



## Home Construction Contract

In consideration of the mutual covenants and obligations, this Home Construction Contract (the “**Contract**”) is made as of the date set forth below, by and among the named Builder and Owner set forth below.

### 1. Builder/Owner/Signature/Acceptance

**Warning:** DO NOT SIGN PRIOR TO READING THE ENTIRE CONTRACT. BY SIGNING THIS SECTION 1, THIS CONTRACT BECOMES LEGALLY BINDING ON THE BUILDER AND THE OWNER, AND EACH PARTY AGREES TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

<b>Builder:</b>	<b>Owner:</b>
Builder’s Company Name: Bluestone Custom Homes, LLC	Name: Community Development Authority, City of Madison
Builder’s Authorized Representatives: Cindy Hammer, Member Jim Roloff, Member	Name (Authorized Representatives): Natalie Erdman Matthew Wachter
Signature:	Signature:
Address: 9830 Dunlap Hollow Rd Mazomanie, WI 53560	Address: 30 W. Mifflin St., Suite 501 Madison, WI 53703
Phone Number and Email Address: <a href="mailto:cindy@bluestonecustomhomes.com">cindy@bluestonecustomhomes.com</a> , 608-774-6382 <a href="mailto:jim@bluestonecustomhomes.com">jim@bluestonecustomhomes.com</a> , 608-490-0525	Phone Number and Email Address: <a href="mailto:MWachter@cityofmadison.com">MWachter@cityofmadison.com</a> 608-261-9664
Date:	Date:

## 2. Contract Price

**Lump Sum Price With Allowances:** Owner agrees to pay Builder a lump sum price of **\$226,274.00** for the completion of the Work subject to any Allowance (defined below) item (the ***“Contract Price”***). Attached as **Attachment 1** is the schedule setting forth the allowances for certain materials and portions of the Work (each an ***“Allowance”***). Owner acknowledges and agrees that Allowance items may only be estimates. The lump sum price is subject to adjustment in the event that the actual cost of an Allowance item is greater or less than the corresponding amount set forth in **Attachment 1**. Owner further agrees that in such cases where an actual cost exceeds the Allowance item estimate set forth in **Attachment 1**, there shall be an adjustment to the total Contract Price reflecting the additional costs. If the actual cost of any Allowance item is less than the Allowance for such item, Owner will receive a credit against the Contract Price equal to the amount by which the cost of the item is less than the Allowance.

## 3. Project/Work/Project Site

- A. **Project.** Owner enters into this Contract for the construction of a 2 bedroom, one-story home (with 1 bedroom, 1 full bath finished in basement) with 1-car detached garage on Lot 13 Mosaic Ridge; (the ***“Project”***) as more specifically set forth in Destree Architecture and Design plans dated **[TBD]** and building specifications dated 6/7/18, attached hereto (the ***“Plans and Specifications”***).
- B. **The Work.** Subject to the terms and conditions of this Contract, Builder shall provide the labor, materials, equipment, and services necessary to complete the construction of the Project consistent with the Plans and Specifications (the ***“Work”***). Slight, non-material deviations from the Plans and Specifications shall be construed as substantial compliance with this Contract.
- C. **Project Site.** The Builder shall complete the Work for the Owner at the following property (the ***“Project Site”***) (clearly mark appropriate box):

[ X ] Address: 2416 Dunns Marsh TE, Madison WI, 53711 (Lot 13 Mosaic Ridge, CSM 12506)

[ ] Lot \_\_\_\_ of the Mosaic Ridge, CSM 12506.

[ ] See legal description attached as Attachment\_    to this Contract.

## 4. Start Date/Completion Date

- A. **Start / Substantial completion.** Unless the parties mutually agree otherwise, the Work shall start and be substantially completed as follows:

Start Date: July 2, 2018

Substantial Completion Date: January 31, 2019

Builder shall not be required to commence working on the Start Date unless the following preconditions have been met: (i) execution of this Contract; (ii) satisfaction or waiver of all contingencies set forth in this Contract; (iii) payment of the Initial payment as described in Paragraph 5(a); and (iv) Owner deposits with the Escrow Agent any loan proceeds or cash equivalent payment if required per the Escrow Agreement set forth under Section 6. Owner shall not be given possession of the Project until Builder receives Final Payment excluding any retainage.

