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CONSTRUCTION DRAWINGS – IN SEPARATE PACKAGE

- Architectural Drawings, Outline Specifications, Site Maps, Engineering Plans

I) ABOUT THE MADISON AREA COMMUNITY LAND TRUST

The Madison Area Community Land Trust (MACLT) is a private, non-profit organization founded in 1991 to provide permanently affordable housing in the Madison metropolitan area. To date, the MACLT has built or renovated 18 single-family homes, one duplex, and 14 condominium units, all of which were sold to first-time homebuyers with household incomes at or below 80% of Dane County median income. Under the community land trust model, the MACLT retains ownership of all land, renting lots to our homeowners for a nominal fee, under the terms of our ground lease.

For more information about the MACLT, go to our website at www.affordablehome.org.

II) HISTORY OF TROY GARDENS

In October, 1995, the state of Wisconsin placed a 15-acre undeveloped site abutting the Mendota Mental Health Center grounds on the State's surplus land list. The State intended to sell the site, most likely to a private for-profit developer. Area residents and people from other parts of the city had been gardening on 4 acres of the site for 15 years, and using much of the rest of it to bird-watch, walk their dogs, and simply wander the land.

Alarmed at the prospect of losing this valuable resource, concerned gardeners and neighbors, facilitated by the Northside Planning Council, began meeting and planning. Three non-profit groups (the Madison Area Community Land Trust, the Urban Open Space Foundation, and the Community Action Coalition) joined together to form the Troy Gardens Coalition. Several representatives from the University of Wisconsin joined the Coalition in the fall of 1996 when the State added a 16-acre landlocked undeveloped area to the north of the original site to the surplus list.

The Coalition developed an innovative proposal for integrated land use, one that combined housing with open space and agricultural uses. This proposal, known as the Troy Gardens Development Concept Plan, was approved by the Common Council in 1998.

After years of fundraising and development work, the Madison Area Community Land Trust, with financial support from the City of Madison, succeeded in purchasing the property from the State of Wisconsin on December 28, 2001.

For more background information about Troy Gardens, we suggest that you go to our website at www.affordablehome.org, as well as the website for the Friends of Troy Gardens at www.troygardens.org.

III) EXISTING SITE CONDITIONS

Troy Gardens is bounded by Troy Drive to the south, Mendota Mental Health Institute to the west, the Central Wisconsin Center to the north, and numerous multi- and single-family homes to the east.

Conservancy Site: The MACLT has leased the 26-acre conservancy parcel to the Friends of Troy Gardens since December of 2001. The Friends of Troy Gardens (FTG) is a membership-based, 501(c)(3) organization specifically established to develop and manage the conservancy areas of Troy Gardens.

Housing Site: The housing site is a 5-acre parcel of land located in the southeast section of Troy Gardens, immediately to the east of the community gardens. It was formerly used for community gardening, and at present sits vacant awaiting the start of housing construction.

IV) DEVELOPMENT – HOUSING SITE

Overview: The design of Troy Gardens Homes is inspired by the Cohousing movement, resulting in a site plan that encourages residents to live in a cooperative manner, but still preserves areas of privacy for residents.

The housing site will consist of thirty units of mixed-income owner-occupied townhomes. Twenty of these townhomes will be sold at below-market rate prices to households at or below 80% of Dane County median income (also referred to as IDUs). The remaining ten townhomes will be sold at market-rate prices.¹

The site plan calls for two main residential clusters. Each cluster will have three four-unit buildings and one three-unit building, for a total of 15 units per cluster. There will be a large central courtyard in each cluster, which will contain flower gardens, play spaces for young children, as well as areas for socializing among the residents.

V) INVITED RESPONDENTS

Gilbert Construction
McGann Construction
Bauer and Raether Builders
Landgraf Construction
Bachmann Construction

¹ Subject to successful completion of fundraising efforts, the plan also includes a “Common House”, which will serve as a focal point for Troy Gardens community activities. The Common House will be a separate project, which will *likely* be awarded to the general contractor chosen to build the 30 townhomes at Troy Gardens.

VI) OTHER INTERESTED CONTRACTORS

Other interested contractors may review a copy of this Request for Proposals at Bid Plus Builders Exchange, 4814 E. Broadway, Madison.

The Request for Proposals will also be available on the MACLT website, www.affordablehome.org.

VII) KEY CONTRACT TERMS AND CONDITIONS

The General Contractor chosen by MACLT will be required to meet terms and conditions including (but not limited to) the following:

- Begin construction by March 13, 2006, and complete all construction by October 31, 2006
- Comply with Energy Star and Green Built Home certification standards.
- Comply with City of Madison Minority/Women Business Enterprise utilization rate, and other procedures as required by the City of Madison Affirmative Action office.
- Provide a minimum of two to three upgrade option packages for prospective homebuyers.
- Work with the MACLT to do direct purchase of materials wherever possible, because the MACLT is a nonprofit and therefore does not pay sales tax on items directly purchased.
- MACLT will retain the right to review and approve choice of subcontractors, as well as the right to suggest subcontractors (in particular landscaping and renewable energy).
- This will be a cost-plus project where subcontractor and material supplier costs will be made available for MACLT review.
- This will be a Guaranteed Maximum Price (GMP) contract. If final construction costs are below the GMP figure, the general contractor will receive a bonus equivalent to 50% of the net savings.
- This project utilizes federal funding provided through the City of Madison CDBG Office. As a result, contractors must comply with all federal, state and local requirements associated with the use of these funds. These requirements are identified in Attachment E.
- 100% payment and performance bond is required.
- This project is not subject to the prevailing wage requirements of the Davis-Bacon Act.

