

**USE AGREEMENT BETWEEN THE CITY OF MADISON, DOWNTOWN MADISON, INC.
AND MADISON'S CENTRAL BUSINESS IMPROVEMENT DISTRICT NO. 1 FOR THE
ELIZABTH LINK PEACE PARK VISITOR CENTER**

THIS USE AGREEMENT ("Agreement") is entered into by and between the **City of Madison**, a Wisconsin municipal corporation ("City"), **Downtown Madison, Inc.**, a Wisconsin corporation ("DMI"), and **Madison's Central Business Improvement District No. 1**, a Wisconsin business improvement district under Wis. Stat. § 66.1109 ("BID"), and is effective as of the final date by which all parties have signed hereunder.

WITNESSETH:

WHEREAS, the City is the owner of the property located at 452 State St. / 229 West Gilman Street, Madison, Wisconsin, commonly known as Elizabeth Link Peace Park (the "Park"); and

WHEREAS, pursuant to Public Works Contract No. 6340, the City is redeveloping the Park to include a stage area, seating areas, landscaping and trees, walkways and a visitor center building (the "Visitor Center"); and

WHEREAS, the Visitor Center shall consist of approximately 1,000 square feet and shall include public restrooms and an office area; and

WHEREAS, BID desires to use, on a non-exclusive basis, approximately 300 square feet of office area space within the Visitor Center and the City desires to allow BID such use; and

WHEREAS, DMI annually enters into a Professional Services Contract with BID where it agrees to provide professional services to BID, including providing BID with its employees, and intends to continue to enter into such annual contracts for the provision of these services.

NOW, THEREFORE, it is mutually agreed as follows:

1. Premises. The City hereby grants BID and BID's employees, volunteers, or agents ("BID Staff") the right to occupy and use, on a non-exclusive basis, approximately 300 square feet of office space within the Visitor Center at the location depicted on attached Exhibit A (the "Premises"). The Premises may also be occupied and used by employees of the Madison Police Department, other City of Madison employees, and other City approved users.
2. Term. This Agreement shall be for an initial term of approximately one year and four months, subject to early termination pursuant to the terms of this Agreement. The initial term shall commence on the date that a certificate of occupancy is issued by the City of Madison for the Visitor Center and shall expire on December 31, 2011.
3. Renewal. This Agreement shall automatically continue for successive terms of one year, unless terminated earlier in accordance with the terms hereof.
4. Use. The Premises will be occupied and used by employees and volunteers of BID's

“Downtown Information Ambassador” program (“BID Ambassadors”) for the purpose of providing the general public with area maps, event information, directions, and shopping and dining suggestions.

5. Rent. No rent or security deposit is payable by BID under this Agreement.
6. Common Areas. The City grants to BID and BID Staff the right to use, in common with all others to whom the City has or may hereafter grant rights to use the same, the “Common Areas” located in the Visitor Center. The term “Common Areas” is defined as the interior hallways, restrooms and all other areas or improvements which may be provided by the City for the common use or benefit of occupants of the Visitor Center. The City grants to the BID the right to display maps and information in the Common Area. The City reserves the right to control and manage the Common Areas in its sole discretion and to establish rules and regulations for the use thereof. The City shall be responsible for cleaning, maintaining and repairing the Common Areas.
7. Special Conditions.

- a. BID shall have non-exclusive use of the Premises during the hours of 8am to 8pm daily. The proposed regular hours of staffing by BID Ambassadors are as follows:

January-April: 11am – 2pm daily

May-September:

Monday-Tuesday: 11am – 2pm

Wednesday-Friday: 11am – 5pm

Saturday: 9am – 5pm

Sunday: 11am – 4pm

October-December:

Monday-Tuesday: 11am – 2pm

Wednesday – Sunday: 11am – 5pm

These hours are subject to change and may be extended for special events upon agreement of the parties.

- b. The City shall provide all utilities including heat, electricity, sewer, storm water, and water, and hard-wired local telephone and data service. As specified in the Visitor Center construction plans, one voice and data outlet shall be located at each of three workstations in the Premises and there will be one local telephone line for the Premises. BID Ambassadors will also make primary use of BID-supplied cell phone while on premises. For data services, BID will utilize Visitor Center live data ports/internet connections to remote into a BID server.
- c. The City shall establish and enforce an administrative Code of Conduct for the Visitor Center effective before or on the day the Visitor Center opens to the public and during all times this Agreement is in effect. BID Staff, like all users of the Visitor Center, are subject to the Code of Conduct. BID Staff have no authority to enforce said Code of Conduct, and instead must notify City staff of violations of the Code of Conduct and cooperate in the enforcement thereof.