Subject to any delay provisions set forth in this Contract, the Builder shall accomplish Substantial Completion of the Work no later than the Substantial Completion Date. **“Substantial Completion”** means the earlier of the following: (i) the date Owner takes possession of the Project; or (ii) the date upon which the Project may be occupied or used for its intended purpose.

- B. **Final Walk-Through.** At a reasonable, agreed to time after Substantial Completion, Builder and Owner shall conduct a walk-through to inspect the Project to determine that the Builder completed the Work, and that there are no Construction Defects. If there is any unfinished Work and/or there are any Construction Defects, Builder shall complete the Work and/or cure the Construction Defects within a reasonable amount of time. The **“Final Completion Date”** shall be the date the City of Madison building inspector issues the certificate of occupancy.
- C. **Delays.** Builder shall give Owner timely notice of any impending delay in performance of the Contract in the form of a written Change Order if performance will be delayed beyond a deadline specified in the Contract. The notice must specify the reason for the delay, and must specify a new proposed Substantial Completion date. Owner shall sign any reasonable request for delay in the performance of the Contract.

## 5. Construction Payments

- A. **Initial Payment.** Owner agrees to make an initial payment to Builder to pay a portion of the initial costs of design, permitting, labor and materials in the amount of \$22,600.00 (the **“Initial Payment”**) within 30 days of the Start Date.
- B. **Progress Payments.** Unless a different method is set forth in a separate Escrow Agreement under Section 6, the Owner shall make progress payments approximately every 30 days (each period a **“Payment Period.”** The Builder shall submit a **“Progress Payment Request”** for each Payment Period ending on the final day of the Payment Period, which shall include a description of the completed portion of the Work and the payment amount for the portion of the Work subject to the request. The Owner shall make or authorize payment to Builder for the requested amount within 30 days after receipt of the Progress Payment Request. Builder shall furnish a partial lien waiver for Builder’s work to the Owner in the amount of the progress payment with the Progress Payment Request. Each partial lien waiver from Builder shall be limited to the actual amount of payment in good funds, and shall be conditioned upon Owner’s payment of the progress payment to Builder. Any lien waiver provided by Builder to Owner shall automatically be null and void if payment in good funds is not received within 35 days.

- C. **Final Payment.** The final payment (the **“Final Payment”**) shall be paid at the time of Substantial Completion of the Work except for the agreed to amount retained by Owner until the Final Completion Date. Owner may retain five percent (5%) of the Contract Price from the Final Payment, which amount shall be paid to Builder on the latter of the Final Completion Date or the date of the final signed lien waiver.

## 6. Escrow Agreement (Clearly Mark Box If Applicable)

- [ ] The parties agree that the total Contract Price, less the aforementioned Initial Payment (when paid), shall be deposited with the escrow agent (the **“Escrow Agent”**) acceptable to Owner and Builder pursuant to a fully executed escrow agreement (the **“Escrow Agreement”**). The Escrow Agreement shall name Builder as escrow proceeds recipient. Owner shall pay any fees or charges for said escrow and agrees to authorize the disbursement of withdrawals from the escrow as set forth in Paragraph 5. Escrow Agent may be the bank or selected by the bank providing financing.