VIII) CRITERIA TO BE USED IN SELECTING THE GENERAL CONTRACTOR

The MACLT will select a General Contractor for this project based upon the following criteria:

- Preliminary construction cost estimate, as well as basis for construction fees,
- Contractor capacity,
- Demonstrated track record on comparable projects,
- Experience utilizing a diverse workforce in construction projects,
- Experience with “green” construction practices

IX) CONTENT OF PROPOSAL

Your proposal may be in the format of your choosing. However, make sure that your proposal responds to the following questions. You may also add other relevant materials at your discretion.

1) Tell us about your company.

- a) What experience do you have in residential multifamily construction?*
- b) Have you worked with nonprofit housing developers before, and if so, please provide a description of projects you have worked on.*
- c) How is your construction experience relevant to Troy Gardens?*

2) Why are you interested in being the general contractor for Troy Gardens? How is it similar or different from other projects you have done in the past?

3) Provide an estimate of overall construction costs for all 30 units of housing (and related infrastructure), based on the plans and specifications provided.

- a) Provide a range of pricing (no more than X and no less than Y).*
- b) FYI: If you are selected as general contractor, and your final pricing comes in substantially higher than your preliminary estimate for reasons other than change of scope, the MACLT reserves the right to award the contract to another general contractor.*

4) Basis for fees and other charges to MACLT

- a) How would you establish pricing for divisions for which you are providing labor and/or materials?*
- b) What is your typical overhead and profit, and how is it calculated?*
 - i) Does it include supervision time – or is that billed separately?*
- c) Provide breakout of general conditions that will be charged to the project and basis for their calculation.*

5) Project management approach.

- a) How would project supervision be handled? Who would be responsible for job site supervision, and what type of on-site presence would be maintained?*
- b) Describe job meetings and frequency.*

6) Change Orders

a) *What is your contractor's mark-up on change orders?*

7) "Green" Construction Practices

a) *What experience have you had with building Energy Star and Green Built Home certified residential housing? If you have not, what experience do you have with energy efficient construction practices, job site waste reduction, and job site recycling?*

b) *What experience have you had with projects utilizing solar hot water, PV, geothermal, and other innovative energy conservation practices?*

8) Owner Purchase of Materials: Because the MACLT is a non-profit organization, we can purchase materials without having to pay sales tax. Therefore, it is our preference to directly purchase as many items as possible in order to save sales tax.

a) *What experience do you have in working out purchase arrangements such as this?*

9) MBE and WBE participation: The MACLT is committed to providing maximum feasible opportunity to small businesses, and women, minority-owned, and disadvantaged businesses (M/WBEs), for all of our projects. The City of Madison has established targets for inclusion of such firms in the construction of the project which are provided in Attachment D.

a) *Describe your firm's approach to including MBEs and WBEs in construction projects;*

b) *Describe the level of M/WBE participation achieved on previous projects in the city of Madison, in terms of percentage of the project contract amount and the nature of the participation.*

i) *Did you achieve City of Madison M/WBE utilization rate targets?*

(1) If you were not successful, please describe the challenges that prevented you from meeting that goal, and what you will do differently next time to achieve the target utilization rate.

c) *Please fill out the M/WBE certification form (Attachment B) and return it with your proposal.*

d) Notice from the City of Madison:

i) This project is funded in part with federal funds provided through the City of Madison. As such a **20% Minority/Women Business Enterprise (M/WBE) Goal** been established for this project. M/WBEs may participate as subcontractors, vendors and/or suppliers which provide a commercially useful function.

ii) A two-step process will be used to select the prime contractor for this project. The first step is to review proposals submitted in response to this Request for Proposals (RFP). **During this phase of the process each bidder will be required to submit a completed and signed M/WBE Certification Statement (see Attachment B of the RFP) with the proposal.** Proposals submitted without this form will be deemed nonresponsive and not considered for award.

iii) Based on the results of the above process one prime contractor will be invited to proceed in the selection process to negotiate a construction agreement as described elsewhere in this RFP. During this phase of the process the selected prime contractor will be required to provide documentation of its M/WBE utilization. In the

event the prime contractor is unable to achieve the **20%** M/WBE goal he/she must demonstrate that a good faith effort to do so has been made. For your reference an outline of what constitutes a good faith effort is provided in Attachment D.

- iv) Please feel free to contact Barb Constans, City of Madison Community Block Grant Office at (608) 267-1983 or Norman Davis, City of Madison Contract Compliance Officer at (608) 267-8759 if you have any questions or need assistance.

10) Compliance with Other City of Madison Requirements: This project is utilizing federal funding provided through the City of Madison CDBG Office. As a result, contractors must comply with all federal, state and local requirements associated with the use of these funds. These requirements are identified in Attachment E. [Note -- this project is not subject to the prevailing wage requirements of the Davis-Bacon Act.]

- a) *The proposal should comment on contractor's experience with compliance with these requirements in the City of Madison.*

11) Bonding and Letter of Credit: The Owner will require a 100% payment and performance bond.

- a) *Please indicate your firm's access to bonding and letters of credit. Indicate rates and any limits on the amount of the bonding that your firm can secure.*

12) Contractor availability to proceed on project schedule: The MACLT intends to begin construction on March 13, 2006, with completion of all 30 units no later than October 31, 2006.

