

**LEASE**

(This document is a lease of less than 99 years and not a conveyance subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

This Lease is entered into as of the Effective Date defined below, by and between the City of **Madison**, a municipal corporation, located in Dane County, Wisconsin (the “City”), and **Madison Public Market Foundation, Inc.**, a Wisconsin non-stock corporation (the “Foundation”).

**WITNESSETH:**

WHEREAS, the City is the owner of the property located at 202 N. First Street, Madison, Wisconsin, legally described on attached **Exhibit A** and depicted on attached **Exhibit B** (the “City’s Property”); and

WHEREAS, that part of the City’s Property that will be leased to the Foundation under this Lease is depicted as the “City’s Leased Property” on **Exhibit B**; and

WHEREAS, the City created (*insert condo name*) Condominium (the “Condominium”) by recording a Declaration of Condominium (*insert condo name*) in the Office of the Register of Deeds for Dane County, Wisconsin, as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2023, together with a Condominium Plat as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2023 (the “Condominium Documents”); and

WHEREAS, Unit No. \_\_\_\_ of the Condominium which has a street address of \_\_\_\_\_, and is legally described on **Exhibit A** and depicted on **Exhibit B**, was conveyed by the City to the County of Dane on \_\_\_\_\_, 2023 (the “County’s Property”); and

WHEREAS, the City leases the County’s Property from the County, pursuant to that certain Lease, dated \_\_\_\_\_, 2023, and recorded as Document No. \_\_\_\_\_ in the Office of the Register of Deeds for Dane County, Wisconsin (the “Primary Lease”); and

WHEREAS, together the City’s Property and County’s Property are the former site of the City’s Fleet Services Division, and the City’s Leased Property and the County’s Property will be developed into the Madison Public Market (the “Public Market”); and

WHEREAS, the City has contracted with the Foundation to operate the Public Market under the terms and conditions found in this Lease and in an Operating Agreement between the City and the Foundation (together, “Parties”), dated \_\_\_\_\_, 2023 (the “Operating Agreement”); and

WHEREAS, the Operating Agreement is attached to and incorporated into this Lease as **Exhibit C**.

Return to: City of Madison  
Economic Development Division  
Office of Real Estate Services  
P.O. Box 2983  
Madison, WI 53701-2983

Tax Parcel No.: 251/0710-063-1507-4

The Parties have further detailed the Parties' respective responsibilities with respect to the Public Market in the Responsibility Matrix attached to and incorporated in this Lease as **Exhibit D** (the "Responsibility Matrix"); and

WHEREAS, the Foundation desires to lease the City's Leased Property, and sublease the County's Property from the City, for the purpose of operating the Public Market, and said leased property shall include the primary Public Market building ("Building A"), a small utility building ("Building B," and together with Building A, the "Building"), and a portion of the parking lot and other lands at the City's Leased Property, all as depicted on attached **Exhibit B** (collectively, the "Leased Premises").

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Leased Premises.** The City hereby (a) leases the City's Leased Property to the Foundation and (b) subleases the County's Property to the Foundation, on the terms and conditions provided for in this Lease. The Foundation agrees to abide by all lessor obligations under this Lease, and under the Primary Lease.
2. **Term.** The initial term of this Lease shall be twenty (20) years, commencing on the Effective Date and terminating on the twentieth anniversary of the Effective Date (the "Initial Term") subject to renewal or early termination, as provided for in this Lease. The "Effective Date" is the date a Certificate of Occupancy for the Building has been issued by the City. The Initial Term may be extended for up to two (2) Renewal Terms, as provided for Section 4 below. The Initial Term and any Renewal Terms are collectively, the "Lease Term." During the Lease Term, each "Lease Year" shall be period of one (1) calendar year commencing on January 1 of each year, provided however, the first Lease Year will be longer than an actual calendar year and commence on the Effective Date and terminate on December 31, 202\_\_.
3. **Rent.** For Lease Years One (1) through Four (4), the Foundation shall pay no annual rent to the City. Beginning at Lease Year Five (5), the City reserves the right to phase in rent payments in the event that the Public Market begins generating a surplus due to higher than anticipated revenues or lower than anticipated cost. The Foundation will provide an annual financial report to the City for each of its fiscal years, to be delivered no later than 6 months following the end of the previous fiscal year. The report will outline the financial condition of the Foundation and the impact the Public Market and the Foundation is having on the community. Rent will be implemented in accordance with the terms outlined below. At that time, the initial rent payment shall be due. Subsequent rent payments shall be due on or before the anniversary of the Effective Date of this Lease. All payments are to be made payable to the City Treasurer and sent or personally delivered to the Economic Development Division at the address specified in Section 38 of this Lease.

The Foundation's rent will be structured as follows, with the years corresponding to the annual anniversary of the Effective Date of this Lease:

- a. Years 0-4: \$0/year lease payment
- b. Years 5, 10, 15: the City retains right to begin assessing rent to the Foundation based on:
  - (1) Financial condition of the Foundation, for example, once operating reserves reach 6 months of operating expenses, or the Foundation is generating net revenue that can

reasonably be expected to maintain operating reserves equal to 6 months of operating expenses; and

(2) Community impact.

The City will notify the Foundation on or about the 4th, 9th, 14th anniversary of the Effective Date of this Lease that it will continue without paying rent for the upcoming 5-year period or that it intends to increase rent and will negotiate an increase, in good faith, with the Foundation for the next 5-year period.

4. Renewal. At the end of the Initial Term, the Lease Term may be renewed for Two (2) subsequent renewal terms of Ten Lease Years each (each a “Renewal Term,” and collectively, the “Renewal Terms”). The terms and conditions provided for in this Lease for the Initial Term shall remain in effect for the Renewal Terms, except that rent may be adjusted as provided for in this Lease. If the Foundation desires to renew the Lease Term for an additional Renewal Term, then the Foundation must deliver a written request to renew to the City at least One (1) year prior to the expiration of the Initial Term or then current Renewal Term. Following receipt of the Foundation’s request to renew, the City may indicate by written notice to the Foundation its approval or denial of the Foundation’s request to renew. If the City approves the Foundation’s request, the Lease Term shall be renewed for an additional Renewal Term. If the City denies the Foundation’s request, the Lease Term shall terminate at the end of the Initial Term or then current Renewal Term. If the City does not approve or deny a renewal request within sixty (60) days after receipt of the Foundation’s request for renewal, the request for renewal shall be deemed denied.
5. Use and Restrictions on Use of Leased Premises.
  - a. The Foundation shall use the Leased Premises for the operation of the Public Market and activities related thereto. The Leased Premises shall be used exclusively by the Foundation and the employees, subtenants, customers, invitees, and guests of the Foundation. The Leased Premises shall not be used by the general public, with general public defined as all persons other than those permitted use in this Section.
  - b. Additional terms and conditions related to the Foundation’s use of the Leased Premises are detailed in the Operating Agreement.
  - c. Any proposed change in the use of the Leased Premises shall require the City’s prior written approval and written amendment to this Lease.
6. Operation of Business. The Foundation covenants and agrees:
  - a. Standard of Business. To conduct its business in a manner consistent with the purpose and character of the Public Market. Without limiting any other provision of this Lease, if the City determines, in its reasonable judgment, that the Foundation’s operations are causing unreasonable wear and tear or damage to the Building or Leased Premises beyond what may be provided for in the Operating Agreement, the City may elect to repair such wear and tear or damage at the Foundation’s sole expense, which shall be paid by the Foundation to the City upon demand;

- b. Appearance. To keep the Leased Premises clean and attractive in appearance at all times;
  - c. Insurance. To neither do nor suffer anything to be done or kept in or about the Leased Premises which contravenes the City's insurance policies or increases the premiums therefor;
  - d. Loading. To neither load, unload, nor permit the loading or unloading of merchandise, equipment or other property from anywhere on the Leased Premises other than within the designated loading area. Loading and unloading from doors outside of the loading area is not permitted;
  - e. Compliance with Laws. To comply with all applicable ordinances, rules, regulations and requirements of all federal, state and municipal governments which relate to the Leased Premises or the business the Foundation conducts on or from the Leased Premises.
7. Common Areas. The City grants to the Foundation and the Foundation's employees, agents, customers, invitees, vendors, licensees, and contractors 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 on the Leased Premises. The term "Common Areas" is defined as all areas leased to the Foundation, but not leased to subtenants, including parking area, sidewalks, driveway, interior hallways, restrooms, stairwells, and all other areas or improvements which may be provided by the City for the common use or benefit of occupants of the Building. 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. Common Areas shall be maintained and repaired according to the Operating Agreement.
8. Access to the City Facilities. So that the City may have 24-hour access to the "City Areas," as the City Areas are depicted on Exhibit B, the Foundation shall at all times maintain free and clear vehicular and pedestrian ingress and egress to the City Areas.
9. Special Conditions.
- a. No buildings, improvements, or other structures shall be erected upon the Leased Premises or any portions of the City-owned property adjacent to the Leased Premises without the approval of the City, provided however, temporary structures and facilities erected on the Leased Premises for less than ten (10) days, to accommodate special outdoor events on the Leased Premises shall not require the City's consent, provided such events, structures and facilities are otherwise in conformance with all relevant codes and laws, and permitted as may be required.
  - b. The Foundation shall not close or obstruct, nor allow to be closed or obstructed, any sidewalks within the Leased Premises or adjacent portions of E. Johnson Street or N. First Street public rights-of-way.
  - c. The Foundation shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.

- d. Upon the expiration or termination of this Lease, pursuant to Sections 28 and 31, the Foundation, at the Foundation's cost, shall remove from the Leased Premises the personal property and moveable improvements installed by the Foundation and its subtenants.
  - e. The Foundation shall supervise, regulate and maintain the Leased Premises to permit parking only on parking stalls which have been completed and approved by the City. The Foundation shall prohibit and prevent parking by anyone on any unimproved area of the Leased Premises.
10. Assignment and Subletting by the Foundation.
- a. Except as permitted in this Lease and the Operating Agreement, the Foundation shall not voluntarily or by operation of law assign, transfer, mortgage, lease, sublet, grant license or rights to a concessionaire or otherwise transfer or encumber all or any part of the Foundation's interest in this Lease or in the Leased Premises, or permit the use or occupancy of the Leased Premises or any part thereof by anyone other than the Foundation, without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the provisions of this section or any other provision in this Lease to the contrary, the Foundation shall have the absolute right to sublease or license parts of the Leased Premises in the manner contemplated in this Lease and in the Operating Agreement.
  - b. Any attempted assignment, transfer, mortgage, use, lease, occupancy, encumbrance or subletting without the City's consent shall be void and shall constitute a default under this Lease. If, upon the Foundation's request, the City shall consider any assignment, subletting or other transfer of the Foundation's interest in this Lease (whether the City shall ultimately approve or disapprove of the proposed assignment, subletting or other transfer of the Foundation's interest in this Lease), then the Foundation shall reimburse the City for the City's reasonable legal fees and expenses incurred in connection with such consideration and the drafting and preparation of appropriate documentation effectuating the assignment, subletting or other transfer in question, if applicable.
  - c. Notwithstanding any provision in this Lease to the contrary, the Foundation may sublet or license portions of the Building and Leased Premises to business entities and vendors to operate within the Public Market, the TruStage MarketReady Hall housed with the Public Market (see Section 17 of the Operating Agreement), and to entities and individuals for special events held at the Public Market. All subleases and licenses shall be on a form approved by the City.
11. No Release of Tenant. Notwithstanding anything to the contrary contained in this Lease, and regardless of the City's consent, no assignment, encumbrance, subletting, transfer, lease or other permission for the use or occupancy of all or any part of the Leased Premises shall release the Foundation of the Foundation's obligation to pay the rent and to perform all other obligations to be performed by the Foundation under this Lease.
12. Alterations, Additions and Removal of Improvements. Except as otherwise permitted by the Operating Agreement, the Foundation shall not, without the City's prior written consent, make any alterations, improvements, additions or utility installations upon the Leased Premises or to the "Encroachments," defined in Section 14 (collectively, "Alterations"). The term "utility

installations,” as used herein, shall include without limitation power panels, space heaters, fluorescent fixtures, conduits and wiring. The Foundation shall provide the City with reasonably detailed architectural plans and specifications relating to any desired Alterations at the time of the Foundation’s request for consent. If the City consents to any Alterations by the Foundation, then the same shall be made at the Foundation’s own cost and expense, in a professional manner in accordance with the architectural plans and specifications approved by the City, and in accordance with the laws, ordinances and codes relating thereto, and free from any claim or claims for construction liens.