## 7. Permits/Owner’s Work

- A. **Permits.** Builder hereby informs Owner that depending on the scope of Work necessary to complete the Project, it may be necessary for either the Builder or the Owner to obtain certain permits, including without limitation, building and construction permits, sanitary and well permits (if a private sewage system or well is used), a driveway permit, an occupancy permit, other local permits and no other
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**(Clearly mark appropriate box)**

- [ X ] Builder shall be responsible for obtaining all necessary permits that are required for the Work. Owner shall be responsible for any and all building and construction permits that are required for Owner’s Work (defined below). Builder shall be responsible for the cost of necessary building permits with the exception of park impact fees. Owner shall be responsible for the cost of park impact fees, if applicable.
- [ ] Owner shall be responsible for obtaining all necessary permits that are required for the Work and Owner’s Work.
- B. **Owner’s Work And Materials / Credits.** Owner shall receive work credits against the total Contract Price for labor and materials provided by Owner, and for any portion of the Work to be completed by Owner (**“Owner’s Work”**). The amount of each credit shall be set forth in Attachment 2, and agreed to prior to the execution of this Contract.

Owner agrees to perform Owner’s Work within a reasonable time after notice from the Builder that such work must be performed. Owner shall complete Owner’s Work subject to appropriate inspection by the proper governmental authority. Owner’s Work is excluded from the Warranty provided under this Contract. Any damage to the Work caused by Owner, Owner’s agents, Owner’s contractors and subcontractors or caused by Owner’s Work is excluded from the Warranty. Such damages shall be the sole responsibility of Owner.

## 8. Changes to the Work

**Change Orders.** After execution of this Contract, any changes to the Work shall be accomplished by agreement of Builder and Owner pursuant to a change order (each a **“Change Order”**). Each written Change Order shall be signed by the Builder and Owner and shall set forth the Change in the Work, adjustments to the Contract Price and the adjustment to the Substantial Completion Date. Parties shall endeavor to document each Change Order.

## 9. Financing/Evidence of Ability to Pay

A. **Financing.** *(clearly mark box only if applicable)*

[ ] This Contract is contingent upon the Owner securing a commitment for a construction loan in an amount equal to percent ( %) of the Contract Price no later than (insert date).

B. **Evidence Of Ability To Pay.** Upon request from Builder, Owner shall provide Builder assurances and evidence of Owner’s ability to pay the Contract Price and/or for any Change Order that increases the Contract price within 30 days. During this period, the Builder may delay Work if necessary. If Owner does not provide adequate assurance and evidence of Owner’s ability to pay, then Builder may disregard the change order and continue work as previously agreed, or terminate this Contract and receive payment for the cost of the labor and materials provided to that date.

## 10. Site Conditions

A. **Differing Site Conditions.** A **“Differing Site Condition”** is any physical condition at the Project Site that is materially different from those implied in the Plans and Specifications or those normally encountered in the construction of this type of Project. Differing Site Conditions may include, without limitation, abnormal soil conditions, undocumented or incorrectly documented sewer or water laterals, the need to remove and transport excess fill, the need for water pumping, etc.

If Builder encounters a Differing Site Condition, Builder shall provide notice to Owner as soon as reasonably possible. Builder will not disturb the Differing Site Condition prior to notification and direction from Owner except as necessary to protect the safety of individual, the Project Site and the Work. Any changes to the Contract Price and the Substantial Completion Date as a result of the Differing Site Condition should be done by a written Change Order.

If a Differing Site Condition is encountered by Builder when performing the Work, then the Contract Price and the Substantial Completion Date shall be adjusted as follows: (i) the Contract Price shall be adjusted to include the additional costs incurred by Builder plus an additional amount of zero percent (0%) of the additional costs; and (ii) the Substantial Completion Date shall be extended a reasonable number of days necessary to complete the Work as a result of the Differing Site Condition.