- a) *Contractor should confirm availability of resources to commence project and to complete it based on schedule provided in Attachment A.*

13) Required Attachments: For a proposal to be considered complete the contractor shall provide all of the following items as attachments to the proposal.

- a) List of significant projects undertaken in the past 5 years. Include owner's name, type of structure involved, location, year completed and contract amount.
- b) Statement of firm's total production for the most recently completed fiscal year with a breakout of residential construction by dollar amount.
- c) Customer, Trade and Bank References. Customer references should include at least three owners of residential projects constructed by your firm in the past 3 years.
- d) Completed and executed M/WBE Certification Form provided in Attachment B.
- e) Completed and executed EEOC Certification provided in Attachment C.

X) CORRECTIONS, MODIFICATIONS OR CLARIFICATIONS

The invited respondents listed above and other contractors that have been issued a copy of the Request for Proposal (and have provided a fax number or email address in writing to the MACLT) will be provided by fax or email any correction, modification or clarification, if any, issued by the MACLT.

XI) SUBMISSION OF PROPOSALS - DEADLINE

Interested bidders must submit six (6) copies of the proposal (including completed and signed M/WD/BE and EEOC certification statements) by December 14, 2005, and deliver to:

Madison Area Community Land Trust
305 S Paterson Street
Madison, WI 53703
Attn: Greg Rosenberg, Executive Director

XII) INTERVIEWS

A limited number of selected candidates will be scheduled for an interview that will be held at the above location on December 19 – 21, 2005. Each contractor will have 30 minutes to present their proposal and experience. Additional time will be provided for a question and answer period.

XIII) CONTRACT NEGOTIATION

Subsequent to the interviews, MACLT will select a general contractor for negotiation of an agreement for the construction of 30 units of housing and related infrastructure at Troy Gardens. This agreement will be based on an AIA short-form contract, and will also contain the MBE and WBE goals and contract provisions required by the City as provided in Attachments D and E.

The selected general contractor will work with project architect Jim Glueck to develop working construction drawings and specifications, to be completed by January 27, 2006. The selected general contractor will provide final pricing to the MACLT for construction of Troy Gardens within three (3) weeks of completion of final construction drawings and specifications, along with preliminary MBE and WBE utilization and any objections or proposed modifications to the various contract elements described above.

The selected general contractor will also be required to participate in a meeting to be arranged by MACLT with City of Madison representatives to review and discuss implementation of the MBE and WBE goals and contract provisions required by the City as provided in Attachments D and E.

As required by the terms of the federal funding being used for this project, the selected general contractor must utilize an open and competitive bidding process for all subcontracts. In addition, the City of Madison CDBG Office must approve all subcontractors.

The MACLT reserves the right, upon notice to the selected general contractor, to terminate negotiations at any time that it deems, in its sole discretion, that acceptable progress is not being made towards the timely completion of a construction agreement.

MACLT reserves the right to negotiate all matters related to the construction agreement and may introduce terms, conditions and requirements that are not provided in this Request for Proposal.

ATTACHMENT A

Preliminary Project Construction Schedule

(November 23, 2005)

	Begin	Completion
	Work	Date
2005		
RFP for General Contractor released, notice period	11/23	12/14
Work on construction drawings/specifications	12/16	1/27/06
General Contractor Interviews	12/19	12/21
Selection of General Contractor	12/23	12/23
2006		
Final pricing from General Contractor	1/30/06	2/17/06
Construction contract signed	2/24/06	2/24/06
CONSTRUCTION	3/13/06	10/31/06

ATTACHMENT B

**MACLT TROY GARDENS PROJECT -- MINORITY & WOMEN BUSINESS ENTERPRISE
CERTIFICATION STATEMENT**

*(This signed statement **MUST** be submitted with your proposal.)*

- 1) We understand that this project is funded through the Community Development Block Grant (CDBG) Program of the City of Madison and as such that a **20%** goal for the Utilization of Minority/Women Business Enterprises (M/WBE) has been attached to this project.
- 2) In the event that our company is selected to proceed in the bid process to negotiate a construction agreement we agree to comply with the MIWBE requirements of this contract. We understand that we will be in compliance with the M/WBE requirements of this project if we achieve or exceed the 14% M/WBE goal. In the event we are unable to achieve the **20%** M/WBE goal, we will demonstrate that a good faith effort to achieve the M/WBE goal was made. We understand that failure to demonstrate that a good faith effort (as defined in paragraph 3) to achieve the M/WBE goal shall be grounds for our company to be deemed a nonresponsible bidder ineligible for award of this contract.
- 3) We shall take all necessary affirmative steps to assure that M/WBEs are utilized when possible and that the established M/WBE goals for this project are achieved. If we are unable to achieve the established M/WBE goals, we shall demonstrate that a good faith effort to do so was made. Such a good faith effort shall, at minimum, include the following:
 - a. Using the City of Madison's directory of certified M/WBEs to identify M/WBEs from which to solicit bids.
 - b. Soliciting bids from M/WBEs whenever they are potential sources.
 - c. Referring prospective M/WBEs to the City of Madison Affirmative Action Department for certification.
 - d. Dividing total project requirements into smaller tasks and/or quantities, where economically feasible, to permit maximum feasible M/WBE participation.
 - e. Establishing delivery schedules, where requirements permit, to encourage participation by M/WBEs.
 - f. Providing M/WBEs with specific information regarding the work to be performed.
 - g. Contacting M/WBEs in advance of the deadline to allow such businesses sufficient time to prepare a bid and engage in negotiation.
 - h. Negotiating directly with M/WBEs including those which volunteer a bid.
 - i. Utilizing the bid of a qualified and competent M/WBE when the bid of such a business is deemed reasonable although not necessarily low. The City of Madison shall use the following tests to determine reasonableness:
 - i. if the M/WBE sub-bidder is within 5% of the lowest bid submitted by a non-M/WBE subcontractor; and/or
 - ii. if the difference(s) between the bid(s) submitted by the M/WBE sub-bidder(s) and the lowest sub-bid(s) submitted for the same work does not materially affect the bid of the prime bidder. Materially affects is defined as when the difference(s) in bid(s) when added to the prime bidder's total bid amount is greater than or equal to 1 % of the total bid amount prior to such additions.

