion of services under this Agreement.
- B. Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- C. Final payment of any balance due the Architect will be made upon acceptance by the City of the services under the Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Architect under this Agreement.
- D. The City has the equitable right to set off against any sum due and payable to the Architect under this Agreement, any amount the City determines the Architect owes the City, whether arising under this Agreement or under any other Agreement or otherwise.
- E. The City will not compensate for unsatisfactory performance by the Architect.

25. **DEFAULT/TERMINATION.**

- A. In the event Architect shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Architect, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Architect, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Contract and all rights of Architect under this Contract.
- B. Notwithstanding paragraph A., above, the City or the Architect may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the City or the Architect, whichever is applicable, with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Architect and accepted by the City including reimbursable expenses then due.
- C. In the event the City shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to the City, the Architect may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the City, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately suspend work or terminate this Contract and all rights of the City under this Contract.

26. **INDEMNIFICATION.**

Architect shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by, or resulting from the Architect's and/or subconsultants negligent acts, errors or omissions, in the performance of this Agreement.

27. **STANDARD OF CARE.**

The Architect agrees that all work performed under this Contract shall be performed in accordance with good, sound architectural design and applicable engineering, geological, or other applicable professional or trade practices, shall be in conformity with any applicable data, specification, and design criteria attached to or included by reference in this Contract, and that performance under this Contract shall reflect the Architect's best professional knowledge, skill and judgment.

Architect shall, to the best of his/her information and knowledge, prepare all design and construction plans and documents and other materials or deliverables required under this Contract in such a manner to be accurate, coordinated and adequate for construction and the Architect shall review all of the same for conformity and compliance with all applicable laws, codes and regulations.

28. **INSURANCE.**

- A. The Architect will insure, and will require each subconsultant to insure, as indicated, against the following risks to the extent stated below. The Architect shall not commence work under this Contract, nor shall the Architect allow any Subconsultant to commence work on its Subcontract, until the insurance coverage required below has been obtained and approved by the City Risk Manager, under the procedures in Section 28. C., below.

Commercial General Liability

The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Automobile Liability

The Contractor shall procure and maintain during the life of this Contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

Worker's Compensation

The Contractor shall procure and maintain during the life of this Contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.

Professional Liability

The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a "claims made" policy, all renewals thereof during the life of the Contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the Contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

- B. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- C. Proof of Insurance, Approval. The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is still in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

City of Madison  
ATTN: Risk Management, Room 406  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703

The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal to any of the above-required policies during the term of this Contract.

- D. Notice of Cancellation. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or to any of the above-required policies during the term of this Contract.

29. **OWNERSHIP OF CONTRACT PRODUCT.**

The original drawings and specifications, renderings, models, scale details, approved copies of shop drawings, record drawings and other such documents prepared by the Architect pursuant to this Contract shall become the property of the City on completion and acceptance of the Architect's work, or upon termination of the Contract, and shall be delivered to the City.

Documents prepared under this Contract may be distributed by the City for informational purposes without additional compensation to the Architect.

Specifications and isolated, detail drawings inherent to the architectural design of the project, whether provided by the City or generated by the Architect, shall be available for future use by the parties to this Contract and other parties, each at their own risk.

If design and documentation has been completed using automated or computerized techniques, the Architect shall provide a copy of project documents upon request in a format approved by the City.

Except as otherwise provided in this Contract, in the event the Owner uses the contract product without retaining the author of the contract product, the Owner releases the Architect and Architect's Consultant(s) from all claims and causes of action arising from such uses.

30. **LIVING WAGE (Applicable to contracts exceeding \$5,000).**

Unless Contractor is not subject to the requirements of Section 4.20, Madison General Ordinances, the Contractor agrees to pay all employees employed by the Contractor in the performance of this Contract, whether on a full-time or part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances.

31. **EQUAL BENEFITS REQUIREMENT (Sec. 39.07, MGO.) (Applicable to contracts exceeding \$25,000).**

This provision applies to service contracts of more than \$25,000 executed, extended, or renewed by the City on July 1, 2012 or later, unless exempt by Sec. 39.07 of the Madison General Ordinances (MGO).

For the duration of this Contract, the Contractor agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of Sec. 39.07, MGO. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, the Contractor is unable to provide the benefit, the Contractor shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. The Contractor may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

Notice Posting, Compliance. The Contractor shall post a notice informing all employees of the equal benefit requirements of this Contract, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

Subcontractors (Service Contracts Only). Contractor shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Sec. 39.07, MGO.

32. **BAN THE BOX - ARREST AND CRIMINAL BACKGROUND CHECKS.** (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000.)

A. **DEFINITIONS.**

For purposes of this section, "Arrest and Conviction Record" includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

"Conviction record" includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

"Background Check" means the process of checking an applicant's arrest and conviction record, through any means.

B. **REQUIREMENTS.** For the duration of this Contract, the Contractor shall:

- (1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant's arrest and conviction record, as defined herein.
- (2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
- (3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
- (4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
- (5) Comply with all other provisions of Sec. 39.08, MGO.

C. **EXEMPTIONS:** This section does not apply when:

- (1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
- (2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. C.(1) or (2) above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the contractor is exempt from this section for the position(s) in question.

33. **WEAPONS PROHIBITION.**

Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

34. **AUTHORITY.**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that he or she has been duly authorized to bind the Contractor and sign this Contract on the Contractor's behalf.