- B. **Environmental Site Condition.** Builder is not responsible for environmental conditions at the Project Site, including without limitation, storm water and wetland issues affecting the site, contaminated soils, radon, existing lead paint, asbestos, molds, or any other unknown environmental hazards. Builder is responsible for any adverse environmental hazard that is a direct result of the Work (as defined herein) actually performed by Builder at the Project Site. Owner represents and warrants the site is not in a floodplain or floodway, and that any storm water runoff from the Project Site after construction will not adversely affect any other property owner.
- C. **Weather Conditions.** Any abnormal, adverse weather that affects Builder's ability to complete the Work shall be treated in the same manner as a Differing Site Condition. In the event that Builder must take immediate action to preserve the Project Site as a result of adverse weather and Builder is unable to notify Owner, Owner shall be responsible for all costs incurred by Builder.
- D. **Validity of Lot Ownership.** Owner represents and warrants that it has the requisite authority and interest (for example, fee simple ownership of the Project Site) to enter into this Contract for performance of the Work on the Project Site. Owner further represents and warrants that there are no recorded deed restrictions, easements, or covenants that would prohibit or impair performance of the Work. Owner shall be responsible for furnishing an approved site for construction of the Work.
- E. **Compliance with Local Restrictions And Zoning.** Owner represents that the Project described herein at the Project Site complies with all applicable zoning and use regulations, and Owner shall hold the Builder harmless from any and all claims, demands, actions, liabilities, losses, and damages arising out of or related to such regulations. If a survey is necessary to determine any set back lines, or other zoning matter, then the Owner shall provide an acceptable survey at Owner's cost.

## 11. Warranty

- A. **Warranty.** Builder solely and exclusively warrants its Work (as defined herein in section 3., above) shall be free from Construction Defects for a period of one (1) year from the Substantial Completion Date subject to the limitations set forth below (the "Warranty").
- B. **Construction Defects.** A "***Construction Defect***" means a deficiency or omission in the completion of the Work that results from defective materials, a violation of applicable building codes or a failure to follow the current adopted standards set forth in the Construction Industry Quality Standards of the Wisconsin Builders Association.
- C. **Notice and Repair/Replacement Of Construction Defect.** For a Construction Defect to be covered by this Warranty, Owner shall give written notice of the Construction Defect (the "***Notice***") to Builder prior to the date of expiration of this Warranty. Upon receipt of the Notice from Owner, the Builder shall either replace or repair the Construction Defect, at Builder's sole discretion, in a reasonably prompt manner subject to the terms and conditions of this Contract. Any Construction Defect, latent or otherwise, for which Notice is not provided prior to the expiration of this Warranty shall not be covered by this Warranty. If Owner does not give Builder Notice of the Construction Defect and the opportunity to either repair or replace the Construction Defect, at Builder's sole discretion, then the Builder shall not be liable for the Construction Defect.

- D. **Exclusions.** Builder shall not be obligated to replace or repair any Construction Defect or pay for the replacement or repair of any Construction Defect caused, in whole or in part by: (i) Owner's improper or insufficient maintenance of the Project or improper or insufficient maintenance or operation of any of the Project's systems; (ii) natural occurrences beyond Builder's control; (iii) defects in materials supplied by anyone other than the Builder or agents acting on the Builder's behalf; (iv) any work performed by Owner or Owner's contractors, subcontractor's or agents; (v) normal wear and tear and normal usage; and (vi) materials, products or systems covered by other warranties such as manufacturers' warranties. Builder's Warranty is not assignable or transferable to any subsequent owner of the Project without the Builder's prior written consent.
- E. **Other Warranties.** Builder hereby assigns to Owner any and all manufacturers' warranties pertaining to any fixtures, appliances and equipment and other products covered by a manufacturer's warranty that are part of the Project (collectively, the "**Warranted Products**"). In the event Builder repairs, replaces or pays the cost of repairing or replacing any defect covered by this Warranty which is covered by other insurance or other warranties, then Owner shall assign the proceeds of such insurance or warranties to Builder to the extent of the cost to the Builder for such repair or replacement, or the extent of the payment.

## 12. Wisconsin's Right To Cure Law

### Notice Concerning Construction Defects

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer.

Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obliged to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

Owner acknowledges receipt of the notice concerning construction defects and the brochure prepared by the Wisconsin department of commerce titled "Wisconsin's Framework for Successful Communications between Consumers and Contractors."