- d. Visitor Center bathrooms will be open to the public only when the Visitor Center is staffed by either BID or other City-designated staff.
- e. BID and BID Staff shall bear no responsibility for scheduling use of the Park by outside parties. All programming and coordination of events and uses in the Park shall be undertaken by other parties and/or the City. BID may elect to schedule BID Ambassadors to staff the Visitor Center outside regular hours during Park events (as mutually agreed to with the City), although the BID is not obligated to do so. The City will make available to the BID on a regular basis Park special event schedules so that staffing needs can be determined in advance. The City and the BID will work together to determine mutually-approved staffing plans for large special events in the Park.
- f. BID Ambassadors will display and provide literature and information to the general public such as area maps, event information, directions, and shopping and dining suggestions, including information from Madison Parks such as current schedule of Park events, and how to program an event in the Park. The literature and information to be provided and the functions of the Ambassador Program will be determined by the BID as outlined in the annual BID Operating Plan as approved by the Common Council.
- g. BID accepts the Premises in "as-is" condition. Any modifications to the Premises by BID shall be subject to the prior written approval of the City and shall be at BID's sole cost and expense.

8. Maintenance and Repairs.

- a. The City shall be responsible for all maintenance, repair and cleaning of the Visitor Center. The City shall clean the public restrooms on a daily schedule that maintains the restrooms at an appropriate standard for public use. If restrooms are unfit for public use, BID Staff will post "restroom closed" signs and contact the City for maintenance. The City shall be responsible for responding to public complaints about cleanliness of Visitor Center Common Areas and restrooms.
- b. Notwithstanding the foregoing, BID shall be responsible for the cost and expenses of repairs/replacements required by reason of acts or omissions of BID, BID Staff, or BID's invitees, vendors, licensees or contractors. BID shall give the City written notice of the necessity for repairs/replacements coming to the attention of BID, following which the City shall have a reasonable time to undertake and complete such repairs.
- c. BID shall be responsible for keeping the Premises secure during any exclusive use of the Premises by BID. All property belonging to BID, BID Staff, or BID's invitees, vendors, licensees or contractors shall be there at the risk of BID or other person only, and the City shall not be liable for damage thereto nor theft or misappropriation thereof. However, BID shall bear no responsibility for security of the Park or for theft, damage or misappropriation of the Visitor Center Premises or Common Area by the City, its employees, agents or invitees.

9. Indemnification and Insurance. DMI shall be liable to and agrees to indemnify, defend and hold harmless the City, and its 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 the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the negligent acts or omissions of BID or DMI or their employees, volunteers, sublessees or subcontractors, acting in their capacity as such, in the performance of this Agreement; provided, however, that DMI will not be liable for indirect, consequential, special, incidental, or punitive damages, even if such damages were foreseeable, except that this exclusion will not apply to damages asserted against the City in a third party claim. Additionally, DMI shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, DMI shall furnish to the City a certificate of insurance on a form provided by the City.

10. Default. In the event of BID or DMI's default hereunder and BID or DMI's failure to cure the same within five (5) days after the City gives BID or DMI written notice thereof, the City, in addition to all other rights and remedies accorded by law or in this Agreement, shall have the right to immediately terminate this Agreement and remove BID from the Premises.
11. Termination.
 - a. Any party shall have the right to terminate this Agreement, at its sole discretion, upon thirty (30) days written notice to the other parties.
 - b. This Agreement shall automatically terminate upon the termination of Madison's Central Business Improvement District No. 1 under Wis. Stat. § 66.1109(4m).
12. Right of Entry. The City or its representatives shall have the right to enter upon the Premises at any time for the following purposes:
 - a. To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Agreement or in the exercise of its police powers.
 - b. For the purpose of performing work related to any public improvement.
13. Assignment and Subletting. BID shall not assign this Agreement nor sublet the Premises, or any portion thereof, without the prior written consent of the City, which consent the City may withhold in its sole discretion.
14. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City: City of Madison
 Attn.: Park Superintendent
 210 Martin Luther King, Jr. Boulevard
 Suite 104
 Madison, WI 53701

For BID: Madison Central BID
ATTN: BID Executive Director
122 West Washington Ave.
P.O. Box 2136
Madison, WI 53701

For DMI: Downtown Madison, Inc.
Attn.: President
122 W. Washington Avenue,
Suite 250
Madison, WI 53703

Any party hereto may, by giving five (5) days written notice to the other parties in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

15. No Waiver. Failure or delay on the part of any party to enforce any of the terms, covenants, conditions or agreements hereof shall not operate as a waiver thereof nor void or affect the right of the party to enforce the same upon any subsequent default or breach. Except as otherwise provided in this Agreement, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rules of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.
16. Rights Upon Expiration or Termination. Upon the expiration of this Agreement, BID's rights in the Premises shall cease, and BID shall immediately surrender the Premises, subject to the provisions of Paragraph 17.
17. Removal and Disposal of Personal Property. Upon the expiration of this Agreement, BID shall remove all personal property from the Premises. If BID leaves any personal property on the Premises, the City shall have the right to dispose of said property, without liability, ten (10) days after BID vacates the Premises.
18. Entire Agreement. All terms and conditions and all negotiations, representations and promises with respect to this Agreement are merged into this Agreement. No alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless in writing and signed by them.
19. Severability. If any term or provision of this Agreement or the application thereof to the City, DMI or BID or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to the City, DMI or BID or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.
20. Non-Discrimination. In the performance of the services under this Agreement, DMI and BID agree not to discriminate because of race, religion, marital status, age, 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. DMI and BID further agree not to discriminate against any contractor,

subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex or national origin.