All permitted improvements within the Leased Premises made by subtenants shall remain the property of the Foundation or subtenants. All trade fixtures, furniture, furnishings and signs installed in the Leased Premises by the Foundation and paid for by the Foundation shall remain the property of the Foundation and shall be removed upon the expiration or termination of this Lease; provided that any of such items as are affixed to the Leased Premises and require severance may be removed only if the Foundation repairs any damage caused by such removal and that the Foundation shall have fully performed all of the terms, conditions and covenants to be performed by the Foundation under this Lease. If the Foundation fails to remove such items from the Leased Premises by the expiration or earlier termination of this Lease, all such trade fixtures, furniture, furnishings and signs shall become the property of the City, unless the City elects to require their removal, in which case the Foundation shall, at its sole cost and expense, promptly remove the same and restore the Leased Premises to their prior condition. The covenants contained in this Section shall survive the expiration or termination of this Lease.

13. Liens.

- a. The Foundation shall not suffer or permit any construction or mechanics’ lien to be filed, or if filed, to remain uncontested, against the fee of the Leased Premises, nor against the Foundation’s leasehold interest in the Leased Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Foundation or anyone holding the Leased Premises or any part thereof through or under the Foundation; and nothing contained herein shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Leased Premises or any part thereof, nor as giving the Foundation any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any construction or mechanics’ lien against the fee of the Leased Premises. If any such lien is filed, the Foundation shall immediately cause the same to be discharged or released or shall upon request provide adequate and acceptable security or bond to protect the City’s interest.
- b. If any such construction or mechanics’ lien shall at any time be filed against the Leased Premises, the Foundation covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise, and that it will hold the City free and harmless of and from any and all liability to any contractor, subcontractor, materialman, laborer or any other person relating to or arising because of any improvements or alterations on or to the Leased Premises, and that it will also defend on behalf of the City, at the Foundation’s sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of any such lien, and that it

will pay any damages and discharge any judgments entered therein. Upon the Foundation's failure to do any of the foregoing things, the City may take such action as may be reasonably necessary to protect the City's interest, in addition to any other right or remedy which it may have; and any amount paid by the City in connection with such action shall be repaid by the Foundation to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.

14. Encroachments.

- a. As depicted on attached Exhibit B, improvements anticipated to be constructed by the City as part of the Public Market project, including portions of sidewalks and bicycle racks (together, "Encroachments"), will encroach into areas of public street right-of-way adjacent to the Leased Premises. The Encroachments shall be maintained by the Parties as detailed in the Operating Agreement. The City reserves the right to remove the Encroachments if the public right-of-way is required for public purposes, by giving the Foundation sixty (60) days written notice prior to removal. Public purposes include, and without limitation because of enumeration, public alleys, parks, streets, highways, bike paths, sidewalks, and facilities for the development, improvement and use of public lands. The Foundation, its successors and assigns shall be entitled to no damages for the removal of the Encroachments.
- b. Additionally, a bus pad and shelter may be installed, either within the Leased Premises or adjacent public street rights-of-way, by the City at a future date. Upon the completion of construction, any such bus-related improvements shall be included in the definition of Encroachments, if located outside the Leased Premises.

15. Maintenance, Repairs, Snow Removal, Mowing and Landscaping Upkeep. The Parties shall keep the Leased Premises and adjacent street terrace areas, including the Encroachments, in good condition and repair, consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. The Parties' respective maintenance obligations are listed below.

- a. City Responsibilities. The City is responsible for and will maintain, at the City's expense, the structural components of the Building, including the foundation, exterior and load bearing walls, roof and all primary building systems like HVAC, plumbing and electrical systems. In addition, the City shall maintain, at the City's expense, the Building's renewable energy system and rainwater cisterns. The City shall also replace (and restripe as necessary) the Public Market's parking lots, driveways and sidewalks.

The City will provide plowing/snow removal, mowing and landscaping upkeep for those parts of the City Property not included in the Leased Premises.

- b. Foundation Responsibilities. The Foundation is responsible for all custodial work, garbage collection, building and grounds maintenance, snow removal, and lighting replacement. The Foundation is responsible for all routine maintenance of the Building and all repairs. The Foundation will maintain the facility's shared kitchen equipment, cooking hoods, entries, lighting systems, air curtains, windows, furniture, and make-up-air units. The Foundation is responsible for irrigation and maintenance of planting beds, and

maintenance of all outdoor features and equipment including bike racks, parking areas, walkways, and outdoor seating areas.

The Foundation will provide plowing/snow removal, mowing, and landscaping upkeep for all exterior parts of the Leased Premises. Additionally, the Foundation is responsible for maintaining the areas of N. First St. and E. Johnson St. right-of-way located between the Leased Premises and curb of said streets and the shared access drive with the Madison Metropolitan Sewerage District, which runs perpendicular from N. First St. into the Public Market. Maintenance duties by the Foundation shall include, but not be limited to, plowing/snow removal, mowing, and landscaping upkeep.

The responsibilities stated in this Section are general. The Parties' respective obligations are further detailed in the Responsibility Matrix (Exhibit D).

No exterior storage of materials, equipment or vehicles is permitted on the Leased Premises, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.

In all cases, the Foundation and the City are responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for all construction or maintenance activity.

16. Taxes and Assessments. The Foundation shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises. Foundation covenants and agrees that it shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any leasehold interest of the Foundation or any fixtures, furnishings, equipment, merchandise, improvements, alterations, stock-in-trade or other personal property of any kind owned, installed or upon the Leased Premises.
17. Utilities. The Parties' respective obligations for utilities are listed below.
  - a. City Responsibilities. The City will install utility access as part of the construction process and will manage, repair and replace the on-site renewable energy system.
  - b. Foundation Responsibilities. The Foundation is responsible for operations and payment of all utilities including water, sewer, storm water, electricity, gas service, telephone, internet, and data connection to the Leased Premises. The Foundation shall pay for any utilities for which the Foundation's responsible beginning as of the date on which possession of the Leased Premises is delivered to the Foundation, without regard to the formal Effective Date of this Lease.
18. Operating Expenses. The Parties shall be responsible for operating expenses related to the Public Market as detailed in Operating Agreement.
19. Notice of Malfunction. The Foundation shall give the City or its representative prompt written (and, in the case of an emergency, oral) notice of any actual knowledge of accidents to, or defects in, any heating, ventilating, air conditioning, electrical or water system, pipe, apparatus or equipment in the Building or elsewhere in the Leased Premises; provided, however, that the Foundation shall also repair any such condition to the extent within the Foundation's repair and



maintenance obligations outlined in this Lease and its exhibits.

20. Indemnification.

a. The Foundation 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 acts or omissions of the Foundation or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees, licensed vendors, or subcontractors, in the performance of this Lease. Negligence on the part of the City or its officers, officials, agents or employees shall not relieve the Foundation of its obligations stated in the preceding sentence. This Section shall survive termination and assignment or transfer of this Lease.

21. Insurance. The Foundation will insure against the following risks to the extent stated below. This Lease will not commence until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager. It shall be the Foundation's responsibility to see that all of the Lease obligations incident to the Lease are covered by liability insurance in order that the general public or any representative of the City may have recourse against a responsible party for injuries or damages sustained as a result of the Foundation's performance of this Lease. This requirement shall apply with equal force, whether the act, error, or omission is performed by the Foundation or by its assigns, guests, invitees, sublessees, licensed vendors, or subcontractors, or by anyone directly or indirectly employed by any of them.

Commercial General Liability. During the Lease Term, the Foundation shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount and shall extend coverage to the Foundation's volunteers. The Foundation's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds.

Automobile Liability. During the Lease Term, the Foundation shall procure and maintain Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident.

Worker's Compensation. During the Lease Term, the Foundation shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The Foundation shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit.

Liquor Liability. During the Lease Term, the Foundation shall procure and maintain Liquor Liability coverage with minimum limits of \$1,000,000 per occurrence and aggregate.

Umbrella Liability. During the Lease Term, the Foundation shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability,

Automobile Liability, Liquor Liability and Employers Liability with minimum limits of \$5,000,000 per occurrence and aggregate.

Sublessees and Licensed Vendors. The Foundation shall insure the activities of any sublessees and licensed vendors under the Foundation's insurance coverages noted above.

Property Insurance. The Foundation shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Leased Premises. the City shall not be liable for any damage to or loss of property of the Foundation or others located on the Leased Premises and the Foundation shall obtain a waiver of subrogation in favor of the City. The Foundation shall require all sublessees and licensed vendors under this Lease (if any) to procure and maintain personal property insurance covering the sublessees' and licensed vendors' personal property and to provide a waiver of subrogation in favor of the City.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A~ (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Foundation shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencement of this Lease. The Foundation shall provide all (the Foundation's and sublessees) certificate(s) to the City's representative upon execution of the Lease, or sooner, for approval by the City Risk Manager. The Foundation shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

Notice of Change in Policy. The Foundation and/or Insurer shall give the City thirty (30) calendar days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the Lease Term.

Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

The City of Madison  
Attention: Risk Manager, Room 406  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703

22. Hazardous Substances; Indemnification. The Foundation represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Foundation further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be

amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property. This Section shall survive termination and assignment or transfer of this Lease.

23. Environmental. As used herein, “Environmental Laws” shall mean any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations, guidance documents or memoranda and other governmental restrictions and requirements relating to the creation or discharge of solid waste, hazardous substances, hazardous waste, air pollutants, water pollutants or process wastewater or otherwise relating to the environment or hazardous substances including, but not limited to, Chapters 144, 160 and 162 of the Wisconsin Statutes, the Federal Toxic Substances Control Act, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource and Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, regulations of the Federal Environmental Protection Agency or state environmental protection agency or Department of Natural Resources or Environmental Quality now or at any time hereafter in effect.

Without limiting the generality of Section 19, during the Lease Term, the Foundation shall:

- a. provide the City, immediately upon receipt thereof, with copies of any correspondence, notice, pleading, citation, notice of noncompliance, notice of violation, indictment, complaint, order, decree or other document from any source asserting or alleging violation upon the Leased Premises by the Foundation of any Environmental Laws, or asserting or alleging a circumstance or condition upon the Leased Premises which may require a financial contribution by the Foundation or a cleanup, remedial action or other response, including investigation, by or on the part of the Foundation under any Environmental Laws;
- b. permit the City, in the event the City has reasonable cause to believe that there exists a condition or circumstance created by the Foundation, its employees or invitees during the Lease Term warranting an environmental inspection or audit, at the Foundation’s expense to retain an architect, environmental consultant or professional engineer selected by the City to perform an environmental inspection and/or audit of the Leased Premises to evaluate the Foundation’s compliance with Environmental Laws, and to test for hazardous substances on the Leased Premises, and for risks associated with exposure to hazardous substances. The Foundation shall permit the City and its employees and agents access to the Leased Premises and the books and records of the Foundation as necessary for the performance of the environmental inspection and/or audit; and
- c. at its expense, remove or contain any hazardous substances on the Leased Premises that were brought onto the Leased Premises by the Foundation, its employees or invitees during the Lease Term, or perform other investigation or remediation or corrective action as required by the City in its sole discretion, if at any time it is determined that such hazardous substances present a health hazard on the Leased Premises or are required to be investigated, removed, contained or remediated or other corrective action is required by any Environmental Laws or regulatory authority.
- d. The City represents and warrants that on the Effective Date, the Leased Premises are not in violation of any Environmental Law.

24. Compliance. The Foundation shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises. The Foundation may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Foundation agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

Without limiting the generality of the paragraph above, the Leased Premises shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Foundation, except as may be the responsibility of the City pursuant to the Operating Agreement.