REMINDER: Builder must provide brochure "Wisconsin's Framework for Successful Communications between Consumers and Contractors."

## 13. Arbitration

[ ] If this section is marked, then any dispute or controversy between Builder and Owner arising out of or related to the Contract shall be decided through binding arbitration, based on the final decision of a neutral arbitrator agreed to by the parties. If the parties cannot agree on an arbitrator, each party shall name one attorney unrelated to this matter (an attorney not representing either party) who is a member of the Wisconsin State Bar. The two named

attorneys shall then select another attorney who is experienced in construction law to act as the arbitrator. Judgment on any arbitration award may be entered in any court of competent jurisdiction. Once an arbitrator is selected, the parties shall agree to rules to govern the arbitration; provided, however, if the parties cannot agree to such rules, then the arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association. If either party refuses to submit a claim to arbitration, or fails to abide by all of the rules adopted, the non-breaching party shall be entitled to recover all costs, including reasonable, actual attorneys' fees, incurred in seeking further action to enforce the terms of this provision and/or to compel arbitration. Nothing in this section precludes or requires the parties to mediate this matter prior to invoking their right to arbitration.

## 14. Notice of Lien

As required By the Wisconsin construction lien law, claimant hereby notifies Owner that persons or companies performing, furnishing or procuring labor, services, Materials, plans, or specifications for the construction on Owner's land May Have lien rights on Owner's land and Buildings if not paid. Those entitled to lien rights, in addition to the undersigned claimant, are those who contract directly with the Owner or those who give the Owner notice within 60 days after they First perform, furnish, or procure labor, services, Materials, plans, or specifications for the construction. Accordingly, Owner probably will receive notices from those who perform, furnish, or procure labor, services, Materials, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the Owner and the Owner's lender, if any, to see that all potential lien claimants are duly paid.

## 15. Insurance

Builder and Owner shall each obtain the insurance coverage set forth in Attachment 3.

## 16. Breach

- A. **Breach by Builder.** In the event that Builder breaches the terms of this Contract, Owner shall be entitled to recover Owner's actual damages incurred as a result of Builder's default. Owner hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the Warranty set forth under Section 11.
- B. **Breach by Owner.** In the event that Owner breaches the terms of this Contract, Builder shall be entitled to recover Builder's actual damages, including without limitation, Builder's lost profit, incurred as a result of Owner's breach. Builder hereby waives all claims for consequential or incidental damages. This section is subject to the terms and conditions of the Warranty set forth under Section 11.

## 17. Signatures

The signature of either Owner (if more than one) subsequent to the signing of this Contract shall be sufficient for all purposes under the Contract, including without limitation Change Orders, if any.



## 18. Contract Documents

The following documents are incorporated into this Contract [mark appropriate box(es)]:

- Plans and Specifications
- Schedule of Allowances (Attachment 1)
- Owner's Work (Attachment 2)
- Insurance (Attachment 3)
- Special Conditions (Attachment 4)
- Affirmative Action (Attachment 5)

## 19. Choice of Law

This Contract shall be interpreted and governed by the laws of the State of Wisconsin.

## 20. Non-Discrimination

In the performance of services under this Contract, Bluestone 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. Bluestone 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.

## 21. Indemnification

Builder shall be liable to and agrees to indemnify, defend and hold harmless Owner and its respective officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon Owner, or its respective 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 acts or omissions of Builder or its officers, officials, agents, employees, assigns, sublessees or subcontractors, in the performance of this Contract. This paragraph shall survive termination or expiration of this Contract.

## 22. Final Agreement

This Contract expresses all agreements between the parties concerning the subject matter hereof and supersedes all previous agreements, communications or understandings relating thereto, whether oral or written, including proposals, draft plans and specifications, brochures and other information, and shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, successors and assigns of the parties hereto.