35. **COUNTERPARTS, ELECTRONIC DELIVERY.**

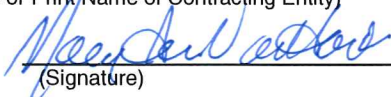
This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

**CONTRACTOR**

Lothan Van Hook DeStefano Architecture LLC

(Type or Print Name of Contracting Entity)

By:   
(Signature)

Mary Ann Van Hook, Managing Principal  
(Print Name and Title of Person Signing)

Date: 9/12/2016

**CITY OF MADISON, WISCONSIN**  
**a municipal corporation**

By:   
Paul R. Soglin, Mayor

Date: October 26, 2016


By:   
Maribeth Witzel-Behl, City Clerk

Date: September 30, 2016

**Approved:**

  
David P. Schmiedicke, Finance Director

Date: 10/25/16

 for  
Eric T. Veum, Risk Manager

Date: 10/14/16

**Approved as to Form:**

  
Michael P. May, City Attorney

Date: 25 OCTOBER 2016

**NOTE: Certain service contracts may be executed by the designee of the Finance Director on behalf of the City of Madison:**

By: Kathryn L. Schwenn, CPA, Accountant 3 Date \_\_\_\_\_  
Designee of Finance Director

MGO 4.26(3) and (5) authorize the Finance Director or designee to sign purchase of service contracts when all of the following apply:

- (a) The funds are included in the approved City budget.
- (b) An RFP or competitive process was used, or the Contract is exempt from competitive bidding under 4.26(4)(a).
- (c) The City Attorney has approved the form of the Contract.
- (d) The Contract complies with other laws, resolutions and ordinances.
- (e) The Contract is for a period of 1 year or less, OR not more than 3 years AND the average cost is not more than \$50,000 per year, AND was subject to competitive bidding. (If over \$25,000 and exempt from bidding under 4.26(4)(a), regardless of duration of the Contract, the Common Council must authorize the Contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b).)

Emergency Service contracts may also be signed by the designee of the Finance Director if the requirements of MGO 4.26(3)(c) are met.



**ATTACHMENT NO. 1  
SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS  
BLOCK 88 PARKING GARAGE**

**CONTRACT NO. \_\_\_\_\_**

In this Attachment 1: the word “City” means City of Madison, Wisconsin; the word “Architect” means the licensed design professional, Lothan Van Hook DeStefano Architecture LLC (LVDA) and other members of the architecture team as listed in Exhibit B where appropriate; the word “General Building Contractor” means the entity which will construct the Project; and the word “Project” shall mean the design and construction of a new below grade municipal parking ramp comprising of approximately 600 parking stalls, and bicycle center on Block 88 of the Judge Doyle Square Development.

Services will be performed from pre-design through administration of the construction contract including the preparation of construction / bid documents and assistance in the bidding process. The Project will be designed to operate as a fully automated, self-parking structure, using the Parking and Revenue Control System that the City Parking Utility will be installing in its other facilities. Sufficient Pay on Foot stations shall be provided to enhance customer convenience and efficiency. The Project will include provisions for a management office, storage, and power stations for electric cars and will also include an interactive, secure bicycle parking facility that provides opportunities to engage both current and new bicyclists, including facility user-related retail and repair services (“Program”).

In addition, the Project will include the design and development of the new Pinckney Street Right of Way Development including the amenities necessary to for the City to replace the rights-of-way to the condition shown on the approved Project plans as described in the Development Agreement between the City and Beitler Real Estate Services, LLC. The Project will also include planning and design provisions for the development to occur above.

The site is bounded by Block 105, East Doty Street, East Wilson Street, and the adjacent Madison Municipal Building in Madison, Wisconsin.

The building site is located within the Downtown Core zoning district.

The estimated preliminary construction budget for this Project (excluding the new Pinckney Street Right of Way) is \$30,940,000

Attachment 1 shall include the following exhibits:

Exhibit A: LVDA Team Fee Proposal

Exhibit B: LVDA Team Members

**ARTICLE II. SERVICES TO BE PERFORMED BY THE ARCHITECT**

The Architect’s services shall consist of the six (6) phases described below and shall be performed by the Architect as principal.

1. PHASE I: PRE-DESIGN PHASE

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- A. Review all pre-design information provided by the City.
- B. Meet and confer with representatives of the City to prepare proposed Program.
- C. The Program shall provide proposed gross facility square foot areas.
- D. Visit the proposed Project site location to identify existing traffic patterns, important existing buildings, year-round accessibility, site drainage, existing water/sewage/electrical, and site features.

- E. Site Development Planning/Master Site Plans:  
Site development planning consisting of preliminary site analysis. Master site plans shall be developed based on land utilization, structures placement, facilities development, development phasing, movement systems including circulation and parking, utility systems, site drainage surface and subsurface conditions, zoning and other legal restrictions.

Meet and confer with City Engineering in preparation of a preliminary master storm water management plan for the entire site development area. The preliminary master storm water management plan must be completed to confirm site drainage locations.

Meet and confer with City Engineering in preparation of a preliminary sanitary sewer plan for the entire site development area. The preliminary sanitary sewer plan must be completed to confirm site sanitary sewer connection locations.

Meet and confer with Madison Water Utility in preparation of a preliminary water main plan for the entire site development area. The preliminary water main plan must be completed to confirm site water main connection locations.