25. Subordination. This Lease shall be subject and subordinate to all mortgages which may now or hereafter affect the City's interest in the Leased Premises, whether such mortgages cover only the Leased Premises or by blanket mortgage cover other premises in addition to the Leased Premises, and to any renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of all amounts secured by the mortgages. The Foundation shall, within ten (10) days after the giving of written notice by the City, execute, acknowledge and deliver to ss any certificate that the City may request to confirm such subordination. The Foundation shall attorn to and recognize any purchaser at a foreclosure sale under any mortgage, or any transferee who acquires the City's interest in the Leased Premises by deed in lieu of foreclosure, and the successors and assigns of such purchasers and transferees, as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in this Lease.
26. Mortgage Financing. In the event the City desires to obtain mortgage financing and the City's mortgagee or mortgagees request certain mortgage modifications or amendments to this Lease, then the Foundation, on demand, agrees to execute such modifications or amendments as required. Notwithstanding the foregoing, the Foundation shall not be required to execute any modifications or amendments to this Lease which shall modify the provisions of this Lease relating to the amount of rent or other charges to be paid by the Foundation, the size of the Leased Premises, the duration of the Lease Term, or otherwise subject the Foundation to additional cost or expense. The Foundation agrees to cooperate with the City's efforts in obtaining said mortgage financing.
27. Right of Entry. The City and its authorized representatives shall have the right to enter the Leased Premises at all reasonable times, upon reasonable prior oral or written notice to the Foundation (or without notice at any time during or after an emergency), to inspect the Leased Premises, to show the Leased Premises to prospective purchasers or tenants, to abate nuisances, to cure dangerous conditions or repair waste, and to make repairs, alterations, improvements or additions to the Leased Premises or to the Building as the City may reasonably deem necessary, including those to be performed by the Foundation, without the same constituting an eviction of the Foundation in whole or in part, and rent shall not abate as a result of such entry. The City shall use commercially reasonable efforts in making any repairs, alterations, improvements or

additions to the Leased Premises or the Building to keep the disruption of the Foundation's business to a minimum. Nothing herein shall impose any duty upon the City to do any work or perform any other act which the Foundation may be required to perform under this Lease, and the performance thereof by the City shall not constitute a waiver of the Foundation's default in failing to perform. If the Foundation is not present to permit entry into the Leased Premises, the City may, in case of emergency, enter by master key, or may forcibly enter, without rendering the City liable therefor.

28. Defaults; Remedies.

- a. Defaults: The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by the Foundation:
- (1) The filing by the Foundation of a voluntary petition in bankruptcy;
  - (2) The institution of proceedings in bankruptcy against the Foundation and the adjudication of the Foundation as bankrupt pursuant to such proceedings;
  - (3) The taking by a court of competent jurisdiction of the Foundation's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act;
  - (4) The appointment of a receiver of the Foundation's assets;
  - (5) The divestiture of the Foundation's estate herein by other operation of law;
  - (6) The abandonment by the Foundation of the Leased Premises. Abandonment shall not be deemed to occur while rental payments are current;
  - (7) The use of the Leased Premises for an illegal purpose;
  - (8) The failure of the Foundation to pay when due any rent or any other monetary sums due pursuant to the terms of this Lease;
  - (9) The failure by the Foundation to repair any waste or to observe or perform any of the terms, covenants or conditions of this Lease to be observed or performed by the Foundation; and
  - (10) In the event the Foundation defaults in the performance of any other term or condition of this Lease.

Failure to send a notice shall not be construed as a waiver of such breach or as to any subsequent breach.

- b. City's Remedies. If any default by the Foundation shall continue uncured after thirty (30) days written notice of default from the City to the Foundation, the City has the following remedies, in addition to all other rights and remedies provided by law or equity, to which the City may resort cumulatively or in the alternative.

- (1) Termination of Lease. The City may at the City's election terminate this Lease by giving the Foundation notice of termination. On the giving of the notice, all further obligations of the City under this Lease shall terminate, the Foundation shall surrender and vacate the Leased Premises in a broom clean and sanitized condition, and the City may reenter and take possession of the Leased Premises and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve the Foundation from the payment of any sum then due to the City or from any claim for damages previously accrued or then accruing against the Foundation. Should the Foundation abandon the Leased Premises and the City elect to reenter as herein provided, or if the Foundation's right to possession is terminated by the City because of a breach of the Lease by the Foundation, this Lease shall, at the City's written election, terminate and the City shall be entitled to recover from the Foundation (i) unpaid rent which has been earned at the time of termination, and (ii) as liquidated damages and not as a penalty a sum of money equal to the rent and rental loss to be paid by the Foundation to the City for the remainder of the Lease Term. In the event of termination under this Subsection, any prepaid rent shall be retained by the City.
- (2) Storage. The City may at the City's election store the Foundation's personal property and trade fixtures for the account and at the cost of the Foundation.
- (3) Rent. The terms "rent" or "rental" as used in this Lease shall be deemed to be and to mean any rent, additional rent, and such other sums, if any, required to be paid by the Foundation pursuant to the terms of this Lease. The term "rental loss" as used in this Lease shall be deemed to include, but shall not be limited by implication, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, alteration costs and expenses of preparation of the Leased Premises or parts thereof for reletting.
- (4) Diligent Efforts. Notwithstanding anything to the contrary in this Section, in the event of the Foundation's default under Section 28.a.(9), if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within the thirty (30) days after the City's notice thereof, then the Foundation shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Foundation immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable. In the event of termination under this Subsection, any prepaid rent shall be retained by the City.
- (5) City May Perform. The City shall have the right at any time, after ten (10) days notice to the Foundation (or in case of emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment or perform any act required of the Foundation under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall obligate the City to make any payment or perform any act required of the Foundation, and this exercise of the right to so do shall not constitute a release of any obligation or a waiver of any default. All payments made and all costs and

expenses incurred in connection with any exercise of such right shall be reimbursed to the City by the Foundation as additional rent.

- c. Foundation's Remedies. If the City shall fail to perform any covenant, term or condition of this Lease or the Operating Agreement required to be performed by the City, if any, and if as a consequence of such default, the Foundation shall recover a money judgment against the City, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of the City in the Leased Premises and out of rents or other income from such property receivable by the City, or out of the consideration received by the City from the sale or other disposition of all or any part of the City's right, title and interest in the Leased Premises, and the City shall not be personally liable for any deficiency.
29. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
  30. Loss of Access. The Foundation agrees to waive any loss of access and to hold the City harmless for any damages resulting from loss of access or noncompliance with the City zoning regulations or otherwise that may result from the expiration or termination of this Lease.
  31. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the Foundation's rights in the Leased Premises shall cease, and the Foundation shall immediately surrender the Leased Premises, subject to the provisions of Sections 28 and 32.
  32. Removal and Disposal of Personal Property. Upon the expiration or termination of this Lease, the Foundation shall remove all personal property from the Leased Premises. If the Foundation leaves any personal property on the Leased Premises, the City shall have the right to dispose of said property, without liability, thirty (30) days after the Foundation vacates or abandons the Leased Premises.
  33. Estoppel Certificate.
    - a. The Foundation shall at any time, upon not less than ten (10) days after the giving of written notice by the City, execute, acknowledge and deliver to the City or to such person designated by the City, a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to the Foundation's knowledge, any uncured defaults on the part of the City hereunder, nor any offsets, counterclaims or defenses to the Lease on the part of the Foundation, or specifying such defaults if any are claimed, and (iii) certifying as to any other matters as may be reasonably requested by the City. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Leased Premises.
    - b. If the City desires to sell or finance or refinance the Building or any part thereof, the Foundation shall deliver to any purchaser and/or lender designated by the City such financial information concerning the Foundation as may be reasonably required by such purchaser and/or lender. Such statements shall include, but shall not be limited to, the past three (3) years' financial statements of the Foundation. All such financial information shall





attorney@the Cityofmadison.com

For Foundation: Madison Public Market Foundation, Inc  
Attn: Anne Reynolds  
P.O Box 2600026  
Madison, WI 53726  
Email: \_\_\_\_\_

**OPTIONAL:**

With a courtesy copy to: Scholz Nonprofit Law, LLC  
(which shall not constitute notice) 612 West Main Street, Suite 301  
Madison, WI 53701  
Attention: Jeff Femrite  
jfemrite@scholznprofitlaw.com

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

39. Waivers. No waiver by the City of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent breach by the Foundation of the same or any other provision. the City's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent act by the Foundation. The acceptance of rent hereunder by the City shall not constitute a waiver of any breach by the Foundation even if the City knows of such breach at the time of acceptance of such rent. No payment by the Foundation or receipt by the City of a lesser amount than the rent then due shall be deemed to be other than on account of the earliest rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the City shall accept such check or payment without prejudice to the City's right to recover the balance of such rent or pursue any other remedy in this Lease provided.
40. Covenants and Conditions. Each provision of this Lease performable by the Foundation shall be deemed both a covenant and a condition.
41. Binding Effect; Choice of Law. This Lease shall bind the parties, their heirs, personal representatives, successors and assigns. This Lease shall be governed by and be construed and interpreted in accordance with the laws of the State of Wisconsin.
42. Attorney's Fees. If either party brings an action to enforce the terms of or declare rights under this Lease, the prevailing party in any such action shall be entitled to recover reasonable costs, attorneys' fees and expenses.
43. Force Majeure. The City shall not be in default hereunder and the Foundation shall not be excused from performing any of its obligations hereunder if the City is prevented from performing any of its obligations hereunder due to any accident, breakage, strike, shortage of materials, acts of God or other causes beyond the City's reasonable control (each a "Force Majeure Event").

44. Alcoholic Beverages. The Foundation and its subtenants shall not sell alcohol at the Leased Premises without a license approved by the City in its normal course of approving such permits.
45. Non-Discrimination. Nondiscrimination (Dane Co. Ord. 19.54). In the performance of the services under this Lease, the Parties agree not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). The Foundation agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this section. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth-additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.
46. Counterparts, Electronic Signature and Delivery. This Lease may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Lease may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Lease may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Lease may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Lease, fully executed, shall be as valid as an original.
47. Accessibility. The Leased Premises shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Foundation, excluding obligations that are those of the City as provided in the Operating Agreement.
48. Signs. Any signs on the Leased Premises shall be in conformity with the provisions of Chapter 31, Street Graphics Control, Madison General Ordinances. Signage for advertising purposes shall not be permitted.
49. Severability. If any term or provision of this Lease or the application thereof to the City or the Foundation or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to the City or the Foundation 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 this Lease shall be valid and be enforceable to the fullest extent permitted by law.
50. Time of Essence. Time is of the essence.

51. Captions. Article, section and paragraph captions are not a part of this Lease.
52. Incorporation of Prior Agreements. This Lease and the attached exhibits set forth all the agreements, terms, covenants and conditions between the City and the Foundation concerning the Leased Premises and there are no agreements, terms covenants or conditions, oral or written, between them other than those herein contained. No amendment, change or addition to this Lease shall be binding upon the City or the Foundation unless it is in writing and signed by each party.
53. Attornment of Tenant. The Foundation shall in the event of the sale, assignment, or other transfer of the City's interest in the Leased Premises or in this Lease, or in the event of any proceedings brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the City covering the Leased Premises, attorn to the transferee and recognize such transferee as the City under this Lease.
54. Rent Covenant. The covenant to pay rent is hereby declared to be an independent covenant on the part of the Foundation to be kept and performed, and no offset shall be permitted or allowed. the Foundation's covenant to pay such rent shall survive the expiration or earlier termination of this Lease.
55. Delinquent Rent To Bear Interest. Any rent or such other sums, if any, required to be paid by the Foundation pursuant to the terms of this Lease which are not paid when due shall bear interest at the rate of twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less, from the date due until paid. The payment of such interest shall not excuse or cure any default by the Foundation under this Lease.
56. Entire Agreement. All terms and conditions with respect to this Lease are expressly contained herein, and the Parties agree that neither the City nor the Foundation has made any representations or promises with respect to this Lease not expressly contained herein. No alteration, amendment, change, or addition to this Lease shall be binding upon the Parties unless in writing and signed by them.
57. Conflicting Terms. If there is a conflict between a term in the body of this Lease and a term in any of the exhibits, the term in the body of this Lease shall control.
58. As Is, Where Is. The City leases the Leased Premises to the Foundation in "as is", "where is" condition with all faults and the City makes no representations or warranties, either express or implied, as to the condition of the Leased Premises or any improvements thereon, as to the suitability or fitness of the Leased Premises or any improvements included in the definition thereof, as to any law, or any other matter affecting the use, value, occupancy, or enjoyment of the property, or, except as set forth elsewhere herein, as to any other matter whatsoever.
59. Surrender. On the last day of the Lease Term, or any Renewal Terms, or on any sooner termination, the Foundation shall surrender the Leased Premises in the same condition as the Leased Premises existed on the Effective Date, broom clean, reasonable wear and tear excepted, and shall surrender all keys to the City.
60. Leased Premises Acquired by Eminent Domain

- a. If the whole of the Leased Premises shall be taken by Federal, State, county, the City, or other authority for public use, or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of the Leased Premises, or any part thereof, the term hereby granted and all rights of the Foundation hereunder shall immediately cease and terminate, and the Foundation shall not be entitled to any part of any award of compensation that may be made for such taking, nor to any damages therefor except that the rent shall be adjusted as of the date of such termination of this Lease.
- b. In the event only a part of the Leased Premises is taken or acquired via condemnation for public purposes, and the Foundation, in its sole discretion, determines that the part of the Leased Premises remaining is not suitable for the same purpose and with substantially the same utility to the Foundation as immediately prior to such taking, the Foundation may terminate this Lease by giving the City written notice of termination a minimum of thirty (30) days prior to the delivery of possession of the Leased Premises to the condemning authority.
- c. In the event of a taking of any portion of the Leased Premises not resulting in a termination of this Lease, the City shall use so much of the proceeds of the City's award of compensation for the Leased Premises as is required therefor to restore the Leased Premises to a complete architectural unit, and this Lease shall continue in effect with respect to the balance of the Leased Premises, with a reduction of rent in proportion to the portion of the Leased Premises taken.