# Attachment 1

## SCHEDULE OF ALLOWANCES

BY SIGNING THIS ATTACHMENT 1, THE OWNER AGREES TO THE FOLLOWING SCHEDULE OF ALLOWANCES:

Owner: Community Development Authority of the City of Madison	Owner's Signature:
Project Site: 2416 Dunns Marsh TE, Madison WI, 53711 (Lot 13 Mosaic Ridge, CSM 12506)	

<b>Allowances</b>	<b>Amount</b>
Mirrors, Bath Hardware	\$475.00
Decorative Light Fixtures	\$425.00
Recessed Light Fixtures	630.00
Appliances	\$3,759.00
Closet and Pantry Shelving (materials and labor)	\$550.00
Landscaping and Retaining Walls	\$6,300.00

If the cost of any item exceeds the Allowance for such item, Owner will pay to Builder, as an addition to the Contract Price, the amount by which the actual cost of such item exceeds the stated Allowance.

If the cost of any Allowance item is less than the Allowance for such item, Owner will receive a credit against the Contract Price equal to the amount by which the cost of such item is less than the Allowance.

# Attachment 2

## OWNER'S WORK

<b>Owner's Work</b>	<b>Credit Against Contract Price</b>
Builder is providing the Work as defined herein.	
Owner is providing the work as defined in the Exclusions to Builder's Work (as defined herein), which Exclusions are attached hereto.	

# **Attachment 3**

## INSURANCE

***THE BELOW COVERAGE SHOULD BE REVIEWED AND MODIFIED WITH THE ADVICE OF THE BUILDER'S AND OWNER'S INSURANCE AGENTS.***

### **Builder's Policies**

Prior to commencing the Work under this Contract, Builder shall maintain Commercial General Liability, Automobile Liability and Worker's Compensation insurance as required by the State of Wisconsin under its Dwelling Contractor Certification. Insurance coverage and certificates shall be provided prior to the commencement of any work.

### **Owner's Policies**

Prior to the Commencement of the Work, Owner shall have the following coverage in place. The Builder shall be a named insured on the Builder's Risk policy.

**Builder's risk insurance (project site coverage).** Owner shall, prior to commencement of the Work and until full payment is made or until Substantial Completion, whichever occurs first, keep the Work insured by a Builder's Risk Policy Special Form, with hydrostatic and collapse coverage, in an amount not less than \$226,274.

**Homeowner's insurance.** Owner shall obtain liability insurance for the Project Site on which the Work will be done. This coverage can be purchased via a stand alone general liability policy or Owner's current homeowner's policy can be endorsed to extend liability coverage for the Project Site.

# **Attachment 4**

## SPECIAL CONDITIONS

The following Special Conditions are incorporated into the terms and conditions of the Contract:

1. Bluestone Custom Homes – specifications document dated 6/7/18.
2. Destree Architecture and Design – plans dated **[TBD]**.

# **Attachment 5**

The Builder shall comply with the following Affirmative Action Articles of Agreement. For purposes of this provision, the word "Builder" shall mean Builder, its contractors and subcontractors.

## **ARTICLES OF AGREEMENT**

### **ARTICLE I**

Builder shall take affirmative action in accordance with the provisions of this Agreement 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. Builder 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**

Builder shall in all solicitations or advertisements for employees placed by or on behalf of the Builder 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**

Builder 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 Builder'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**

Builder agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. Builder warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- 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 CFR 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 Agreement, 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 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Agreement, it will complete a model affirmative action plan approved by the Madison Common Council.

**ARTICLE V**

(Not applicable.)

**ARTICLE VI**

Builder will maintain records as required by Section 39.05(9)(f) of the Madison General Ordinances and will provide the City's Affirmative Action Division with access to such records and to persons who have relevant and necessary information, as provided in Section 39.05(9)(f). The City shall keep all such records confidential, except to the extent that public inspection is required by law.

**ARTICLE VII**

In the event of Builder's or its contractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Agreement or Sections 39.02 and 39.05 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 the Agreement in whole or in part.
- B. Declare the Builder 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**

(Not applicable.)

**ARTICLE IX**

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