Meet and confer with Madison Gas & Electric in preparation of a preliminary gas and electric plan for the entire site development area. The preliminary gas and electric plan must be completed to confirm site gas and electric connection locations.

Meet and confer with City Traffic Engineering to review master site planning related to curb cuts, driveway access to adjoining streets, and pedestrian and bicycle access.

- H. Review City's Owner Project Requirements ("OPR"). As a component of this contract, Walker Parking Consultants will assist City in developing the OPR.
- I. Meet and review sustainability strategies and technologies with the City and the City's commissioning agent, which will be the City's Department of Public Works Engineering Division. Sustainability strategies and technology goals need to include criteria that are related to energy efficiency, maintainability, reliability, longevity, and cost. Provide cost analyses and recommendations on options to achieve ParkSmart certification, or at a minimum, incorporate options that will lower operating costs and energy consumption/waste.

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Modify the Architect's sustainability strategies and technologies as requested by the City and the City's commissioning agent.

- I. Meet and confer with the City Fire Marshal to identify programming criteria related to fire suppression systems, building type, fire alarm systems, site considerations for fire vehicle access, fire hydrant locations, and similar fire department related requirements.
- J. Meet and review architectural pre-design documents with local area neighborhood groups. Prepare appropriate presentation materials which may include large color presentation boards, power point presentations, handout sheets, project schedules, and similar project design related materials. Site planning concepts shall include surrounding lots, surrounding structures, public right of ways, and public green ways, and shall include context of entire neighborhood plans, planned urban development plans, or land use plans.
- K. Develop project time schedules for the project indicating the expected progress of the work; include architectural and engineering design, bidding, contract execution and construction.
- L. Meet and confer with City Building Inspection and Zoning and the development assistance team to identify the zoning.
- M. Meet and confer with City staff, users, and others as required to complete all design approval needs and completion aspects of pre-design phase.
- N. Furnish five (5) sets of completed drawings, specifications, and other documents at the end of this phase to the City's Designated Representative.
- O. The Architect shall not proceed beyond Phase I without written authorization from the City's Parking Manager.

**2. PHASE II: SCHEMATIC DESIGN PHASE**

- A. Review all design information provided by the City.
- B. Prepare schematic designs consisting of drawings and other documents illustrating the scale and relationship of the Project components for approval by the City including, but not limited to, site plans, basic building design floor plans, exterior elevations, and building sections.
- C. Review OPR and update Basis of Design ("BOD") documents that will include all engineering and architectural calculations and assumptions on how to design the building systems such that the OPR are satisfied.
- D. Meet and review sustainability design documentation and OPR with the City and the City's commissioning agent. Modify Architect's sustainability design report as requested by the City and the City's commissioning agent.

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- E. Prior to completion of Phase II, submit to the City's Designated Representative a statement of the estimated cost of site and building improvements. It is understood that the City's Designated Representative and Parking Manager shall approve the estimated cost before the Architect shall proceed. In the event that the City does not approve any submittal, because the submittal does not meet the construction budget or does not comply with previously approved project directives, Architect agrees to revise submittal until approved by the City.
- F. The Architect shall provide the Construction Cost Estimator with the necessary documentation to prepare construction cost estimating services as the Architect's subconsultant. Construction cost estimating shall be related to the configuration and construction of the building and shall produce estimated costs of construction by approaching the building as a sum of its systems and components using the elemental method for building assemblies and subsystems.
- G. Prepare documents, applications, submittals, and assist the City to obtain a Conditional Use Permit for this project.
- H. Meet and confer with the City Fire Marshal to review schematic design plans and specifications related to fire suppression systems, building type, fire alarm systems, site considerations for fire vehicle access, fire hydrant locations, and similar fire department related requirements.
- I. Meet and confer with City Engineering to review schematic design site plans related to storm water management and design.
- J. Meet and confer with City Engineering to review schematic design site plans related to sanitary sewer design.
- K. Meet and confer with City Traffic Engineering to review schematic design site plans related to curb cuts, driveway access to adjoining streets, and pedestrian and bicycle access.
- L. Meet and confer with Madison Water Utility to review schematic design site plans related to water main design and connection locations.
- M. Meet and confer with Madison Gas & Electric to review schematic design site plans related to natural gas connections and electrical power connection locations.
- N. Meet and review architectural schematic design documents with local area neighborhood groups. Prepare appropriate presentation materials which may include large color presentation boards, power point presentations, handout sheets, project schedules, and similar project design related materials. Site planning concepts shall include surrounding

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lots, surrounding structures, public right of ways, and public green ways, and shall include context of entire neighborhood plans, planned urban development plans, or land use plans.