61. Foundation Waivers of Eminent Domain Benefits and Award.

- a. In the event of the Foundation's vacation of the Leased Premises or if the City terminates this Lease pursuant to the provisions of this Lease, the Foundation hereby waives any rights against the City that may be construed to accrue to the Foundation, its successors and assigns, by provisions of Section 32.19 of the Wisconsin Statutes, as amended.
- b. In the event the Leased Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purposes by any authority, other than the City, in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of the leasehold, reversion and fee, shall belong to the City without any deduction therefrom for any present or future estate of the Foundation, and the Foundation hereby assigns to the City all of its right, title and interest to any such award.

62. Driveway in Easement Area. Current plans for the Public Market include expanding an existing driveway providing access to the parking lot from First Street. The driveway currently only allows for one-way traffic; the expansion will allow for two-way traffic. Expanding the driveway will require obtaining an easement from the owner of the adjacent property, the Madison Metropolitan Sewerage District (the "Sewerage District"). The City has not yet obtained that easement, but the City expects a future easement agreement will provide the Sewerage District the right to close down access to the driveway to work on infrastructure located in the easement area or immediately adjacent to it. The Foundation acknowledges it has been notified of this possibility, and the Foundation agrees that such closure of the driveway does not constitute a loss of access to the Leased Premises, does not constitute a breach or default under this Lease,

and does not entitle the Foundation to a reduction in rent, financial damages, or other legal remedies against the City.

63. Option to Lease Additional Area. The Foundation may petition the City to lease additional area adjacent to the Leased Premises, subject to approval of the City's Economic Development Division Director. Any lease of additional area shall be authorized by an addendum to this Lease and shall be subject to the terms of this Lease and any additional terms provided for in said addendum.
64. Public Record. This Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the Parties.

IN WITNESS WHEREOF, the Parties agree to enter into this Lease, subject to the terms and conditions contained herein.

**MADISON PUBLIC MARKET FOUNDATION, INC.,** a Wisconsin non-stock corporation

By: \_\_\_\_\_

\_\_\_\_\_  
\* Name and Title

Attest: \_\_\_\_\_

\_\_\_\_\_  
\* Name and Title

State of Wisconsin    )  
                                  )ss.  
County of Dane        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, \_\_\_\_\_ and \_\_\_\_\_ of the above named Madison Public Market Foundation, Inc., a Wisconsin non-stock corporation, known to be the person(s) who executed the above foregoing instrument and officers of said corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
Print or Type Name  
My Commission expires: \_\_\_\_\_

**THE CITY OF MADISON**

By:

\_\_\_\_\_  
Satya Rhodes-Conway, Mayor

By:

\_\_\_\_\_  
Maribeth L. Witzel-Behl, City Clerk

**AUTHENTICATION**

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, on behalf of the City of Madison, are authenticated on this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Matthew Robles, Assistant City Attorney  
Member of the Wisconsin Bar

**Approved**

**Date**

**Approved**

**Date**

\_\_\_\_\_  
David Schmiedicke, Finance Director

\_\_\_\_\_  
Eric Veum, Risk Manager

**Approved as to Form**

**Date**

\_\_\_\_\_  
Michael Haas, City Attorney

Execution of this Lease by the City of Madison is authorized by Resolution No. RES-\_\_\_\_-\_\_\_\_\_, File ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2023.

Drafted by the City of Madison Office of Real Estate Services

Real Estate Project No. 12624

**EXHIBIT A**  
**Legal Description of the City's Property and County's Property**

The City's Property: (To be updated to full legal description of underlying land and the City-owned condo unit)

RILEY PLAT, BLK 310, PART OF LOTS 2, 3, 5, 6, 7, 8 & 9; ALSO PART OF FARWELL'S ADDITION, BLK 277, DESC AS FOL: COM INTR OF SE LN JOHNSON ST & SW LN OF FIRST ST, TH SWLY ALG JOHNSON 75 FT TO RR ROW, TH SELY PARA FIRST ST 66 FT TO POB, TH NELY PARA JOHNSON ST TO A PT 24 FT SWLY OF SW LN FIRST ST, TH SELY 51 FT, TH SWLY AT RT ANGLES 66 FT, TH SELY AT RT ANGLES 90 FT, TH NELY AT RT ANGLES 66 FT TO A PT 24 FT SWLY OF FIRST ST, TH SELY 212 FT, TH SWLY AT RT ANGLES 246 FT, TH SELY AT RT ANGLES 175 FT TO NW LN E MIFFLIN ST EXTD, TH SWLY AT RT ANGLES TO RR ROW, TH NWLY ALG RR ROW TO ANOTHER RR ROW, TH NWLY ALG RR ROW TO SE LN WIDENED JOHNSON ST ROW, TH ALG SD ROW 135 FT M/L TO POB, EXCEPT THAT PART DESC IN DOC 5432509 FOR PUBLIC STREET ROW. ALSO RILEY PLAT, BLK 310 - BEG AT A PT ON SW LINE OF N. FIRST ST 117 FT SE OF SE LINE OF E. JOHNSON ST, TH SWLY AT RT ANGLES TO FIRST ST 90 FT, TH SELY PARA TO FIRST ST 90 FT, TH NELY AT RT ANGLES TO LAST MENTIONED LINE 90 FT TO SW LINE OF N. FIRST ST, TH NWLY ALG SD ST 90 FT TO POB. INCLUDED IN ABOVE DESC IS THE SELY 33 FT OF LOT 3, ALL OF LOT 4 & NWLY 7 FT OF LOT 5. EXCEPT NELY 24 FT; ALSO EXCEPT THAT PART DESC IN DOC 5425437 FOR PUBLIC STREET ROW.

The City's Leased Property:

*To be inserted once defined.*

The County's Property:

*To be inserted once defined.*



**EXHIBIT B**  
(see separate PDF “12624 Exhibit B”)

**MADISON PUBLIC MARKET**  
202 N First St, Madison, WI 53704

Project No. 20180062.00

I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the Laws of the State of Wisconsin.

Architect Seal



Signature *Dagmara K. Larsen*

Print Name *Dagmara Larsen*

Date *05.28.2021* License No. *57356*

100% Construction Documents

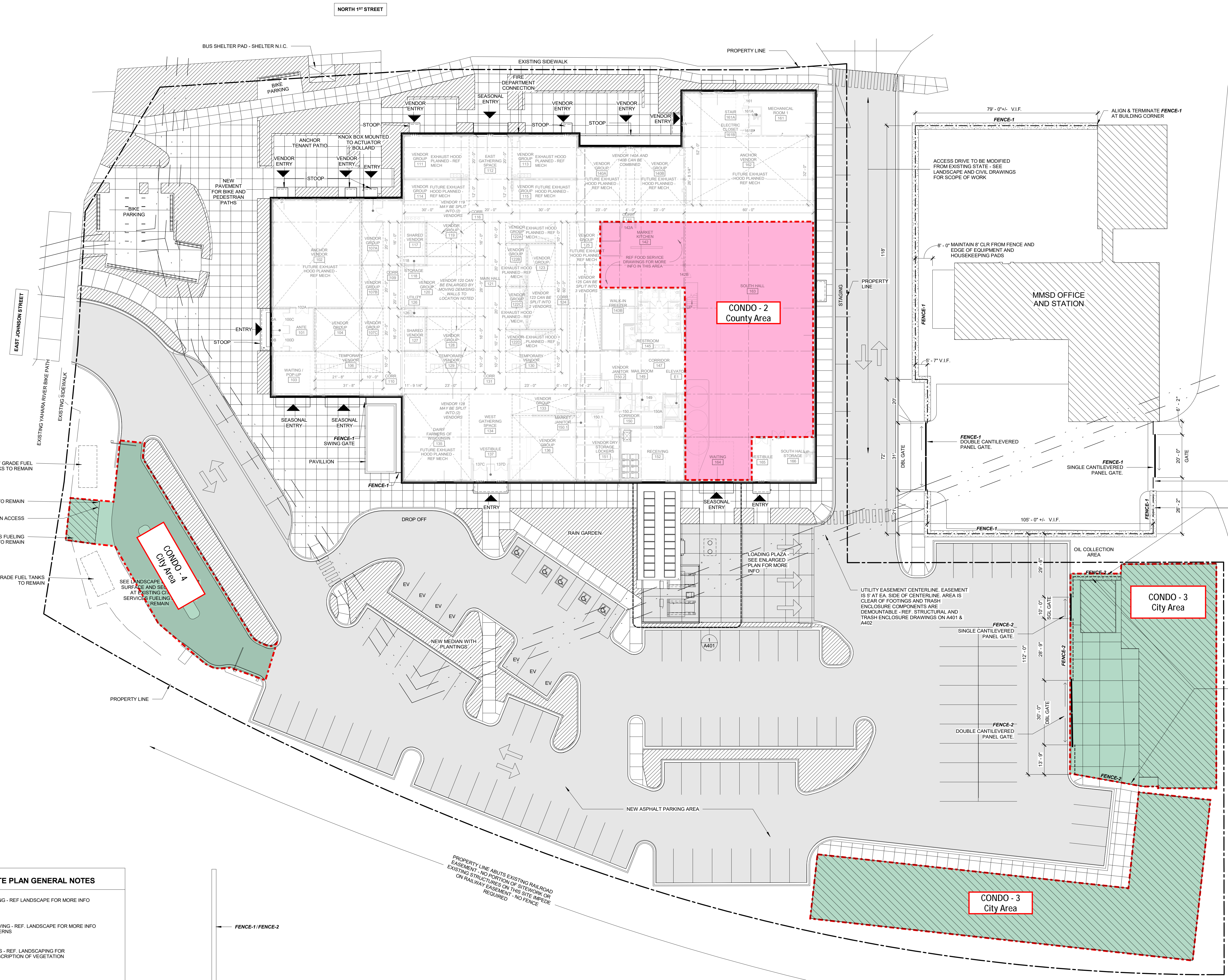
ISSUE / REVISION

Mark	Date	Description
06	04/2019	SITE - BUILDING DESIGN 1 PRICING ISSUE
05	12/2019	UDC INFORMATIONAL SUBMISSION
08	18/2019	SITE - BUILDING DESIGN 2 PRICING ISSUE
11	13/2019	100% CDD DOCUMENTS
02	18/2020	CD PRICING ISSUE
04	30/2020	90% CONSTRUCTION DOCUMENTS
06	04/2021	100% CONSTRUCTION DOCUMENTS

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SITE PLAN

**A001**



PROVIDE FENCE-1 (REF PROJECT SPECIFICATIONS) PROVIDE CONCRETE SONOTUBE FOOTINGS ON COMPACTED BASE. DEPTH OF FOOTING AND FREQUENCY OF POSTS SHALL BE VERIFIED BY MFR TO SATISFY WIND PERFORMANCE CRITERIA - ASSUME 8'-0" POST SPACING, MAX.