Company Name

Bidder's Signature/Title

Date

ATTACHMENT C

CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Instructions

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliances reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such a report is submitted.

Certification by Bidder

Name and Address of Bidder *(Include Zip Codes)*

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes No

2. Compliance reports were required to be filed in connection with such contract or subcontract.

Yes No

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.

Yes No

4. Have you ever been sanctioned or are you being considered for sanction due to violation of Executive Order 11246, as amended?

Yes No

Name and Title of Signer *(Please type)*

Signature

BACKGROUND

DOCUMENTS

ATTACHMENT D

INSTRUCTIONS TO BIDDERS

CITY OF MADISON

MINORITY & WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM INFORMATION

1.1 POLICY AND GOAL

The City of Madison reaffirms its policy of nondiscrimination in the conduct of City business by maintaining a procurement process which remains open to all who have the potential and ability to sell goods and services to the City. It is the policy of the City of Madison to allow Minority & Women Business Enterprises (M/WBEs) maximum feasible opportunity to participate in City contracting.

For projects that are funded in whole, or in part with federal funds, a specific M/WBE utilization goal is established. **The goal for the utilization of M/WBEs on this project is 20% of the total bid.** M/WBEs may participate as subcontractors, vendors and/or suppliers which provide a commercially useful function as defined in paragraph 1.4.

A bidder which achieves or exceeds the M/WBE goal will be in compliance with the M/WBE requirements of this project. In the event that the bidder is unable to achieve the M/WBE goal, the bidder must demonstrate that a good faith effort to achieve the M/WBE goal was made. Failure by the bidder to demonstrate it made a good faith effort, as defined in paragraph 1.4(B), to achieve the M/WBE goal shall be grounds for Agency to deem the bidder a nonresponsible bidder ineligible for award of this contract.

Note: This project will be monitored for “pass through” purchases for participation. Suppliers for this project must also install the supplies or the purchase will only count as 20% of the goal and must be from a bonafide vendor/supplier, that is also a certified M/WBE with the City of Madison.

1.2 CONTRACT COMPLIANCE

Questions concerning the M/WBE Program shall be directed to the Contract Compliance Officer of the City of Madison Affirmative Action Department, Madison Municipal Building, Ste. 130, 215 Martin Luther King, Jr., Blvd., Madison, WI 53701; telephone (608)266-4082.

1.3 **CERTIFICATION OF M/WBE BY CITY OF MADISON**

The Affirmative Action Department maintains a directory of M/WBEs which are currently certified as such by the City of Madison. Contact the Contract Compliance Officer as indicated in Section 1.2 to receive a copy of the M/WBE Directory.

All contractors, subcontractors, vendors and suppliers seeking M/WBE status must complete and submit **Schedule A, M/W/DBE Certification Application** to the City of Madison Affirmative Action Department by the time and date established for receipt of bids. A copy of Schedule A is available by contacting the Contract Compliance Officer at the address and telephone indicated in Section 1.2. Submittal of Schedule A by the time specified does not guarantee that the applicant will be certified as a M/WBE eligible to be utilized towards meeting the M/WBE goal for this project.

1.4 **MINORITY & WOMEN BUSINESS ENTERPRISE COMPLIANCE REPORT**

A. **Counting M/WBE Participation towards meeting the M/WBE goal.**

Once an entity is determined to be a certified M/WBE in accordance with the City of Madison's M/WBE Program, the total dollar value of the contract awarded to the M/WBE is counted toward the respective goals.

The City and affected Contractor may count toward the M/WBE goal a portion of the total dollar value of a contract with a joint venture eligible under the standards of this M/WBE Program equal to the percentage of ownership and control of the M/WBE partner in the joint venture.

The City and affected Contractor may count towards the M/WBE goals only expenditures to M/WBEs which perform a commercially useful function in the work of the contract. An M/WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a M/WBE is performing a commercially useful function, the City of Madison Affirmative Action Department shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

Consistent with normal industry practices a M/WBE may enter into subcontracts. If a M/WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the M/WBE shall be presumed not to be performing a commercially useful function. The M/WBE may present evidence to rebut this presumption.

The Contractor may count towards its M/WBE goals expenditures for materials and supplies obtained from M/WBE suppliers and manufacturers provided that the M/WBEs assume the actual and contracted responsibility for provision of the materials and supplies.