- O. Meet and review architectural schematic building design documents and master site planning documents with the Urban Design Commission (UDC) for approval. Prepare UDC submittal application forms and materials as necessary. Prepare appropriate presentation materials which may include large color presentation boards, power point presentations, handout sheets, project schedules, and similar project related design materials. Site planning concepts shall include surrounding lots, surrounding structures, public right of ways, and public green ways, and shall include context of entire neighborhood plans, planned urban development plans, or land use plans. Review UDC comments, revise design, resubmit application, and attend UDC meetings until approval is obtained.
- P. Meet and review architectural schematic design documents with the Board of Public Works. This is an informational meeting after UDC approval and shall occur prior to proceeding beyond Phase II. Prepare appropriate presentation materials which may include large color presentation boards, power point presentations, handout sheets, project schedules, and similar project related design materials.
- Q. Meet and confer with the City and the City's commissioning agent to coordinate controls sequences and HVAC equipment.
- R. Develop project time schedules for the project indicating the expected progress of the work; include architectural and engineering design, bidding, contract execution and construction.
- S. Meet and confer with City staff, users, and others as required to complete all design approval needs and completion aspects of schematic phase.
- T. Furnish five (5) sets of completed drawings, specifications, and other documents at the end of this phase to the City's Designated Representative.
- U. Meet and review sustainability strategies and technologies with the City and the City's commissioning agent should the City choose to hire a commissioning agent. Sustainability strategies and technology goals need to include criteria that are related to energy efficiency, maintainability, reliability, longevity, and cost. Modify the Architect's sustainability strategies and technologies as requested by the City and the City's commissioning agent.
- V. The Architect shall not proceed beyond Phase II without written authorization from the City's Parking Manager and final approvals from the Urban Design Commission (UDC).

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**3. PHASE III – DESIGN DEVELOPMENT PHASE**

Prepare, from the approved schematic designs, for approval by the City, the design development documents consisting of drawings, specifications, and other documents to fix and describe the size and the character of the entire facility as to architectural, civil, landscape, structural, HVAC, plumbing, electrical power and communications, interiors, and such other essentials as may be appropriate. In addition, the Architect shall, as a part of this Phase, include the following specific considerations:

**A. Building Design**

- 1) Prepare building floor plans, exterior elevations, building sections, wall sections, and similar drawings of the described areas.
- 2) Prepare reflective ceiling and lighting plans, as necessary, including lighting fixture schedules and switching plans and selection of and/or design of lighting fixtures that supply adequate light, conserving as much electric energy as is practical. Prepare interior lighting plan for all indoor rooms and spaces.
- 3) Plan, design and specify building exterior, including materials, finishes, and colors. Provide samples of materials, finishes, and colors.
- 4) Prepare mechanical room and electrical room floor plans and sections to identify HVAC/plumbing/electrical equipment locations. Mechanical and electrical rooms configurations must be designed to accommodate staff circulation and equipment service needs. Entrance doors, path of travel circulation, and stair access shall be large enough to remove equipment for future replacement needs.
- 5) Plan and design the building to be energy efficient. All outdoor lighting shall be designed to comply with Madison General Ordinances 10.085 “Outdoor Lighting” for light trespass, reflection, and shielding. Consider outdoor LED lighting fixtures. Prepare outdoor lighting plan for entire site.
- 6) Prepare interior signage and wayfinding plans, schedules, and details.
- 7) Provide designs or graphics to identify special areas of service.
- 8) Provide interior elevation drawings.
- 9) Building design elements in the path of travel to all public and all staff work areas shall be accessible and shall be designed to meet the minimum standards of ADA Accessibility Guidelines.

**B. Site Planning / Civil Engineering**

- 1) Prepare site plan drawings indicating location and orientation of buildings and

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other amenities.

- 2) Prepare civil engineering grading design plans. This shall include site-grading plans indicating existing grades and final grades with one-foot grade contours, including banks, berms, swales, retaining walls, rain gardens, storm water basins, and similar items.
- 3) Prepare drawings for paving, including drives, parking areas, bike storage and walks and similar items.
- 4) Provide site fire protection drawings for fire department access including fire engine clearances, turning radius, and fire hydrant locations.
- 5) Prepare drawings for utilities including storm and sanitary sewer systems, water mains and service lines, fire hydrants, gas and electrical services, cable TV, data and communications, and site lighting.
- 6) Prepare erosion control plans and storm water management plans meeting the requirements of City of Madison and Department of Natural Resources Chapter NR-216 and Chapter NR-151 Runoff Management, where land disturbing construction activity affects one acre or more. Assist City in preparing, submitting, and permit approval for Department of Natural Resources "Notice of Intent" for storm water discharges associated with land disturbing construction activities. Include soil loss calculations as required.
- 7) Prepare plans, details, and specifications for landscape design. Landscape shall consist of materials, systems, equipment, and furnishings for land forms, lawns, and plantings. Landscape design shall be based on program requirements, physical site characteristics, design objectives, and environmental determinants.
- 8) The City shall provide geotechnical engineering services. The geotechnical engineering services shall include, as applicable, test borings, test pits, determination of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, preparation of soils reports and appropriate professional recommendations.
- 9) Meet with the City and engineering consultants to coordinate selection of HVAC, plumbing, and electrical systems and components. Develop a report analyzing initial cost vs. operating costs to demonstrate energy efficiency and life cycle costing, such that the City can evaluate the benefits of incorporating components of varying energy efficiencies in the project.
- 10) The Architect shall not proceed beyond Phase III without written authorization from the City's Parking Manager.

**4. Phase IV - Construction Documents Phase**

- A. Prepare from the approved design development documents, for approval by the City, drawings and specifications setting forth in full detail the requirements for the construction of the entire project, and assist in the preparation of bidding forms, the conditions of the Contract and the form of Agreement between the City and the General

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Building Contractor.