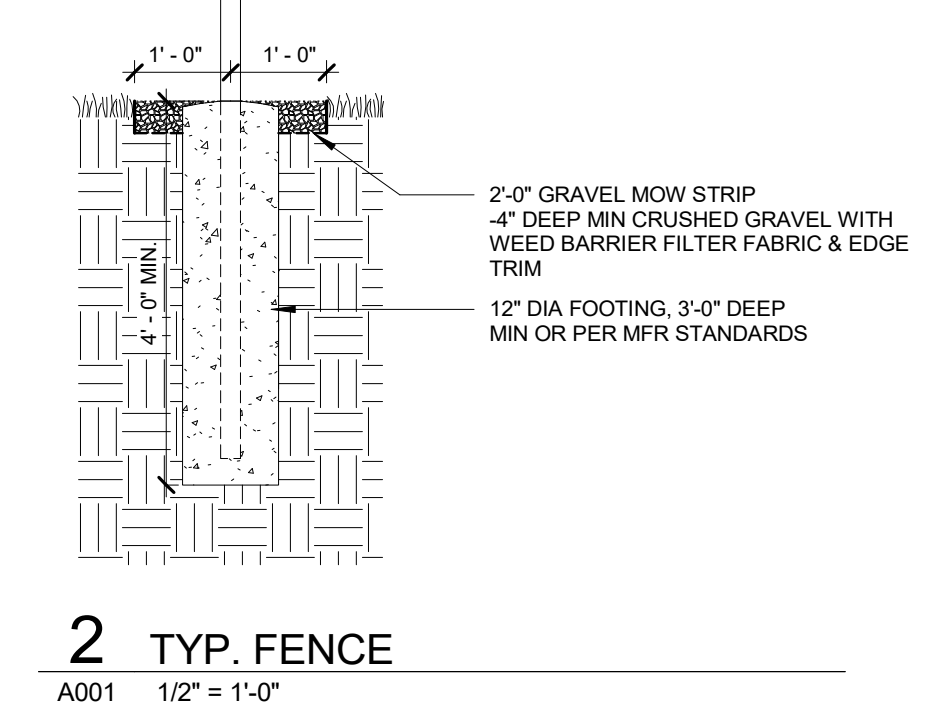
AT ALL FENCE-1 AND FENCE-2 LOCATIONS PROVIDE 4" DEEP CRUSHED GRAVEL MOW STRIP OVER WEED BARRIER FILTER FABRIC. PROVIDE EDGING BETWEEN MOW STRIP AND ADJACENT LANDSCAPING - REF. LANDSCAPE FOR STANDARD SPECIFICATION

PROVIDE FENCE-2 ALONG POLICE EVIDENCE STORAGE BUILDINGS. (REF PROJECT SPECIFICATIONS) PROVIDE CONCRETE SONOTUBE FOOTINGS ON COMPACTED BASE. DEPTH OF FOOTING AND FREQUENCY OF POSTS SHALL BE VERIFIED BY MFR TO SATISFY WIND PERFORMANCE CRITERIA - ASSUME 8'-0" POST SPACING, MAX.

**ARCHITECTURAL SITE PLAN GENERAL NOTES**

- NEW ASPHALT PAVING - REF. LANDSCAPE FOR MORE INFO
- NEW CONCRETE PAVING - REF. LANDSCAPE FOR MORE INFO AND SCORING PATTERNS
- NEW PLANTING BEDS - REF. LANDSCAPING FOR MORE INFO AND DESCRIPTION OF VEGETATION WITHIN BEDS

- SITE PLAN IS FOR REFERENCE ONLY. REFER TO LANDSCAPE AND CIVIL DOCUMENTS FOR MORE DETAILED INFORMATION
- REFER TO CIVIL EROSION CONTROL PLAN PRIOR TO BEGINNING SITE WORK
- CONTRACTOR SHALL LOCATE AND CONFIRM LOCATION OF UNDERGROUND UTILITIES PRIOR TO BEGINNING ANY EXCAVATION.
- CONTRACTOR IS RESPONSIBLE FOR EXCAVATION AND HAULING OF DISTURBED CONTAMINATED SOILS. COORDINATE WITH OWNER FOR EXISTING HAZARDOUS SOILS REPORT AND NOTIFY OWNER AND ARCHITECT IF CONTAMINATED SOILS ARE ENCOUNTERED ON SITE.
- THIS CONTRACT INCLUDES WORK ON ADJACENT MMSD SITE AND EASEMENT. SEE SITE PLAN FOR EXTENTS OF WORK
- SEE ENLARGED TRASH AND LOADING AREAS PLAN ON A401 FOR MORE INFO IN TRASH AND LOADING AREA



**1 SITE PLAN**  
A001 1" = 20'-0"

**EXHIBIT C**  
**Operating Agreement Between the City of Madison and the Madison Public Market Foundation**

**Madison Public Market**

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## **INTRODUCTION:**

This Operating Agreement (this “Agreement”) establishes terms between the City of Madison, Wisconsin, a Wisconsin municipal corporation (the “City”) and the Madison Public Market Foundation, a Wisconsin nonstock corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (the “Foundation”) related to the design, construction, financing, maintenance and operations of the Madison Public Market. This Agreement is meant to delineate the responsibilities between the City and the Foundation with respect to the Madison Public Market.

The City owns property at 202 North First Street, Madison, Wisconsin (the “Land”). The Land is comprised of vacant land, the vacant former Fleet Services Building, MPD evidence storage, cold/dry storage buildings, and fleet fuel pumps. That part of the land depicted on Exhibit A, attached hereto will be the “Public Market Land.” The Madison Public Market (the “Public Market”) will be comprised of a year-round indoor facility built in the “to be renovated” Fleet Services Building on the Public Market Land (the “Building”) and all associated improvements and facilities located on the Public Market Land and serving the Building, including, but not limited to parking lots, driveways, sidewalks and landscaped space.

The Public Market will provide space and opportunities for an array of small local businesses to offer food and other products to customers. The mission of the Public Market will be to lower barriers to entry for diverse entrepreneurs, support local food, and create an inclusive and welcoming public space for the community.

The Public Market’s guiding documents (Business Plan and Implementation Strategy approved by Common Council in 2015 and 2016) recommend that an independent nonprofit corporation operate the Public Market in collaboration with the City. The Foundation was formed in 2017 to serve in the role of the Public Market’s operating entity. The City formally selected the Foundation to be the operator of the Public Market through a competitive Request for Qualifications process conducted in early 2018.

The City and the Foundation subsequently entered into a “Collaboration Agreement” defining how the two entities would work together during the design phase of the Public Market. The City and the Foundation now need to replace the existing “Collaboration Agreement” with a more permanent Operating Agreement that specifically defines roles for each entity in the long-term operations of the Public Market – both in terms of the physical facility and the business operations of the enterprise.

## **SECTION 1: ARCHITECTURE AND ENGINEERING**

The responsibilities stated in this section are general with additional details provided in the Responsibility Matrix (Exhibit D).

### **The City Responsibilities:**

The City is responsible for creating architectural and engineering (A/E) designs for the initial construction of Public Market, securing required land use and design approvals, securing required construction and building permits, ensuring that the project is compliant with all codes, creating construction documents, creating construction specifications, completing all required site and building engineering, identifying and creating plans to address any environmental contamination, conducting cost estimates and value engineering to meet the project's budget, creating bid documents, bidding the project, and securing contractors. Except as provided for in Exhibit D, the Responsibility Matrix, the City's obligations under this Section shall terminate upon issuance of Certificate of Occupancy for the Public Market,

### **Foundation Responsibilities:**

The Foundation will provide guidance and advise the City on design features as it relates to long-term A/E operational considerations. The Foundation shall be responsible for any long-term A/E work following the issuance of the Certificate of Occupancy for the Public Market.

## **SECTION 2: CONSTRUCTION**

The responsibilities stated in this section are general with additional details provided in Exhibit D, the Responsibility Matrix.

### **The City Responsibilities:**

The City will manage the construction contractors and oversee the entire construction process, with the exception of tenant buildout, which is the responsibility of the Foundation as noted below. The City responsibilities include engaging the contractor team, managing the construction administration scope of the A/E team, overseeing all construction activity, managing the budget throughout the process, coordinating with the Foundation on vendor build-outs, managing the inspection process, and securing an occupancy permit. When completed, the City's construction project will result in a fully completed Public Market, with all required infrastructure and building systems and an occupancy permit, so that the Public Market is ready to be occupied for use as a public market space.

### **Foundation Responsibilities:**

The Foundation will manage the tenant improvement and buildout process in accordance with State of WI Dept of Admin Neighborhood Investment Fund guidelines. The Foundation will be responsible for construction and installation of any elements of the Building or equipment not included within the specifications in the City's bid documents, with guidance from the City as requested by the Foundation. The City will provide opportunity for the Foundation to review a final punch list for the City-related construction project elements and to approve completed Building renovations.

## **SECTION 3. PROJECT CAPITAL FINANCING**

### **City Responsibilities:**

The City has secured \$11,500,000 in funding from TID #36, \$4,000,000 in funding from the State of WI "Neighborhood Investment Fund Program", \$1,500,000 million in funding from Dane County, \$849,383 in prior UDAG funding, and a WEDC Community Development Investment Grant (\$250,000). The City will be responsible for managing the processes and requirements for the deposit and security of the funds from state and federal grant sources to the project. The City is responsible for providing the Foundation with a sub-award from the State of WI "Neighborhood Investment Fund Program" to complete tenant buildout. Except for the Private Funding provided for below, the City shall provide all financing required to complete construction of the Public Market.

### **Foundation Responsibilities:**

The Foundation will be providing \$2,500,000 for Public Market capital costs (the "Private Funding"). The Foundation will retain \$250,000 to set up an operating reserve. The Foundation will provide the City with \$2,250,000 for construction-related costs, as will be memorialized in a separate legal document. The Foundation acknowledges that it is responsible for, and the City is relying upon, the provision of the Private Funding.

## **SECTION 4. TENANT SELECTION POLICIES AND LEASING**

### **The City Responsibilities:**

All tenant leases shall conform to the terms and conditions of this Lease. The City will direct prospective tenants for the Public Market to the Foundation.

### **Foundation Responsibilities:**

The Foundation will be responsible for developing policies and procedures for recruiting, selecting, negotiating with, and securing leases with individual business tenants in the Public Market. This includes defining selection criteria, contacting potential tenants,

defining lease terms, creating marketing materials, managing tenant allowances, and creating policies for tenant build-out. The Foundation will be responsible for developing subleases and/or use agreements with tenants and users of the Public Market in a form approved by the City of Madison.

## **SECTION 5. TENANT BUILD-OUT PROCESS AND DECISIONS**

### **City Responsibilities:**

Any tenant improvement work that modifies the existing civil, architecture, enclosure, mechanical, electrical, plumbing, telecommunications, fire protection and life/safety systems, site work, landscaping, or other material changes to the site and/or building shall be reviewed and approved by the City of Madison Economic Development Division prior to proceeding with any changes.

### **Foundation Responsibilities**

The Foundation will manage the procedure for tenant build-out within the Public Market. This includes, but is not limited to, creating guidelines and rules for the design of individual tenant spaces, working with tenants during the process of designing their individual spaces, communicating rules and policies around signage, and materials, providing tenant improvement allowances as deemed appropriate, and coordinating between the City's general contractors and the individual contractors who may be engaged to complete vendor build-outs.

## **SECTION 6. PUBLIC MARKET BUSINESS OPERATIONS**

### **The City Responsibilities:**

The City shall have the reasonable right to review the Foundation's operations and finances to ensure consistency with this Operating Agreement.

### **Foundation Responsibilities**

The Foundation is responsible for all business operations of the Public Market including insurance, bookkeeping, contracted services, personnel, taxes, utilities, legal, and all required licensing. The Foundation will determine operating hours for the Public Market and all policies related to customers and businesses using and operating within the market.

The Foundation will sublease a space to TruStage MarketReady Hall, LLC for the TruStage MarketReady Hall. TruStage MarketReady Hall, LLC will be responsible for all operations of the TruStage MarketReady Hall.