B. Good Faith Efforts

Bidders shall take all necessary affirmative steps to assure that M/WBEs are utilized when possible and that the established M/WBE goals for this project are achieved. When a bidder is unable to achieve the established M/WBE goals, the bidder must demonstrate that a good faith effort to do so was made. Such a good faith effort should include the following:

1. Attendance at the pre-bid meeting.
2. Using the City of Madison's directory of certified M/WBEs to identify M/WBEs from which to solicit bids.
3. Solicit bids from M/WBEs whenever they are potential sources.
4. Referring prospective M/WBEs to the City of Madison Affirmative Action Department for certification.
5. Dividing total project requirements into smaller tasks and/or quantities, where economically feasible, to permit maximum feasible M/WBE participation.
6. Establishing delivery schedules, where requirements permit, which will encourage participation by M/WBEs.
7. Providing M/WBEs with specific information regarding the work to be performed.
8. Contacting M/WBEs in advance of the deadline to allow such businesses sufficient time to prepare a bid and engage in negotiation.
9. Negotiating directly with M/WBEs including those which volunteer a bid.
10. Utilizing the bid of a qualified and competent M/WBE when the bid of such a business is deemed reasonable although not necessarily low. The City of Madison shall use the following tests to determine reasonableness: (1) if the M/WBE sub-bidder is within 5% of the lowest bid submitted by a non-M/WBE subcontractor; and/or (2) if the difference(s) between the bid(s) submitted by the M/WBE sub-bidder(s) and the lowest sub-bid(s) submitted for the same work does not materially affect the bid of the prime bidder. Materially affects is defined as when the difference(s) in bid(s) when added to the prime bidder's total bid amount is greater than or equal to 1% of the total bid amount prior to such additions.

1.5 **M/WBE REQUIREMENTS AFTER AWARD OF THE CONTRACT**

The contractor awarded the contract shall identify M/WBE subcontractors, suppliers and vendors on the subcontractor list in accordance with the specifications. The Contractor shall submit a detailed explanation of any variances between the listing of M/WBE subcontracts, vendors and/or suppliers on the subcontractor list and the Contractor's M/WBE Compliance Report for M/WBE participation. Failure to provide a satisfactory explanation in these variances may result in the Agency invoking the sanctions found in Section 3.58 of the Madison General Ordinances.

No change in M/WBE subcontractors, vendors and/or suppliers from those M/WBEs indicated in the M/WBE Compliance Report will be allowed prior to approval from the City of Madison Affirmative Action Department. The contractor shall submit in writing to the City of Madison Affirmative Action Department a request to change any M/WBE citing specific reasons which necessitate such a change. The Affirmative Action Department will use a general test of reasonableness in approving or rejecting the contractor's request for change. If the request is approved, the Contractor will make every effort to utilize another M/WBE if available.

The Agency will monitor the project to ensure that the actual percentage commitment to M/WBE firms is carried out.

1.6 **M/WBE DEFINITION AND ELIGIBILITY GUIDELINES**

A Minority & Women Business Enterprise is a business concern awarded certification by the City of Madison as a small business as defined under Section 3 of the Small Business Act which is "owned and controlled" by racial/ethnic minorities, women and/or socially and economically disadvantaged persons. For the purposes of this program, "owned and controlled" means a small business:

- a. which is at least fifty-one percent (51%) owned by one or more racial/ethnic minorities, women and/or socially and economically disadvantaged persons, or in the case of any publicly-owned business, at least fifty-one (51%) of the stock of which is owned by one or more racial/ethnic minorities, women and/or socially and economically disadvantaged businesses; and
- b. whose management and daily business operations are controlled by one or more of the racial/ethnic minorities, women and/or socially and economically disadvantaged persons who own it.
- c. the business must be an independent business and operated under a single management, which means that the business is not a subsidiary of any other business and that the stock of ownerships is not held by anyone or any other business in a similar field. In determining whether a firm qualifies as a M/WBE, the City of Madison Affirmative Action Department shall consider, among other factors, the date that the business was established, the adequacy of the firm's resources for the work in which it proposes to involve itself, the degree to which financial, equipment leasing and other relationships exist with other non-qualified firms in the same or similar lines of work. M/WBE owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate

with their enjoyment interests, as demonstrated by an examination of the substance rather than form of arrangement that may be reflected in its ownership.

Firms or individuals that submit fraudulent documents or testimony regarding their participation in the M/WBE Program may be deemed ineligible to bid on future Agency contracts and may have present Agency contracts terminated.

M/WBE certification is valid for one (1) year unless challenged and found ineligible under the guidelines in this paragraph.

ATTACHMENT E

City of Madison - Required Construction Agreement Provisions -Including Section 3.

Clean Air and Water (Applicable to Contracts in excess of \$100,000)

- (a) Definition. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations owned, leased or supervised by the Contractor or any subcontractor used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility, except when the Administrator or a designee of the Environmental Protection Agency (EPA) determines that independent facilities are located in one geographical area.
- (b) In compliance with regulations issued by the United States Environmental Protection Agency (EPA) 40 CFR Part 15 pursuant to the Clean Air Act as amended ("Air Act") 42 U.S.C. 7401 et seq., the Federal Water Pollution Control Act as amended ("Water Act") 33 U.S.C. 1251 et seq., and Executive Order 11738 the Contractor agrees to ---
 - (1) Not utilize any Facility in the performance of this Contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the Facility remains on the list;
 - (2) Promptly notify the Owner if a Facility the Contractor intends to use in the performance of this Contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
 - (3) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
 - (4) Include or cause to be included the provisions of this Section in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

Energy Efficiency

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163) for Wisconsin.

Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

Limitations on Payments Made to Influence Certain Federal Financial Transactions

The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof; except that the Owner shall be responsible for all such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Owner. Failure to give such notice shall make the Contractor responsible for resultant loss.

Examination and Retention Of Contractor's Records

- (a) The Owner, the City of Madison, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to the Contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this Contract a provision substantially the same as subsection (a) above. "Subcontract," as used in this Section, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs and expenses of this Contract to which the Owner, the City of Madison, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions

Security for Faithful Performance

Simultaneously with his/her delivery of the executed contract, the Contractor shall furnish a surety bond(s) or irrevocable letter or credit, as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The surety on such bond(s) or irrevocable letter of credit shall be respectively, a duly authorized surety company or financial institution authorized to do business in Wisconsin and shall be satisfactory to the Owner. Failure of the successful bidder to obtain such security within the time specified shall render the bidder ineligible for the award.

Safety Standards and Accident Prevention

With respect to all work performed under this contract, the Contractor shall:

- a. Comply with the safety standards provisions of applicable laws, building and construction codes, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), the requirements of 40 USC 333, and the requirements of all regulations promulgated thereunder.
- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c. Maintain at his/her office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

Subcontracts

- (a) Definitions. As used in this contract
 - (1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies materials, equipment, and services for the performance of the prime contract or a subcontract.
 - (2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.
- (b) The Contractor shall submit a list of proposed subcontractors to the Owner and to the City of Madison for approval prior to commencing work. Each subcontractor must be approved by the City CDBG Office prior to that subcontractor commencing work.
- (c) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the State of Wisconsin or of the City of Madison.
- (d) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.
- (e) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Contract insofar as they are applicable to the work of subcontractors.
- (f) Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the Owner or between the subcontractor and the City of Madison.

Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that whenever possible subcontracts are awarded to small business firms, minority firms, women's business enterprises and labor surplus area firms:

- (a) Placing qualified, small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, the City of Madison Affirmative Action Department, and State and local governmental small business agencies.

Equal Employment Opportunity

During the performance of this contract the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, handicap/disability, familial status, marital status, age, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status.

- (b) The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include but not be limited to (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Owner that explain this Section.
- (d) The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or handicap.
- (e) 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 the notice to be provided by the Owner advising the labor union or workers representative of the Contractor's commitments under this Section and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246 as amended and the rules regulations and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973 as amended and by rules regulations and orders of the Secretary of Labor or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this Section or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts under the procedures authorized in Executive Order 11246 as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246 as amended the rules regulations and orders of the Secretary of Labor or as otherwise provided by law.
 - (i) The Contractor shall include the terms and conditions of this Section in every subcontract or purchase order unless exempted by the rules regulations or orders of the Secretary of Labor issued under Executive Order 11246 as amended so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Executive Order 11246

The Contractor shall comply with Executive Order 11246 as amended, and the rules, regulations and orders of the Secretary of Labor. The Contractor will include the following Notice in all of its subcontracts in excess of \$10,000.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetable	Goals for minority participation for each trade	Goals for female participation in each trade
	2.2%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the City of Madison, Dane County, Wisconsin

**Equal Opportunity for Businesses and Lower Income Persons (HUD Act of 1968 Section 3)
(Applicable to Contracts in Excess of \$100,000.)**

- (a) The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 as amended 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
- (b) The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- (c) The Contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (d) The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will at the direction of the applicant for or recipient of Federal financial assistance take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (e) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal financial assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

**CONTRACTORS AND SUBCONTRACTORS
SECTION 3 PLAN - (HUD)
CITY OF MADISON, WISCONSIN**

_____ (Name of Contractor) will make the following good faith efforts to utilize: (1) low-income area residents as trainees and employees and (2) businesses located in, or owned in, substantial part by Madison residents, on this Section 3 covered project. These good faith efforts will include:

- A. Understanding that the City of Madison is the Section 3 covered project area and when necessary, seek assistance from the City Affirmative Action or CDBG offices in preparing and implementing this Section 3 Plan.
- B. Appointing or recruiting an executive official of the company or agency as Equal Opportunity officer to coordinate the implementation of this Section 3 Plan.
- C. Insuring that all appropriate project area business concerns are notified of pending contractual opportunities.
- D. Insertion of this Plan in all bid documents and requiring all bidders to submit a Section 3 Plan, including utilization goals and the specific steps planned to accomplish those goals.
- E. Insuring that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. Attempting to recruit trainees and employees from the appropriate areas the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating with or serving the project area such as: Urban League of Greater Madison, State Job Service, Operation Fresh Start, Private Industry Council, United Migrant Opportunity Service, Centro Hispano and Community Action Coalition for South Central Wisconsin.
- G. Formally contacting unions, subcontractors and trade associations to secure their cooperation for this program.
- H. Maintaining a list of all lower income project area residents who have applied either on their own, as trainees or employees, or on referral from any source and to employ such persons, if otherwise eligible for existing vacancies. If this contractor is unable to employ such residents, the residents shall be listed for the next available opening.
- I. Not filling job vacancies immediately prior to undertaking work on this Section 3 covered project as an attempt to circumvent these regulations.
- J. Maintaining records, including copies of correspondence, memoranda, etc. which document that all of the above steps have been taken.

As officers and representatives of _____ (Name of Contractor), we the undersigned have read and fully agree to this Plan, and become a party to the full implementation of this program.

