

ENCROACHMENT AGREEMENT

Re: The privilege of encroaching into public property to occupy a portion of the **South Blount Street** right-of-way with a portion of a parking lot and trash dumpster enclosure for the property located on the property as legally described as follows:

Certified Survey Map No. 14111 as recorded in Dane County Register of Deeds in Vol 95, Page 99 of Certified Surveys, Lot 2.

This Agreement is entered into between the **City of Madison**, a Wisconsin municipal corporation ("City") and **301 Blount Historical Bldg, LLC** ("Permittee").

RETURN TO: City of Madison
EDD – Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

WITNESSETH:

Tax Parcel No: 251-0709-134-1701-4

WHEREAS, the Permittee is the owner of the above described property situated at **301 South Blount Street**, City of Madison, Dane County, Wisconsin, ("Abutting Property"); and

WHEREAS, the Permittee has made application to City for a privilege in streets pursuant to Section 66.0425, Wisconsin Statutes and Section 10.31, Madison General Ordinances (MGO), consisting of the following items:

Parking lot improved with asphalt pavement

Dumpster storage

to be located in an unimproved portion of the East Wilson Street right-of-way adjacent to the Abutting Property, as depicted on attached Exhibit A (the "Encroachment Area").

NOW, THEREFORE, City hereby grants the aforementioned privilege subject to the following obligations, which are assumed by the Permittee, its heirs, successors and assigns.

1. To comply with all applicable Madison General Ordinances.
2. To remove said encroachments upon ten (10) days written notice by City. Additionally, the Permittee, its successors and assigns shall be entitled to no damages for removal of the encroachments, and if the Permittee does not remove the same upon due notice, it shall be removed at the Permittee's expense and the cost therefore levied against the Abutting Property as a special charge for current service rendered.
3. The Permittee agrees to pay City an annual fee of \$11,880.00 for each calendar year the privilege and accompanying Agreement is in effect. Said annual fee may be adjusted from

time to time by City. The initial fee shall be due upon execution of this Agreement. Subsequent annual fee payments shall be due on or before January 1 of each year this Agreement is in effect. Check is to be made payable to the City Treasurer, and mailed to:

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

4. The Permittee shall be liable to and hereby 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 officials, officers, 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 Permittee and/or its officials, officers, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, and employees.
5. Additionally, the Permittee shall furnish a Certificate of Insurance, on a form provided by the City, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage and minimum limits of one million dollars (\$1,000,000) per occurrence. The City of Madison Risk Manager reserves the right to require higher limits and other coverage terms and conditions at his/her discretion. The Permittee shall keep required insurance in full force and effect throughout the duration of this Agreement.
6. The Permittee shall use the Encroachment Area for maintenance and operation of a private parking lot and dumpster storage which use shall be ancillary to its business operation at the Abutting Property. The dumpster storage shall be limited to the Encroachment Area identified on attached Exhibit A. The Encroachment Area shall be used exclusively by the Permittee and the employees, tenants and invitees of the Abutting Property. The Encroachment Area shall not be used for parking by the general public, with general public defined as all persons other than the Permittee and the employees, tenants and invitees of the Abutting Property.
7. No construction, other than construction related to the use of the Encroachment Area for parking, shall be permitted without the prior written consent of the City, which consent the City may withhold in its sole discretion.
8. Upon the termination of this Agreement, the Permittee, at the Permittee's cost, shall remove from the Encroachment Area all parking lot improvements and shall restore the Encroachment Area to a condition equivalent to that which existed prior to the date the Permittee first occupied the Encroachment Area. Removal and restoration shall be accomplished within sixty (60) days of termination of this Agreement, except as may be adjusted by the City to allow for winter conditions. The termination of this Agreement shall

not become effective until removal and restoration has been accomplished to the satisfaction of the City; however, during such removal and restoration period the Permittee's right to use the Encroachment Area shall be limited to removal and restoration activities and shall not include parking. In the event the Permittee fails to accomplish said removal and restoration, the City may cause the removal and restoration to be accomplished at the Permittee's expense and with no liability or cost to the City. The City may waive or alter this removal requirement if, at its sole discretion, it so chooses.

9. The Permittee shall supervise, regulate, and maintain the Encroachment Area to permit parking only on parking stalls that have been approved by the City of Madison. The Permittee shall prohibit and prevent parking by anyone on any unimproved portion of the Encroachment Area.
10. The Permittee shall immediately provide written notice to the City of any foreclosure action against the Abutting Property.
11. The Permittee shall, at the Permittee's expense, keep and maintain the Encroachment Area in a presentable condition 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. Maintenance responsibilities include, but shall not be limited to, any required paving, repaving, repairs, striping, snow and ice removal, removal of garbage and debris, landscape upkeep, and parking enforcement. No exterior storage of materials or equipment is permitted on the Encroachment Area except the temporary and orderly placement of items in conjunction with maintenance or repair activities.
12. The Permittee represents and warrants that its use of the Encroachment Area will not generate any hazardous substance, and it will not store or dispose on the Encroachment Area nor transport to or over the Encroachment Area any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Permittee 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 except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "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.
13. By acceptance of the privilege, the Permittee shall waive the right to contest in any manner the validity of Section 66.0425, Wis. Stats., and Sec. 10.31 MGO.
14. City agrees that the Permittee may terminate this Agreement at any time upon written notice to City, following removal of the subject encroachments.

15. This Agreement shall be binding upon the Permittee, its successors and assigns, and shall be recorded in the office of the Dane County Register of Deeds. In the event of the sale of the Abutting Property, the City shall be given notice of the change of ownership in accordance with the provisions of Paragraph 19.
16. In the performance of the services under this Agreement, the Permittee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The Permittee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sexual orientation, gender identity or national origin.
17. The Permittee agrees that City shall not be held responsible for any damage to the Permittee's parking lot and dumpster storage improvements that may be caused by City, its employees, contractors, or others.
18. The Permittee shall comply with all Madison General Ordinances regarding the operation and maintenance of the parking lot and dumpster storage including any and all applicable City of Madison permits for excavation and installation, including a City Engineering Permit to Excavate in Public right-of-way, if applicable. The Permit to Excavate in Public Right-of-Way requires fees for inspection and street degradation. Permittees failing to obtain a Permit to Excavate in Public Right-of-Way are subject to penalty. The Permit to Excavate in Public Right-of-Way can be obtained at the office of the City Engineer.

Dated this _____ day of _____, 2017

CITY OF MADISON,
a Wisconsin municipal corporation

By: _____
Matthew Mikolajewski, Director
Economic Development Division

State of Wisconsin)
) ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, the above named Matthew Mikolajewski, Director, Economic Development Division of the City of Madison, and acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
Heidi Radlinger
Commission expires: 8/21/2020

Approved as to form:

Director of Finance, David P. Schmiedicke

Approved as to form:

City Attorney, Michael P. May

301 BLOUNT HISTORICAL BLDG, LLC
a Wisconsin limited liability company

By: _____
(signature)

(print or type name and title)

State of Wisconsin)
) ss.
County of Dane)

Personally came before me this _____ day of _____, 2017, the above named _____ (name), _____ (title) of 301 Blount Historical Bldg, LLC, known to me to be the person who executed the above and foregoing instrument and acknowledged that he/she executed the foregoing instrument as such partner as the deed of such company, by its authority.

Notary Public, State of Wisconsin

Print or Type Name
Commission expires: _____