## **SECTION 7. BUILDING MAINTENANCE AND OPERATIONS**

The Parties' respective maintenance and upkeep obligations for the Leased Premises are addressed in Section 7 of the Lease.

## **SECTION 8. PERSONNEL**

### **City Responsibilities:**

If requested, the City will advise the Foundation on staffing decisions.

### **Foundation Responsibilities**

The Foundation is responsible for recruiting and hiring a Public Market Executive Director and Public Market Staff. This includes, but is not limited to, creating a personnel plan, creating position descriptions, conducting hiring processes, conducting interviews, creating an employee handbook, onboarding employees, and providing oversight and guidance to staff.

## **SECTION 9. FURNITURE, FIXTURES, AND EQUIPMENT**

### **City Responsibilities:**

The base construction of the Public Market project to be completed by the City will include, at the City's expense, all facility lighting, tables and chairs for the common areas of the Public Market, shared kitchen equipment (see Section 11 below), office furniture for Public Market staff and specialized equipment needed for TruStage MarketReady Hall operations. The City's construction project will include, at the City's expense, cooking hoods and four-compartment sinks for vending stalls anticipated for prepared foods. The City's construction project will include, at the City's expense, restrooms, an elevator, loading area, scissor lift, garbage area, lockers, IT/data rooms, event tables/chairs, and outdoor furniture. The City's obligations under this Section shall terminate upon issuance of a Certificate of Occupancy.

### **Foundation Responsibilities:**

The Foundation can work with individual tenants on specialty lighting. The Foundation and/or individual tenants are responsible for, at their cost, any additional required equipment within vendor stalls including cooking equipment, refrigerator/freezers, or other specialty equipment.



## **SECTION 10. SIGNAGE**

### **City Responsibilities:**

The City will provide, at the City's expense, all code-required signs including restroom signs, exit signs, interior wayfinding signage, street address signage, and room identification signs. As part of the base construction of the Public Market, the City will include, at the City's expense, 30 individual signboards that can be installed in the canopy structure for each individual tenant space and then customized for that business. The City's construction will include, at the City's expense, primary exterior signage on the building that will be designed in accordance with the Foundation's direction on branding.

### **Foundation Responsibilities:**

The Foundation will be responsible for managing the design and installation of all tenant signs, donor recognizing signs, specialty signage for the main halls of the Public Market, and the exterior signage for the TruStage MarketReady Hall.

## **SECTION 11. MARKET KITCHEN**

### **City Responsibilities:**

The City's construction of the Public Market project will include construction, at the City's expense, the "Market Kitchen" as identified in the architectural plans. The City's construction project for the Market Kitchen will include, at the City's expense, installing walls systems, floor coverings, ceiling systems, electrical access and outlets to the space, HVAC and plumbing connections to the space, doors, sinks, cooking ventilation hoods, and make-up air capacity. The City will be responsible for procuring and installing all Market Kitchen equipment at the City's expense.

### **Foundation Responsibilities:**

TruStage MarketReady Hall, LLC will be responsible for all management, licensing, and coordination required to operate the kitchen per its sublease with the Foundation.

## **SECTION 12. INTERNET AND AUDIO/VISUAL EQUIPMENT**

### **Foundation Responsibilities:**

The Foundation will be responsible, at the Foundation's expense, for securing internet access through a third party internet service provider. The Foundation will select a provider and install any required systems beyond the City's base access points. The Foundation will be responsible - at its cost - for installing a wi-fi system and providing internet access to the

market offices. The Foundation will be responsible, at the Foundation's expense, for procuring and installing any audio systems, display screens, projectors, or other AV equipment.

## **SECTION 13. BUILDING ACCESS CONTROL**

### **City Responsibilities:**

The City will install, at the City's expense, an access control system, integrated with the City's network, to provide an access point for designated the City staff that may need access to the Building. The City will install, at the City's expense, systems necessary to install a second on-site access control system for the Building, but will not install the system itself. The City will install doors with hardware capabilities that allow for an electronic access control system and/or traditional mechanical locks.

### **Foundation Responsibilities:**

The Foundation will be responsible for determining what type of access control system will best serve the Building and will install that system through a third party provider, distributing keys and/or key cards to market personnel and vendors, managing access to the Building, all at the Foundation's expense.

## **SECTION 14. LICENSING AND CODE COMPLIANCE**

### **Foundation Responsibilities:**

The Foundation is responsible for all permits and licenses that may be required to operate the Public Market including Madison/Dane County Public Health Licensing for the Market and individual tenants, alcohol licensing, street vending licenses if applicable, any required state and federal licensing for kitchen equipment, food handling, and food safety. The Foundation will be required to operate the Public Market in accordance with all local, state, and federal laws. The Foundation is responsible for ensuring the Public Market's tenants operate in accordance with all local, state, and federal laws as well.

## **SECTION 15. PRIVATE FUNDRAISING**

### **Foundation Responsibilities:**

The Foundation is responsible for organizing, managing, and implementing the Public Market Capital Campaign. The Foundation has authority to implement a donor recognition program at the Public Market including interior signage, the City-approved exterior signage, and other features recognizing private contributors to the project.

## **SECTION 16. EVENT MANAGEMENT**

### **Foundation Responsibilities:**

The Foundation is responsible for managing the event space at the Public Market and managing all events. This includes booking and scheduling, ticket sales, food and beverage services, products displays, tours, banquets, room rental rates, and any required event related licensing.

## **SECTION 17. TRUSTAGE MARKETREADY HALL**

### **Foundation Responsibilities:**

TruStage MarketReady Hall, LLC will be responsible for all management, licensing, and coordination required to operate the TruStage MarketReady Hall.

## **SECTION 18. MARKETING AND PROMOTIONS**

### **Foundation Responsibilities:**

The Foundation is responsible for all marketing and promotions efforts for the Public Market.

## **SECTION 19. RACIAL EQUITY AND SOCIAL JUSTICE GOALS**

### **City Responsibilities:**

The City will continue to make available its RESJI economic development programs to the Foundation and tenants of the Public Market.

### **Foundation Responsibilities:**

Guided by the RESJI analyses completed in 2015 and updated in 2019, the Foundation will be responsible for operating the Public Market in accordance with mutually agreed upon goals for racial equity and social justice. This includes:

- Recruiting small businesses owned and operated by women and/or people of color, first-generation entrepreneurs and others from groups traditionally underrepresented in small business
- Supporting early-stage entrepreneurs from underrepresented communities through programs, training and assistance with obtaining resources

- Hosting events that attract diverse participants, and working with vendors to offer products and services that appeal to the full spectrum of the Madison community.

## **SECTION 20. UTILITIES**

The Parties' respective obligations for utilities are addressed in Section 17 of the Lease.

## **SECTION 21. SAFETY AND SECURITY**

### **City Responsibilities:**

General public safety services to the Public market (police and fire), as would be expected by any private business.

### **Foundation Responsibilities:**

The Foundation is responsible for safety and security at the Public Market. The Foundation is responsible for keeping the site safe to customers and vendors. The Foundation shall seek the City approval for the installation of any cameras or other surveillance equipment prior to installation.

## **SECTION 22. FINANCIAL OPERATIONS AND RENT**

### **Foundation Responsibilities:**

The Foundation is responsible for operating the Public Market without ongoing subsidy from the City. As anticipated in the Public Market Business Plan and Public Market Implementation Strategy (approved by the Common Council), the operational objective of the Public Market will be to earn revenues through rents, event fees, and other sources sufficient to cover all operating costs of the Public Market, including building a reserve fund. The Foundation's current pro forma and operating plan are targeted toward this objective. However, in the event that the Public Market begins generating a surplus due to higher than anticipated revenues or lower than anticipated costs, the City reserves the right to phase in rent payments consistent with the terms outlined in the Lease.

## **SECTION 23. PUBLIC ART**

### **City Responsibility:**

The City will manage % for Art Ordinance funding allocation process via the Madison Arts Commission and Planning Staff. Further responsibilities of the City and the Foundation, including maintenance, will be outlined in a separate agreement.

### **Foundation Responsibility:**

The Foundation will work with the City Planning staff to determine solicitation, location, and on-site placement of public art at the Public Market.

## **SECTION 24. PARKING**

### **City Responsibility:**

Will manage Parking Lot Site Review Process and related approvals.

### **Foundation Responsibility:**

Will manage operation aspects of parking on-site. Currently unpaid surface parking. If paid parking were desired, this would require another management document to be approved by the City of Madison.

## **SECTION 25. ANCILLARY BUILDINGS AND FUNCTIONS**

Ancillary buildings on the Land (but not on the Public Market Land), which include MPD evidence storage, cold/dry storage buildings, and Fleet fuel pumps, will be maintained by the City of Madison. Electric vehicle charging stations will be on the Land and will be managed and maintained by the Madison Public Market Foundation.

The Foundation will continue communicating with relevant the City agencies – Police, Fleet, and Engineering – on maintenance and use functions related to ancillary buildings that may have an impact on market functionality. These functions may include fuel tank re-fueling by 3<sup>rd</sup> party vendors, Police Department access schedules to the evidence storage facilities, etc.

## **SECTION 26. PERFORMANCE AND REPORTING**

### **City Responsibilities:**

Review and monitor the Foundation reporting

### **Foundation Responsibilities:**

The Foundation will provide an annual written report and presentation to the Mayor and the Madison Common Council to update the Council on the Public Market's performance and

operations. This will be submitted during the first quarter of each year.

## **SECTION 27. AMENDMENTS**

It is understood that upon opening and operating the Public Market, minor modifications may be needed to this Operating Agreement between the Foundation and the City. These minor modifications can be made administratively by mutual agreement of the Foundation Executive Director and the City Director of the Department of Planning, Community, and Economic Development.

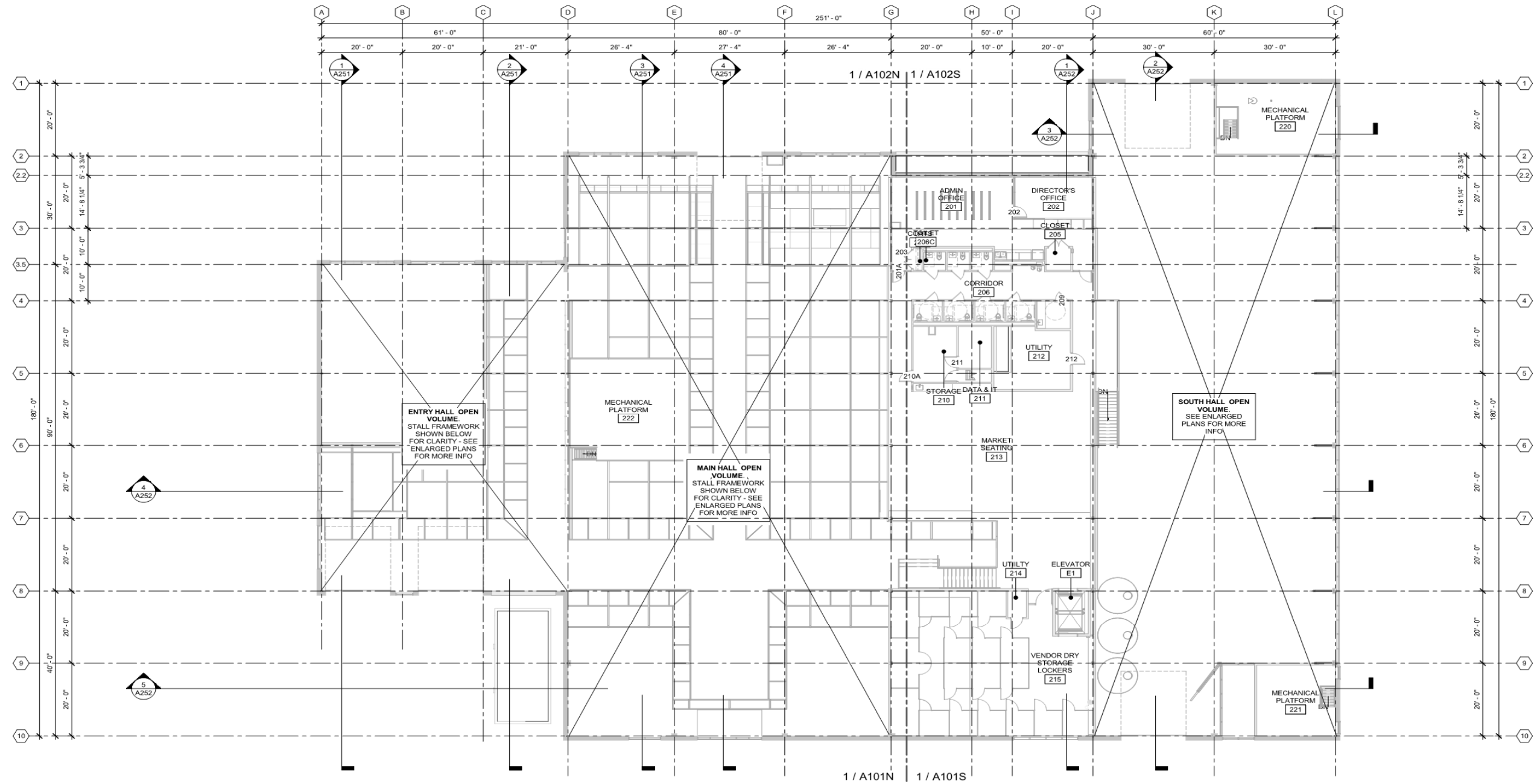
More substantial amendments to this Operating Agreement, as deemed substantial by either the Foundation Executive Director or the City Director of the Department of Planning, Community, and Economic Development must be approved by the Foundation Board of Directors and the Madison Common Council.