- B Meet with the City and engineering consultants to coordinate selection of HVAC, plumbing, and electrical systems and components.
- C. Meet and review MEP equipment selection options and cost options with the City and the City's commissioning agent. Modify Architect's equipment selection and cost reporting as requested by the City and the City's commissioning agent.
- D. Review OPR) and update BOD documents that will include all engineering and architectural calculations and assumptions on how to design the building systems such that the OPR are satisfied.
- E. Prior to completion of Phase IV, submit to the City's designated representative a statement of the estimated cost of construction. It is understood that the City shall approve the estimated cost before the Architect shall proceed. In the event that the City does not approve any submittal, because the submittal does not meet the construction budget or does not comply with previously approved project directives, Architect agrees to revise submittal until approved by the City.
- F. The Architect shall provide the Construction Cost Estimator with the necessary documentation to prepare construction cost estimating services as the Architect's subconsultant. Construction cost estimating shall be related to the configuration and construction of the building and shall produce estimated costs of construction by approaching the building as a sum of its systems and components using the elemental method for building assemblies and subsystems.
- G. Meet and confer with the City Fire Marshal to review construction document plans and specifications related to fire suppression systems, building type, fire alarm systems, site considerations for fire vehicle access, fire hydrant locations, and similar fire department related requirements.
- H. Meet and confer with City Engineering to review construction document site plans related to storm water management and design.
- I. Meet and confer with City Engineering to review construction document site plans related to sanitary sewer design.
- J. Meet and review architectural and engineering construction documents with Board of Public Works and a City appointed representative. Prepare appropriate presentation materials which may include large color presentation boards, power point presentations, handout sheets, project schedules, and similar project design related materials.



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- K. Meet and confer with City's facilities maintenance staff to review HVAC, plumbing and electrical plans and specifications. Submit two complete sets of construction document plans and specification to the City for review and comment.
- L. Develop project time schedules for the project indicating the expected progress of the work; include architectural and engineering design, bidding, contract execution and construction.
- M. Meet and confer with City staff, users, and others as required to complete all design approval needs and completion aspects of construction document phase.
- N. At the completion of Phase IV, submit complete drawings and specifications suitable for making multiple copies for bidding to the City's designated representative.
- O. At the completion of Phase IV, submit copy of electronic digital drawing files compatible with the City system (Revit) to the City's designated representative. Reference files shall be attached to each drawing.
- P. Furnish five (5) sets of completed drawings, specifications, and other documents at the end of this phase to the City's Designated Representative.
- Q. The Architect shall not proceed beyond Phase IV without approval from the City of Madison Common Council..

**5. Phase V - Bidding Phase**

- A. The Architect, following the City's approval of the construction documents and of the latest statement of probable construction cost and the City's declaration of its intent to put the project out for bidding, shall assist the City in preparation and assembly of the final standard City contract specifications. The City's contract specifications will be prepared by the City. Bidding, bid opening, building contractor selection, and contract signing will be provided by the City Engineering Division and the Board of Public Works. The Architect shall answer questions during bidding and contract negotiations and develop proper and timely addendums as required. The Architect shall attend a pre-bid conference meeting and shall assist the City in obtaining printing for bid sets of plans and specifications. The cost of bid set printing will be by the City.
- B. As the City has a total construction cost limitation for this project (Maximum Cost), the Architect shall adhere to this limitation. It is understood that any cost over Maximum Cost shall require budget authorization by the City of Madison Common Council. Should the total bid for all work exceed the estimated probable costs of construction by more than five percent (5%), but remain below Maximum Cost, the City shall have the discretion to require the Architect to revise the design at no additional cost to the City, whether or not the City ultimately decides to complete the project according to the

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redrafted plans or the original plans.

**6. Phase VI – Construction Phase / Administration of the Construction Contract**

- A. The Construction Phase will commence with the award of the construction contract and will terminate when the Common Council accepts the construction.
- B. The Architect, as the representative of the City during the Construction Phase, shall advise and consult with the City and all of the City's instructions to the General Building Contractor shall be issued through the Architect. The Architect shall have the authority to act on behalf of the City to the extent provided in the City of Madison Standard Specifications for Public Works Contracts and General Conditions unless otherwise modified in writing.
- C. The Architect shall at all times have site access to the construction work.
- D. The Architect, and when appropriate to the progress of the project any sub-consultants used, shall attend construction meetings. The General Building Contractor shall conduct construction meetings and shall prepare minutes of the meetings. Such meetings shall be held at regular 2-week intervals plus additional meetings as may be required to maintain progress of the work. The Architect shall make periodic visits to the site as necessary to maintain familiarity with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the construction documents. The Architect shall not be required to make exhaustive or continuous onsite observations to check on the quality or quantity of the construction work. The Architect shall not have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, since these are solely the General Building Contractor's rights and responsibilities under the construction documents.
- E. Based on construction observations at the site and on the General Building Contractor's applications for payment, the Architect shall assist the City to determine the amount owing to the General Building Contractor by verifying quantities of work put in place on the General Building Contractor's application for payment. The Architect's review of the General Building Contractor's request for payment to the City shall constitute a representation to the City, based on the Architect's observations of construction at the site and on data comprising the General Building Contractor's Application for Payment, that to the best of the Architect's knowledge, information and belief, the construction work has progressed to the point indicated, and the quality of the construction work is in general accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the construction work for conformance with the construction documents upon substantial completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the construction documents

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prior to completion, and (4) to specific qualifications expressed by the Architect. The issuance of an opinion for payment from the General Building Contractor to the City shall not be a representation that the Architect has (1) made exhaustive or continuous on-site observations to check the quality of the construction work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received by the City to substantiate the General Building Contractor's right to payment, or (4) ascertained how or for what purpose the General Building Contractor has used money previously paid on account of the contract sum.