Signature:

Title: _____ Date:

Signature:

Title: _____ Date:

“SECTION 3 ASSURANCES” CLAUSE

1. This project is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.
2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 C.F.R. Part 135.

[Source: 24 C.F.R. Part 135]

Date:

Contractor's Name:

President's Signature:

Project Name:

CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

Name of Prime Contractor

Project Name and Number

The undersigned hereby certifies that:

- (a) Section 3 provisions are included in the Bid and Contract Document(s).
- (b) A written Section 3 plan has been, or will be, prepared and submitted as part of the executed Contract (if bid equals or exceeds \$100,000).
- (c) No segregated facilities will be maintained.

Name and Title of Signer (Print or Type)

Signature

Date

PAYMENT AND PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____
as Principal, and _____ Company of
_____ as Surety, are held and firmly bound
unto the Owner, in the sum of _____
(\$_____) Dollars, lawful money of the United States, for the payment of which sum to the Owner, we
hereby bind ourselves and our respective executors and administrators firmly by these presents.

The condition of this Bond is such that if the above bound _____
shall on his/her/its part fully and faithfully perform all of the terms of the Contract entered into this day
between him/her/it and the Owner for the construction of:

in Madison, Wisconsin, and shall pay all claims for labor performed and material furnished in the
prosecution of said work, and save the Owner harmless from all claims for damages because of
negligence in the prosecution of said work, and shall save harmless the said Owner from all claims for
compensation (under Chapter 102, Wisconsin Statutes) of his/her/its employees and employees of
Subcontractors, then this Bond is to be void, otherwise of full force, virtue and effect.

Signed and sealed this ____ day of _____, 20____.

Countersigned:

Company Name (Principal)

Secretary

President

Witness

Surety

Attorney-in-fact

This certifies that I have been duly licensed as an agent for the above company in Wisconsin
under License No. _____ for the year 20____, and appointed as attorney-in-
fact with authority to execute this Payment and Performance Bond which power of attorney has not been
revoked.

Date

Agent

AFFIRMATIVE ACTION REQUIREMENTS

The Contractor shall comply with the following provisions of Madison General Ordinances Section 3.58(9).

In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, familial status, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor 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 or national origin.

The Contractor agrees that, within thirty (30) days after the effective date of this Agreement, the Contractor will provide to the City of Madison Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the Agreement 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 City Department of Affirmative Action 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 City of Madison Department of Affirmative Action 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. The Contractor agrees to interview and consider candidates referred by the Department of Affirmative Action 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.

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 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 Contractor state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex 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

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 warrants and certifies that, of the following two paragraphs, paragraph A or B is true:

- A. It 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, it 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.

Article V

(Reserved for public works contracts)

Article VI

The Contractor will maintain records as required by Section 3.58(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 3.58(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 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. 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 is blank. This article applies to City Public Works projects only.]

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).

ATTACHMENT F

Madison General Ordinances Section 4.20 “Living Wage”

- (1) Statement of Purpose. The City contracts with many persons to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should be spent to set a community standard that permits workers to live above the poverty line. The Common Council finds that the use of City funds to promote the creation of living wage jobs will increase consumer income, decrease poverty, invigorate neighborhood businesses and reduce the need for taxpayer-funded social services programs. The purpose of this ordinance is to improve the quality of services to beneficiaries of City-contracted agencies and to assure that City employees, employees of City service contractors and subcontractors, and employees and contractors of recipients of City financial assistance earn an hourly wage that is sufficient to enable a family of four to live at or above the federal poverty level.
- (2) Definitions. In this section:
- (a) “City financial assistance” means any grant, cooperative agreement, loan, contract or any other arrangement by which the City provides or otherwise makes available assistance in an amount equal to \$100,000 or more in the form of:
 - 1. Funds;
 - 2. Services of City personnel;
 - 3. Real and personal property or any interest in or use of such property, including:
 - a. Transfers or leases of such property for less than the fair market value, or for reduced consideration; and
 - b. Proceeds from a subsequent transfer or lease of such property if the City’s share of its fair market value is not returned to the City.
 - 4. The sale and lease of, and the permission to use (on other than a casual or transient basis) City property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease or furnishing of services to the recipient;
 - 5. “City financial assistance” includes, but is not limited to, capital revolving fund loans, redevelopment contracts, economic development agreements, revenue or loan agreements with an eligible participant or authorized developer under Sec. 66.521, Wis. Stats., contracts with developers or other entities authorized by Secs. 66.1333 (5) and 66.1105(3)(e), Wis. Stats.
 - 6. “City financial assistance” does not include public works contracts, supply procurement contracts, professional service contracts, contracts of insurance or guaranty, collective bargaining agreements, or contracts with nonprofit corporations, unless the nonprofit corporation passes City financial assistance in an amount equal to \$100,000 or more through to a for-profit entity, in which case the for-profit entity shall be subject to this ordinance.
 - (b) “Employee” means any individual, except those excluded under Subsection (10), who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to or work or be at any time in any place of employment. “Employee” includes individuals whose work is permanent or temporary, or on a full-time or part-time basis.
 - (c) “Person” means any individual, partnership, joint venture, corporation, limited liability company or partnership, trust, association, or other entity that may employ individuals or enter into contracts.
 - (d) “Professional service contract” means any contract in which the majority of employees engaged in the performance of the contract perform work which:
 - 1. predominantly intellectual and varied in nature, as opposed to work which involves routine mental, manual, mechanical or physical labor; and
 - 2. Requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.