21. Authority. DMI and BID represent that they each have the authority to enter into this Agreement and that the persons signing on behalf of DMI and BID represent and warrant that he or she has been duly authorized to bind DMI and BID and sign this Agreement on DMI and BID's respective behalf.

IN WITNESS WHEREOF, the parties have entered into this Use Agreement as of the date first set forth above.

FOR THE CITY OF MADISON

David Cieslewicz, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved as to form:

Dean Brassler, City Comptroller

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

FOR MADISON'S CENTRAL BUSINESS IMPROVEMENT DISTRICT NO. 1

Jeanette Riechers, Board Chair of BID

Date

FOR DOWNTOWN MADISON, INC.

Susan Schmitz, President

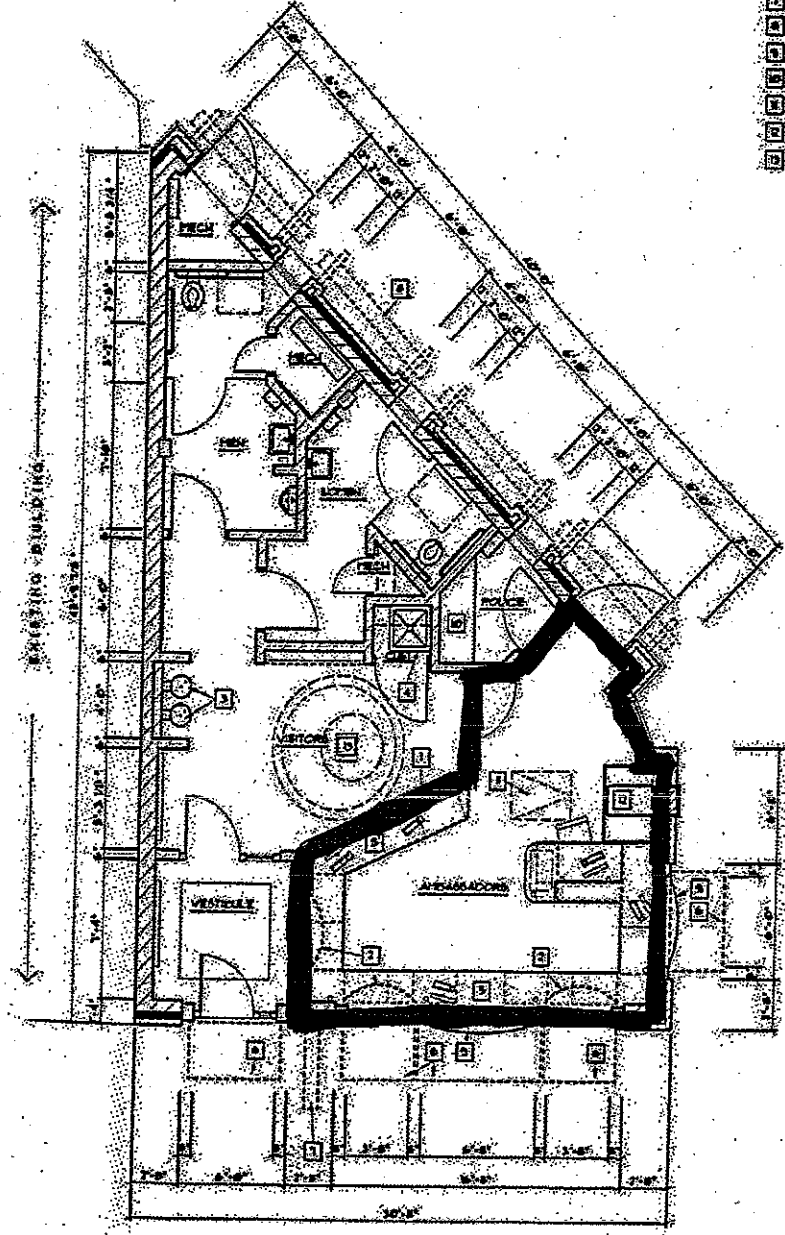
Date

Drafted by the City of Madison Office of Real Estate Services and Office of the City Attorney.

Project No. 9405

EXHIBIT A

"Premises" outlined in Boldface Line.



BOX NOTES:

- 1. STAIR SERVICE SHAFT TO 7TH FLOOR WITH ACCESS THROUGH ABOVE
- 2. DISPLAY AREA BY CORNER
- 3. STAIR CORRIDOR TO STAIR - SEE PLANS
- 4. FLOOR ELEVATOR SEE PLANS
- 5. SERVICE COUNTER AT 3RD FLOOR
- 6. SERVICE ABOVE
- 7. SERVICE ABOVE
- 8. SERVICE ABOVE
- 9. SERVICE ABOVE
- 10. POLICE WORK COUNTER AT 3RD FLOOR
- 11. FLOOR ACCESS HATCH ABOVE
- 12. ATTACHMENT WITH CABINETRY SURROUND
- 13. 4TH FLOOR SERVICE ABOVE WITH CORRIDOR SURROUND

 FLOOR PLAN
 VAN DER GRIFF
 1234 56789