- F. The Architect shall be available to report to the Board of Public Works on claims of the City or General Building Contractor relating to the execution and progress of the work and on all other matters or questions related thereto.
  
- G. The Architect shall have authority to reject work, which does not conform to the construction documents. Whenever, in the Architect's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the construction documents, with the approval of the City's Designated Representative, the Architect will have authority to require special inspection or testing of any work in accordance with the provisions of the construction documents whether or not such work be then fabricated, installed or completed. The cost of such special inspection or testing shall not be borne by the Architect. The Architect shall not be responsible for the General Building Contractor's failure to perform the construction work in accordance with the requirements of the construction documents. The Architect shall be responsible for the Architect's negligent acts or omissions. The Architect shall not have control over or charge of, and shall not be responsible for, acts or omissions of the General Building Contractor, Subcontractors, or their agents of employees, or for any other persons or entities performing portions of the work.
  
- H. The Architect shall review and take other appropriate action upon the General Building Contractor's submittals such as shop drawings, product data, and samples and make recommendations regarding such to the City's Designated Representative. The submittal review and action is for the limited checking for conformance with information given and the design concept expressed in the construction documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for installation or performance of equipment or systems, all of which remain the responsibility of the General Building Contractor as required by the construction documents. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate acceptance of an assembly of which the item is a component.
  
- I. The Architect shall prepare, reproduce, and distribute supplemental drawings, specifications, and interpretations in response to requests for clarification by General

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Building Contractor or City. The Architect shall also prepare, reproduce, and distribute drawings and specifications with revisions to describe work to be added, deleted, or modified. Prepare change orders for the written approval of City and present proposed changes to the Board of Public Works for approval. Clarifications, drawing revisions, change orders and similar items shall be prepared in a timely manner.

- J. The Architect shall conduct construction observations to determine the dates of substantial completion and final completion, substantiated by punch lists, shall receive and review written guarantees and related documents assembled by the General Building Contractor, and shall transmit said data to the City's Designated Representative who will prepare the final Certificate for Payment. The Architect's punch list review shall be conducted with the City's Designated Representative to check conformance of the visible construction work with the requirements of the construction documents and to verify the accuracy and completeness of the list of submitted items by the General Building Contractor of construction work to be completed or corrected.
- K. The Architect shall review and approve for reasonable accuracy and completeness, the General Building Contractor's submission of "record" drawings and operations and maintenance manuals and transmit same to the City prior to certification of the General Building Contractor's application for final payment.

**ARTICLE III. RESPONSIBILITIES OF THE CITY**

- A. Furnish a current and updated site survey by a licensed surveyor, describing the physical characteristics, legal limitations, and utility locations for the site of the project. Provide geotechnical engineering services and furnish a soils report. Also see Article II, Phase III, B.8.
- B. Furnish testing for structural, mechanical, chemical, and other special laboratory tests, inspections, or reports as required by law. If applicable the City shall provide material abatement testing and removal.
- C. During construction the City shall furnish foundation testing services for on-site soil compaction testing and concrete testing.
- D. The services, information, surveys, and reports required by Paragraph A, B, and C above shall be furnished at the City's expense. If the Architect discovers any inaccuracy or lack of completeness, it shall immediately notify the City.
- E. Furnish information required of City as expeditiously as necessary for the orderly progress of the work.

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- F. The City may, at its option, print and distribute portions of any documents prepared under this contract. In the event the City elects to have the Architect prepare extra copies beyond those provided by the Architect in the performance of this contract, the City shall reimburse the Architect for the actual cost thereof.
- G. At all times, the City reserves the right to make public all information concerning this Project and to choose the form, content, method of presentation, by whom presented, and the time of release; and at any time during or after completion of this project.

**ARTICLE IV. PERSONNEL ASSIGNED**

A. Architect's Personnel:

Principal Of the Architect: The Architect agrees that all its activities performed pursuant to the terms of this contract will be coordinated and directed as Principal of the Architect and Project Manager by:

**Architect of Record – Lothan Van Hook DeStefano Architecture LLC:**

Design Principal:

James DeStefano

Managing Principal:

Mary Ann Van Hook

Technical Principal:

Duane Sohl

**Associate Architect – InSite Consulting Architects:**

Principals:

Stephen Mar-Pohl

Chris Oddo

**Team Project Managers:**

Mary Ann Van Hook, LVDA

Stephen Mar-Pohl, InSite

**Project Architect:**

Meghan Dyer, LVDA

**Other Design Staff of the Architect:**

Leonard Clagett, LVDA

Michelle Alletto, LVDA

Glen Serdar, InSite

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**Construction Cost Estimating Services:**

Evans Spileos, Evans Construction / Consulting

**Principals of the Base Fee Sub-Consulting firms are:**

David Way, Mead & Hunt, Inc.  
Robert Halvorson, Halvorson & Partners  
Scott Easton, Affiliated Engineers, Inc.  
Tom Hannula, Walker Parking Consultants  
To Be Determined (Wayfinding/Signage)  
To Be Determined (Bicycle Facility Consulting)

The Principal of the Architect shall be the general administrator of the professional services for the Project, and shall be responsible for design services contracts, change of scope authorizations, and staffing assignments. The Principal of the Architect shall be responsible for oversight of design services throughout the duration of the Project.