- (e) "Recipient of City financial assistance" means any person, including that person's subcontractors, successors, assignees and transferees.
 - (f) "Service contract" means any contract with the City for the provision of services to any City department or agency with a budget under the control of the Common Council, which has a value exceeding \$5,000. "Service contract" does not include any contract which involves the purchase of goods or which is a professional service contract, public works contract under Sec. 62.15, Wis. Stats., or a contract with another unit of government.
 - (g) "Service contractor" means any person, including that person's subcontractors, successors, assignees, or transferees.
- (3) Living Wage Requirement.
- (a) All employees employed in work performed as part of a service contract, employed as City of Madison employees, employed in work performed under a contract funded by City financial assistance, employed by a contractor of a City financial assistance recipient and who expends at least twenty hours a week at the project site funded by City financial assistance, or employed by a recipient of City financial assistance in work performed at a project site funded by City financial assistance shall receive and be paid a City minimum hourly wage. The City minimum hourly wage shall be \$7.91 through December 31, 1999. Thereafter, the City minimum hourly wage shall be calculated as follows:
 - 1. Effective January 1, 2000 and continuing for the remainder of 2000, an hourly rate equal to 105% of the poverty level divided by 2080.
 - 2. Effective January 1, 2001 and continuing thereafter, an hourly rate equal to 110% of the poverty level divided by 2080.
 - 3. As used in this section, "poverty level" means an annual income equal to the U.S. Department of Health and Human Services' then most recently published poverty guideline for a family of four.
 - (b) Compliance with this Section shall be required for the term of the contract between the City and the service contractor or recipient of City financial assistance.
 - (c) Tipped employees, employees paid on commission, employees who receive meals or lodging or both from their employers, and employees whose compensation consists of more than hourly wages shall be paid an hourly wage which, when combined with the other compensation, will at least equal the City minimum hourly wage. The value of such meals or lodging shall be calculated pursuant to Chapter DWD 272, Wis. Admin. Code.
- (4) Maintenance of Effort. No service contractor or recipient of City financial assistance may use the living wage requirement of this section to reduce the wage paid to any person employed by the service contractor or recipient.
- (5) Provisions in Contracts. For purposes of carrying out the intent of this section, all provisions of this section are made part of all service contracts and contracts for the provision of City financial assistance. Every service contractor and recipient of City financial assistance shall bind its contractors and subcontractors in writing, as applicable, to the provisions of this section.
- (6) Contract Bid and Request-for-Proposal Specifications. A digest of the provisions of this section shall be included in all specifications for financial assistance projects and service contract work upon which the City calls for bids or issues requests for proposals.
- (7) Specifications for Contracts. No service contract and no contract between the City and a recipient of City financial assistance shall be entered into by the City unless such contract contains the following stipulation or its equivalent: "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."
- (8) Posting of Wage Rate. For every service contract and for every contract between the City and a recipient of City financial assistance the minimum hourly wage required by Subsec. (3) and the phone number of the City's Affirmative Action Department shall be kept posted by the contractor or recipient at the site of the work in a prominent place where it can be easily seen and read by persons employed in the performance of such contract. In addition, copies of the living wage requirement shall be supplied to any person employed by a recipient or employed in the performance of a service contract at the request of such person and within a reasonable period of time after the request.
- (9) Enforcement.
- (a) Any person who has been found by the City to have submitted any false, misleading or fraudulent information, or to have failed to comply with the provisions of this section, may be subject to any of the following sanctions, imposed by the City:
 - 1. Withholding of payments under the contract;

2. Termination, suspension or cancellation of the contract in whole or in part.
 3. After a due process hearing, denial of the right of the person to bid on future City contracts, by herself or himself, partner or agent, or by a corporation of which she or he is a member, for a period of one year after the first violation is found and for a period of three years after a second violation is found.
- (10) Exclusions. This section shall not apply to student learners, on-call employees, employees under the age of 18, or employees of sheltered workshops, as those terms are defined in Ch. 104, Wis. Stats., to City Special Workers as defined in Section 3.38(2)(b), Madison General Ordinances, or to laborers, workers or mechanics subject to either Section 4.23, Madison General Ordinances or to 40 U.S.C. 276a. (Am. by Ord. 12,594, 6-6-00)
- (11) Collective Bargaining Agreements. This ordinance may be superseded and made inapplicable, in whole or in part, by an expressed declaration to such effect in any signed collective bargaining agreement between a service contractor or a recipient of City financial assistance and a labor organization.
- (12) Applicability. The provisions of this section shall apply to:
- (a) A service contract or contract for the provision of City financial assistance consummated after the effective date of this ordinance;
 - (b) A service contract amendment consummated after the effective date of this ordinance which itself meets the requirements of this section;
 - (c) Supplemental financial assistance provided after the effective date of this ordinance which itself meets the requirements of this section.
- (13) Penalty. In addition to the sanctions set forth in Subsection (9) above, any person, contractor, subcontractor, or recipient who violates this section or fails to comply with any of its requirements shall, upon conviction hereof, be subject to a forfeiture of not less than one dollar (\$1.00) and not more than two hundred dollars (\$200), and in addition shall pay all costs and expenses. Each day such violation continues shall be considered a separate offense.

(Sec. 4.20 Cr. by Ord. 12,363, 3-30-99)