General Notes	
1	This agreement shall be binding and deemed effective upon Receipt of an Occupancy Permit of the Madison Public Market.
2	

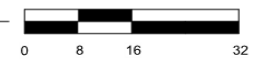
Definition and Classification		
Symbol	Definition	Description
C	City of Madison	City of Madison responsibility
F	Madison Public Market Foundation	Madison Public Market Foundation Responsibility
=	Self-responsibility	Both parties are responsible for their respective elements/systems.
^	Refer to next level up for responsibility (ascending)	symbol delegates responsibility to the next level upward in the table
-	Not defined, see next level below for responsibility	symbol delegates responsibility to the next level below in the table
N/A	Not Applicable	Item is not applicable to responsibility matrix
	Not In Project	Item is not a Constructed Element within Madison Public Market. In the event an Item labeled as "Not In Project" is discovered, the City and Foundation shall negotiate on responsibility at that time.

Responsibility Classification and Definition		
#	Type	Definition
1	Oversight	Party is responsible for a yearly oversight review of identified element. Party can communicate maintenance, consumable replacement, and cleaning requirements not being met. On a yearly basis, as part of the oversight process, the City and Foundation will review this document and make changes in responsibility as needed. When applicable, oversight includes access to datasets and/or building automation system information.
2	Permitting and Testing	Party is responsible for all required entitlements, permits, and testing during the occupancy phase of this building's lifecycle.
3	Whole Element Replacement	Party is responsible for replacement of the identified element when its servicable lifespan is obtained. Responsible party takes on full effort of design/entitlements/construction needed to achieve a functioning construction element
4	Partial Element Replacement	Party is responsible for replacement of subelements of the identified element. Party is responsible for returning the overall element to the original state (per specification). Responsible party takes on full effort of design/entitlements/construction needed to achieve a functioning construction element
5	Routine/Preventative Maint.	Party is responsible for routine and preventative maintenance of the identified element as defined by the building's Operations and Maintenance (O&M) manual. See Table 22 reference column for associated MasterClass Division number
6	Consumable Replacement	Party is responsible for the procurement and installation/replacement of all consumables of the identified element needed to properly function. Refer to the Building's O&M manual for more information
7	Cleaning	Party is responsible for general cleaning and upkeep of the identified element. Refer to the Building's O&M manual for more information
8	Permission To Alter	Yes or No. Yes requires operator to obtain permission from City to alter element. City shall grant approval in a two step process, Initial Approval and Final Approval. If initial approval is granted then the operator will provide construction documents for approval prior to Start of Construction. Permission to Alter is not required to complete other responsibility classification obligations

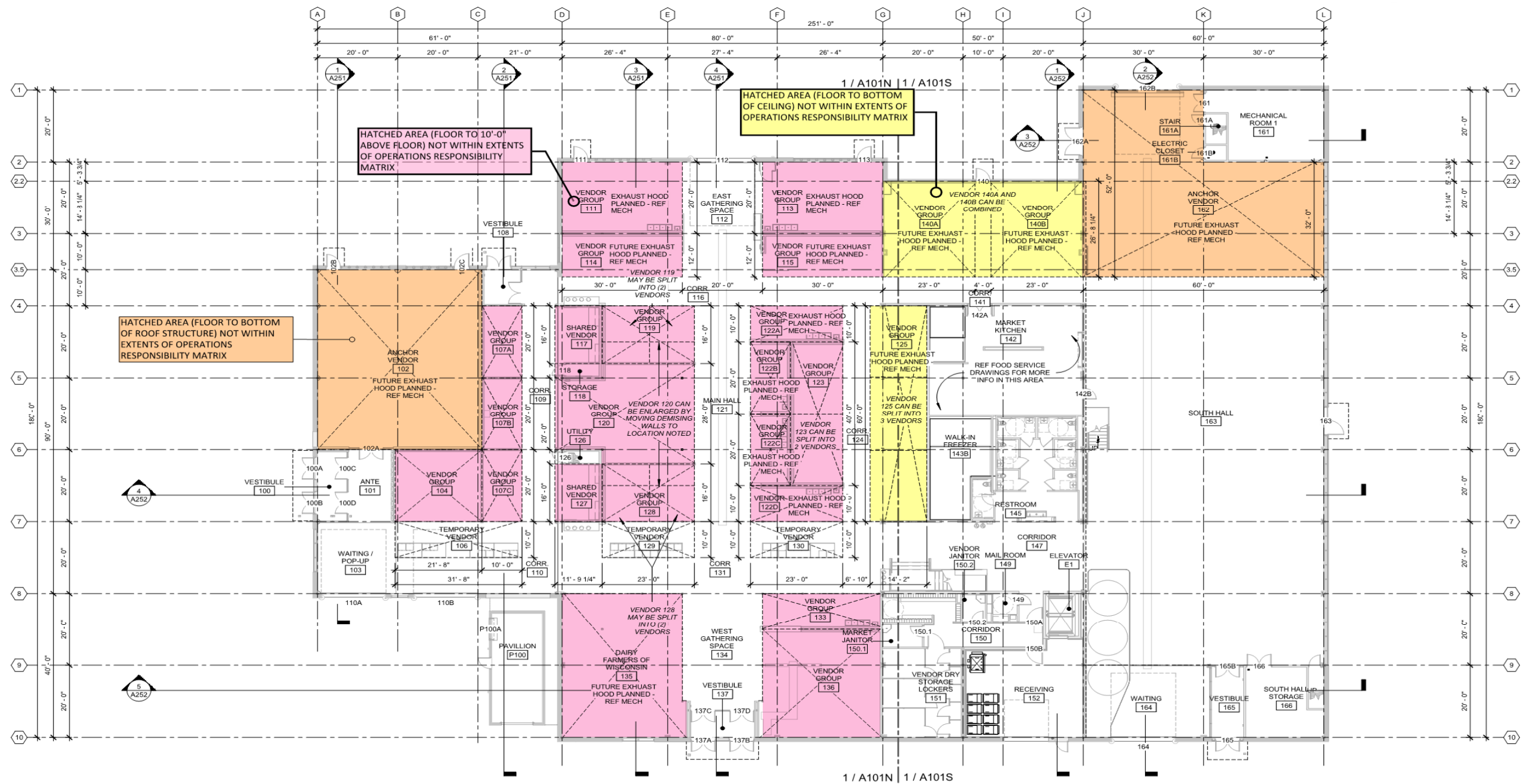
Extents of Responsibility floorplan(s)



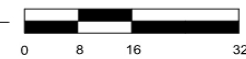
**1** MEZZANINE LEVEL - REFERENCE  
 A101 1/16" = 1'-0"



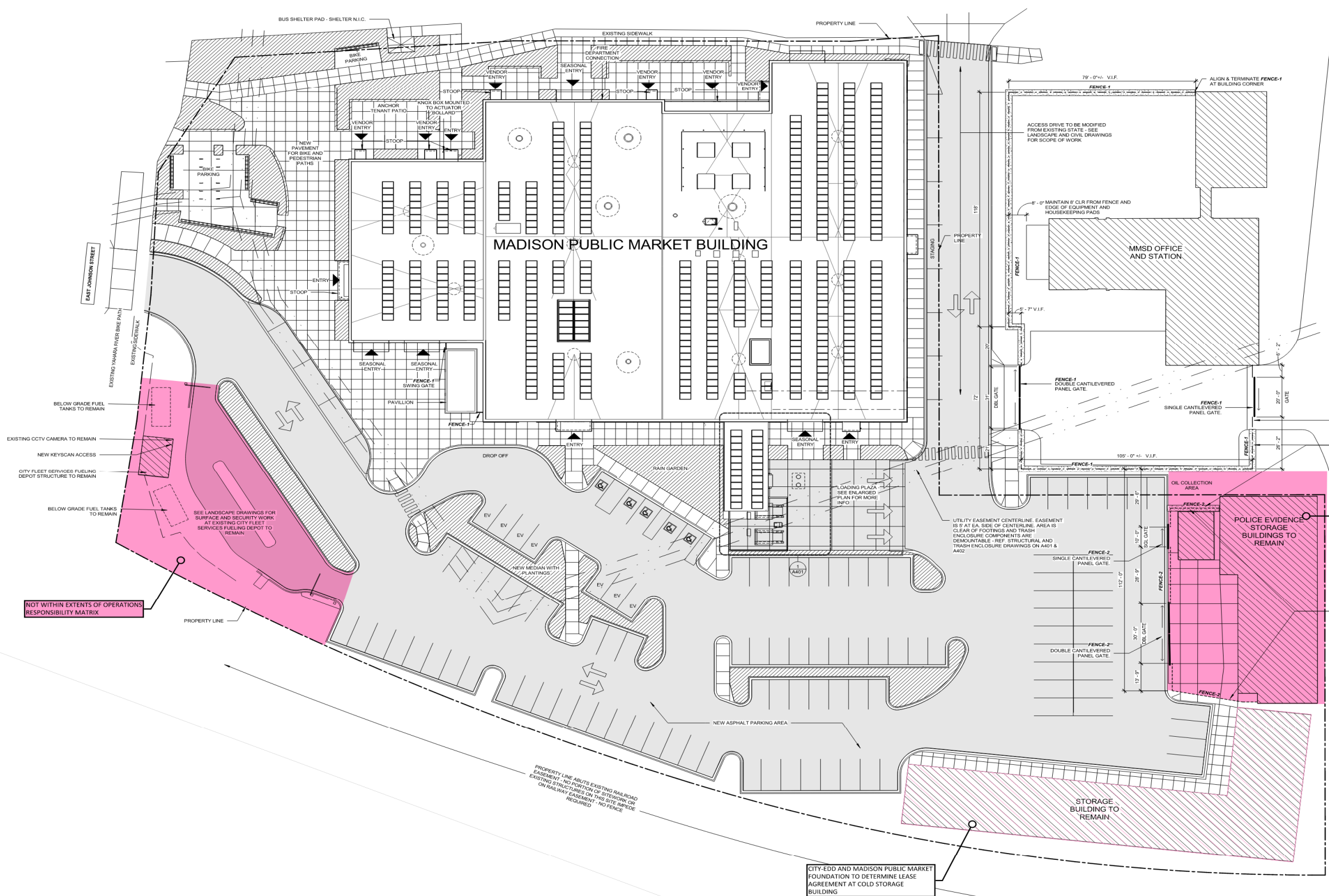




2 LEVEL 1 FLOOR PLAN - REFERENCE  
 A101 1/16" = 1'-0"



NORTH 1<sup>ST</sup> STREET



- BELOW GRADE FUEL TANKS TO REMAIN
- EXISTING CCTV CAMERA TO REMAIN
- NEW KEYSKAN ACCESS
- CITY FLEET SERVICES FUELING DEPOT STRUCTURE TO REMAIN
- BELOW GRADE FUEL TANKS TO REMAIN
- SEE LANDSCAPE DRAWINGS FOR SURFACE AND SECURITY WORK AT EXISTING CITY FLEET SERVICES FUELING DEPOT TO REMAIN

NOT WITHIN EXTENTS OF OPERATIONS RESPONSIBILITY MATRIX

PROVIDE FENCE-1 (REF PROJECT SPECIFICATIONS) PROVIDE CONCRETE SONOTUBE FOOTINGS ON COMPACTED BASE. DEPTH OF FOOTING AND FREQUENCY OF POSTS SHALL BE VERIFIED BY MFR TO SATISFY WIND PERFORMANCE CRITERIA - ASSUME 8'-0" POST SPACING, MAX.