The Project Manager shall be responsible for budgets, scheduling, and quality control of design services and shall facilitate the exchange of information and schedule meetings as needed among the Architect, the engineering sub-consultants, and the City user groups as necessary for the coordination and completion of the Project. The Project Manager shall be assigned to schematic design, design development, construction documents, bidding, and construction administration phases.

The Project Architect shall be responsible for the design management and drawings of the project associated with architectural design, engineering design, construction materials and methods, and construction documents. The Project Architect shall be assigned to schematic design, design development, construction documents, bidding, and construction administration phases.

The Sub-Consultant is an independent contractor responsible for means and methods used in performing their professional services; and is not an employee, agent, or partner of the Architect. Employees or sub-consultants of the Architect shall not in any way be construed as employees of the City.

- B. Activities to be performed by a Principal, either the Architect, sub-consultant, or both, as described in this Contract including the attachments and exhibits, shall be performed by or under the supervision of the appropriate Principal named above. In the event of the death or disability of the named Principal such as to be unable to participate in the above described activities, or if the named principal leaves the employment of the (Architect / Design Professional / Engineer), or in any other way becomes incapable of performing the above-described activities, the City may accept another as Principal or terminate this Agreement pursuant to the provisions of this Agreement, at it's option.

In case a team member is replaced by a new team member, the new team member's

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qualifications will be evaluated and needs to be approved by the City's Designated Representative to determine if the qualification is sufficient. The team member working on a task shall have obtained all necessary licenses and qualifications required by law and regulations. All team members shall have current knowledge of technologies and use state of the art methods in a proficient manner.

- C. Minimum qualifications for the architectural and engineering design team are:
- Architects (including principal, project manager, project architect, and construction administrator landscape): Licensed and 10 years experience
  - Interior Designer: Licensed with 10 years experience
  - Structural Design: PE license with 10 years experience
  - HVAC Design: PE license with 10 years experience
  - Electrical Design: PE license with 5 years experience
  - Plumbing/Fire Protection Design: PE license with 5 years experience; or certified "Designer of Engineering Systems" with 15 years experience
  - Lighting Design: PE license and 5 years experience or certified "Designer of Engineering Systems" and 15 years experience
  - Acoustical, Security, A/V and other peripheral consultants shall have appropriate credentials.

D. City's Representative:

All dealings between the City and the Architect with respect to the subject matter of the Agreement shall be with the City's Designated Representative unless otherwise herein provided. The City's Designated Representative is George Austin. The representative shall inform the Architect as to groups and staff with which it is to consult, provide prompt evaluation of requests of such groups, examine documents and receive inquiries submitted by the Architect, refer information and requests submitted by the Architect to appropriate officials, departments and bodies and obtain or render decisions promptly with respect thereto so as to avoid delays in the work of the Architect. The designation of the representative thereof shall not limit those with whom the Architect may have contact if, in the Architect's judgment, consultation with others will be of assistance.

**ARTICLE V. COMPLETION SCHEDULE**

The Architect shall provide a design and construction project schedule indicating the completion date of each phase or segment of work. The design and construction project schedule shall include review periods with the City, committees, or commissions as may be required for project design approvals and acceptance, or of similar items. The Architect will update and resubmit the project schedule whenever scheduling changes occur.

The work shall commence after final contract execution by the City and upon issuance by the City's representative of official notice to proceed.

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- I. Pre-Design Phase – 2 Months
- II. Schematic Design Phase – 2 Months
- III. Design Development Phase – 2 Months
- IV. Construction Document Phase – 3 Months
- V. Bidding Phase – 4 Months
- VI. Contract Administration Phase – 12 Months

The above durations for each design phase will be finalized with The City of Madison.

**ARTICLE VI. CHANGES TO SCOPE**

The City shall be permitted to modify the scope of work, the design and/or the program of the project. However, should modifications of material scope invalidate completed work or otherwise cause the Architect to abandon and/or revise previously completed work; occur after completion of a specific design phase; result from late review by the City or Operator; are not the result of any act, error or omission of the Architect, or are not required to fully describe the initial scope of the work, then such modifications shall be considered a “Change” to the design. The Architect shall identify all “Changes” to the design. A separate fee proposal and schedule shall be prepared for any such “Change”. Owner approval of costs and schedule shall be obtained prior to commencing any work resulting from a “Change”.

**ARTICLE VII. COMPENSATION**

A. For work completed in accordance with the Scope of Services described in Article V and completed within the scheduled durations described in Section C, the Architect proposes a lump sum fee for Architectural and Engineering services, including cost estimating and a parking garage consultant, exclusive of reimbursable expenses, Owner’s Consultants’ fees and costs, site costs and Owner testing agencies. See Attachment A - Fee Schedule. Except as provided in Article VI, the City shall not be responsible for costs resulting from work completed outside the Scope of Services or the Scheduled Durations. Furthermore, as stated in Art. II(5)(B), the City will not responsible for costs above the Maximum Cost unless so approved by the City of Madison Common Council.

- 1) In addition to Architectural Services, Architect’s base fee includes the following Consultants:
  - a. Associate Architects
  - b. Structural Engineering
  - c. Civil Engineering
  - d. Mechanical, Electrical, Plumbing and Fire Protection Engineering



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- e. Cost Estimating Services
- f. Parking Design Consultant
- g. Signage/Wayfinding Consultant
- h. Bicycle facilities consultant

2) Architect's base fee does not include the Services of the following Consultants. However, the following budget allowances have been established. The hiring of any consultant listed here requires the prior approval of the City. The Allowance contained in this paragraph will only be paid in the event that an approved consultant is engaged to provide services. See Attachment A – Fee Schedule.

Landscape Architect	\$ 30,000
Traffic Consultant	\$ 30,000
Geotechnical Engineer	\$ 25,000
Elevator Consultant	\$ 30,000
Security Consultant	\$ 35,000
Extended Field Time	\$106,600
<hr/>	
Total Allowance	\$256,000

*Note: The Architect will request proposals from each of the proposed Consultants once the design is further documented. The Architect will negotiate the fees for these services on behalf of the Owner.*

3) Architect's fee does NOT include the Consultants:

- Earth Retention Engineer
- Environmental Impact Assessment
- Owner's Independent Testing Agency
- Permits and Approvals Expediter
- Site Survey and Existing Condition Survey

4) Lump Sum Base Fee – Architectural / Engineering Design

Architect proposes a total architectural and engineering team base fee in the amount of **Two Million Four Hundred Ninety Thousand Two Hundred Twenty Dollars (\$2,490,220)**. For Base Architecture/Engineering Fee Services, proposed reimbursable consultant allowance and reimbursable expense allowance, see Attachment A – Fee Schedule.

**B. Payment Schedule.**

1) The City shall make periodic payment to the Architect in approximate proportion to services performed so that the compensation on the completion of each task described herein shall not exceed the following percentage of the contract price for base services of this contract document.

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Phase I	Pre-Design	5%
Phase II	Schematic Design	15%
Phase III	Design Development	35%
Phase IV	Construction Documents	75%
Phase V	Bidding and Negotiation	80%
Phase VI	Construction Administration	100%

2) The Architect shall submit periodic statements certifying the sum so determined due and outlining the progress of the work to date. These reports shall be submitted to the City's Designated Representative and shall be subject to review by City personnel at the discretion of the City's designated representative.

Additional expenses. The Architect's base fee does not include Additional Expenses which include but are not limited to travel, telephone, data communications, reproductions, postage and delivery, and other similar direct project-related expenditures by the Architect. The Additional Expenses are to be capped at One Hundred Thousand Dollars. Any Additional Expenses above that amount are considered Additional Services under Article VIII.

**ARTICLE VIII. ADDITIONAL SERVICES**

Any additional services over and above the services described in Attachment #1, in Article II of the Scope of Services shall be provided when authorized in writing by the City's Designated Representative. For additional service, the Architect's additional compensation will be based on the following rates for individuals assigned to the Project:

The Architect's principal time at the rate of \$ 275 per hour; the Architect's employees' time at a multiple of 2.75 times the employees "base hourly salary." "Base hourly salary," means the employees hourly W-2 earnings.

Employees of Subconsultant, time at the following rates:

At a multiple of 2.75 times the employees "base hourly salary."

Such rates shall include but not be limited to the usual overhead costs such as clerical and office support and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits for all persons in consultation, research and design in producing report, drawings, specifications and other documents pertaining to the project. Services of professional subconsultants not included in Article II of this contract engaged by the Architect with the written consent of the City's Designated Representative shall be compensated at a multiple of one point one (1.1) times the amount billed to the Architect for

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such services.

The Architect and subconsultants listed in Article II shall be paid for reimbursable expenses that apply to additional services, as listed herein that are in excess of usual and customary expenses. Usual and customary expenses shall include expenses for travel, telephone, data communications, reproductions, postage and delivery, and other similar direct project related expenditures.

The additional services rates listed above shall include usual and customary overhead associated with deliverance of the additional service.

<b>REIMBURSABLE EXPENSES FOR ADDITIONAL SERVICES</b>	
Mileage—in excess of travel required for basic service (beyond metropolitan area of Architect's home office)	\$0.56/mile
Travel and Subsistence—in excess of travel required for basic service (beyond metropolitan area of Architect's home office)	Cost
Long Distance Telephone, Telex, Telecopy, etc.	Cost
Postage, Handling, etc. (in excess of usual and customary office support)	Cost
Color Copies (8 ½" x 11")	\$0.10/copy
Color Copies (11" x 17")	Cost
Electrostatic Copies	Cost
Plotting	Cost
Reproduction and Printing (in excess of usual and customary project support)	Cost
Materials (in excess of usual and customary project support)	Cost
Equipment Rental	Cost

At the request of the City's Designated Representative, the Architect shall provide a statement listing the names of individuals who worked on the additional services, the category of work, the number of hours worked and the hourly rates based on the aforementioned rates of the individuals. All cost records of the Architect and the Architect's subconsultants, including but not limited to time sheets, payrolls, receipts, invoices, and vouchers shall be available for inspection by representatives of the City upon request.

**ARTICLE VIII. PAYMENT TERMS**

The Architect shall invoice the City of Madison on a monthly basis for base fee services based upon the percentage of work completed in each phase at the time as outlined in Article VI. Reimbursable sub-consultants' services will be billed based on the work completed at the time and invoiced to the Architect. Additional services will be invoiced based on the terms contained in Article VII. Payment of invoices is due thirty (30) days after the receipt. The Architect reserves the right to discontinue all services in the event that invoices remain unpaid after ninety (90) days.