AT ALL FENCE-1 AND FENCE-2 LOCATIONS, PROVIDE 4" DEEP CRUSHED GRAVEL MOW STRIP OVER WEED BARRIER FILTER FABRIC. PROVIDE EDGING BETWEEN MOW STRIP AND ADJACENT LANDSCAPING - REF. LANDSCAPE FOR STANDARD SPECIFICATIONS

NOT WITHIN EXTENTS OF OPERATIONS RESPONSIBILITY MATRIX

PROVIDE FENCE-2 ALONG POLICE EVIDENCE STORAGE BUILDINGS (REF PROJECT SPECIFICATIONS) PROVIDE CONCRETE SONOTUBE FOOTINGS ON COMPACTED BASE. DEPTH OF FOOTING AND FREQUENCY OF POSTS SHALL BE VERIFIED BY MFR TO SATISFY WIND PERFORMANCE CRITERIA - ASSUME 8'-0" POST SPACING, MAX.

CITY-EDD AND MADISON PUBLIC MARKET FOUNDATION TO DETERMINE LEASE AGREEMENT AT COLD STORAGE BUILDING



1







	B	C	D	F	G	H	I	J	K	L	M	N
2	Classification System (Omniclass, Table 21)			Responsibility Classification								
3	OmniClass Number	Level	OmniClass Title	Oversight	Permitting and Testing	Whole Element Replacement	Partial Element Replacement	Routine/Preventative Maint.	Consumable Replacement	Cleaning	Permission to Alter required?	Notes
206	21-03 20 40 20	4	Tile Stair Finish									
207	21-03 20 40 40	4	Masonry Stair Finish									
208	21-03 20 40 45	4	Wood Stair Finish									
209	21-03 20 40 50	4	Resilient Stair Finish									
210	21-03 20 40 60	4	Terrazzo Stair Finish									
211	21-03 20 40 75	4	Carpeted Stair Finish									
212	21-03 20 50	3	Ceiling Finishes	C	F	F	F	F	F	F	F	YES
213	21-03 20 50 10	4	Plaster and Gypsum Board Finish	^	^	^	^	^	^	^	^	YES
214	21-03 20 50 20	4	Ceiling Paneling	^	^	^	^	^	^	^	^	YES
215	21-03 20 50 70	4	Ceiling Painting and Coating	^	^	^	^	^	^	^	^	YES
216	21-03 20 50 80	4	Acoustical Ceiling Treatment	^	^	^	^	^	^	^	^	YES
217	21-03 20 50 90	4	Ceiling Finish Supplementary Components	^	^	^	^	^	^	^	^	YES
218	21-04 00 00	1	<b>Services</b>									
219	21-04 10	2	Conveying	-	-	-	-	-	-	-	-	
220	21-04 10 10	3	Vertical Conveying Systems	-	-	-	-	-	-	-	-	
221	21-04 10 10 10	4	Elevators	C	C	C	F	F	F	F	F	YES
222	21-04 10 10 20	4	Lifts									
223	21-04 10 10 30	4	Escalators									
224	21-04 10 10 50	4	Dumbwaiters									
225	21-04 10 10 60	4	Moving Ramps									
226	21-04 10 30	3	Horizontal Conveying									
227	21-04 10 30 10	4	Moving Walks									
228	21-04 10 30 30	4	Turntables									
229	21-04 10 30 50	4	Passenger Loading Bridges									
230	21-04 10 30 70	4	People Movers									
231	21-04 10 50	3	Material Handling	C	F	F	F	F	F	F	F	YES
232	21-04 10 50 10	4	Cranes									
233	21-04 10 50 20	4	Hoists	^	^	^	^	^	^	^	^	YES Not Operational
234	21-04 10 50 30	4	Derricks									
235	21-04 10 50 40	4	Conveyors									
236	21-04 10 50 50	4	Baggage Handling Equipment									
237	21-04 10 50 60	4	Chutes									
238	21-04 10 50 70	4	Pneumatic Tube Systems									
239	21-04 10 80	3	Operable Access Systems	C	C	C	C	C	C	C	C	YES
240	21-04 10 80 10	4	Suspended Scaffolding									
241	21-04 10 80 20	4	Rope Climbers									
242	21-04 10 80 30	4	Elevating Platforms	^	^	^	^	^	^	^	^	YES
243	21-04 10 80 40	4	Powered Scaffolding									
244	21-04 10 80 50	4	Building Envelope Access	^	^	^	^	^	^	^	^	YES
245	21-04 20	2	Plumbing	-	-	-	-	-	-	-	-	
246	21-04 20 10	3	Domestic Water Distribution	-	-	-	-	-	-	-	-	
247	21-04 20 10 10	4	Facility Potable-Water Storage Tanks									
248	21-04 20 10 20	4	Domestic Water Equipment	C	C	C	F	F	F	F	F	YES
249	21-04 20 10 40	4	Domestic Water Piping	C	F	F	F	F	F	F	F	YES All domestic water piping above grade, therefore foundation resp.
250	21-04 20 10 60	4	Plumbing Fixtures	C	F	F	F	F	F	F	F	NO
251	21-04 20 10 90	4	Domestic Water Distribution Supplementary Components	C	F	F	F	F	F	F	F	YES
252	21-04 20 20	3	Sanitary Drainage	C	C	C	C	F	F	F	F	YES
253	21-04 20 20 10	4	Sanitary Sewerage Equipment	^	^	^	^	^	^	^	^	YES
254	21-04 20 20 30	4	Sanitary Sewerage Piping	^	^	^	^	^	^	^	^	YES Pipe blockage is considered Cleaning and/or routine/preventative maintenance
255	21-04 20 20 90	4	Sanitary Drainage Supplementary Components	^	^	^	^	^	^	^	^	YES
256	21-04 20 30	3	Building Support Plumbing Systems	-	-	-	-	-	-	-	-	
257	21-04 20 30 10	4	Stormwater Drainage Equipment	C	C	C	F	F	F	F	F	YES
258	21-04 20 30 20	4	Stormwater Drainage Piping	C	C	C	F	F	F	F	F	YES















	B	C	D	F	G	H	I	J	K	L	M	N
2	Classification System (Omniclass, Table 21)			Responsibility Classification								
3	OmniClass Number	Level	OmniClass Title	Oversight	Permitting and Testing	Whole Element Replacement	Partial Element Replacement	Routine/Preventative Maint.	Consumable Replacement	Cleaning	Permission to Alter required?	Notes
577	21-07 20 60 50	4	Site Equipment	C	C	C	F	F	F	F	YES	
578	21-07 20 60 60	4	Retaining Walls	C	C	C	F	F	F	F	YES	
579	21-07 20 60 70	4	Site Bridges									
580	21-07 20 60 80	4	Site Screening Devices	C	C	C	F	F	F	F	YES	
581	21-07 20 60 85	4	Site Specialties	C	C	C	F	F	F	F	YES	
582	21-07 20 80	3	Landscaping	C	F	F	F	F	F	F	-	
583	21-07 20 80 10	4	Planting Irrigation	^	^	^	^	^	^	^	YES	
584	21-07 20 80 20	4	Turf and Grasses	^	^	^	^	^	^	^	YES	
585	21-07 20 80 30	4	Plants	^	^	^	^	^	^	^	YES	
586	21-07 20 80 50	4	Planting Accessories	^	^	^	^	^	^	^	YES	
587	21-07 20 80 70	4	Landscape Lighting	^	^	^	^	^	^	^	YES	
588	21-07 20 80 80	4	Landscaping Activities	^	^	^	^	^	^	^	YES	
589	21-07 30	2	Liquid and Gas Site Utilities	-	-	-	-	-	-	-	-	
590	21-07 30 10	3	Water Utilities	C	C	C	F	F	F	F	YES	
591	21-07 30 10 10	4	Site Domestic Water Distribution	^	^	^	^	^	^	^	YES	
592	21-07 30 10 30	4	Site Fire Protection Water Distribution	^	^	^	^	^	^	^	YES	
593	21-07 30 10 50	4	Site Irrigation Water Distribution	^	^	^	^	^	^	^	YES	
594	21-07 30 20	3	Sanitary Sewerage Utilities	C	C	C	F	F	F	F	YES	
595	21-07 30 20 10	4	Sanitary Sewerage Utility Connection	^	^	^	^	^	^	^	YES	
596	21-07 30 20 20	4	Sanitary Sewerage Piping	^	^	^	^	^	^	^	YES	
597	21-07 30 20 40	4	Utility Septic Tanks									
598	21-07 30 20 50	4	Sanitary Sewerage Structures	^	^	^	^	^	^	^	YES	
599	21-07 30 20 60	4	Sanitary Sewerage Lagoons									
600	21-07 30 30	3	Storm Drainage Utilities	C	C	C	C	C	C	C	YES	
601	21-07 30 30 10	4	Storm Drainage Utility Connection	^	^	^	^	^	^	^	YES	
602	21-07 30 30 20	4	Storm Drainage Piping	^	^	^	^	^	^	^	YES	
603	21-07 30 30 30	4	Culverts	^	^	^	^	^	^	^	YES	
604	21-07 30 30 40	4	Site Storm Water Drains	^	^	^	^	^	^	^	YES	
605	21-07 30 30 50	4	Storm Drainage Pumps	^	^	^	^	^	^	^	YES	
606	21-07 30 30 60	4	Site Subdrainage	^	^	^	^	^	^	^	YES	
607	21-07 30 30 70	4	Storm Drainage Ponds and Reservoirs	^	^	^	^	^	^	^	YES	
608	21-07 30 50	3	Site Energy Distribution									
609	21-07 30 50 10	4	Site Hydronic Heating Distribution									
610	21-07 30 50 20	4	Site Steam Energy Distribution									
611	21-07 30 50 40	4	Site Hydronic Cooling Distribution									
612	21-07 30 60	3	Site Fuel Distribution	C	C	C	C	C	F	F	YES	
613	21-07 30 60 10	4	Site Gas Distribution	^	^	^	^	^	^	^	YES	
614	21-07 30 60 20	4	Site Fuel-Oil Distribution									
615	21-07 30 60 30	4	Site Gasoline Distribution									
616	21-07 30 60 40	4	Site Diesel Fuel Distribution									
617	21-07 30 60 60	4	Site Aviation Fuel Distribution									
618	21-07 30 90	3	Liquid and Gas Site Utilities Supplementary Components	C	C	C	C	C	F	F	YES	
619	21-07 30 90 10	4	Supplementary Components	^	^	^	^	^	^	^	YES	
620	21-07 40	2	Electrical Site Improvements	-	-	-	-	-	-	-	-	
621	21-07 40 10	3	Site Electric Distribution Systems	C	C	C	C	C	F	F	YES	
622	21-07 40 10 10	4	Electrical Utility Services	^	^	^	^	^	^	^	YES	
623	21-07 40 10 20	4	Electric Transmission and Distribution	^	^	^	^	^	^	^	YES	
624	21-07 40 10 30	4	Electrical Substations									
625	21-07 40 10 40	4	Electrical Transformers	^	^	^	^	^	^	^	YES	
626	21-07 40 10 50	4	Electrical Switchgear and Protection Devices	^	^	^	^	^	^	^	YES	
627	21-07 40 10 70	4	Site Grounding	^	^	^	^	^	^	^	YES	
628	21-07 40 10 90	4	Electrical Distribution System Instrumentation and Controls	^	^	^	^	^	^	^	YES	
629	21-07 40 50	3	Site Lighting	C	C	C	F	F	F	F	YES	

