

CONTRACT NO.

**PROFESSIONAL SERVICES CONTRACT  
BETWEEN  
THE CITY OF MILWAUKEE  
AND STOSS INC.**

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**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Milwaukee, a Municipal Corporation organized under the laws of the State of Wisconsin, *the City*, and Stoss Inc., a Corporation organized under the laws of the State of Massachusetts, *the Consultant*.

**WHEREAS**, The City has conducted a design competition for the Erie Street Plaza; and

**WHEREAS**, The Consultant's proposal for the plaza was selected by the jury; and

**WHEREAS**, The Milwaukee Common Council via file number 051286 has authorized the appropriate City officials to enter into a professional service contract with the Consultant; and

**WHEREAS**, Funds to pay for this contract have been set aside in account number TD05684007;

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City of Milwaukee and the Consultant promise and agree as follows:

**ARTICLE I  
Retention of Services**

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to personally perform, as an Independent Consultant and not as an employee of the City, the services hereinafter set forth, all in accordance with the terms and conditions of this Agreement, the RFQ (*Exhibit I*), the Scope of Services (*Exhibit II*), the Consultant's Proposal dated, December 16, 2005, (*Exhibit III*), and Consultant insurance requirements (*Exhibit IV*), collectively, the *Contract Documents*.

**ARTICLE II  
Term of Agreement and Early Termination**

2.1 Term of Agreement: The Term of Agreement shall commence on the date hereof, and shall end upon completion of the Scope of Services and final contract payment. In addition to all other remedies inuring to the City, should this Agreement not be completed in accord with the schedule specified in the Scope of Services (*Exhibit II*) and in accordance with all the terms, requirements and conditions set forth in the Contract Documents, the Consultant shall continue to be obligated thereafter to fulfill the Consultant's responsibility to complete the scope of

services and to execute any necessary amendments to this Agreement subject to, and in accord with, any applicable provisions of the Scope of Services.

2.2 Option to Extend: The City, at its sole option, may extend the project schedule for a period not-to-exceed 6 months. Such option shall be exercised by the City by delivering written notice to the Consultant no later than ten (10) days prior to the latest date listed in the project schedule. Extensions beyond 6 months shall only occur upon mutual agreement of the Consultant and the City. If the extension is due to circumstances beyond the reasonable control of the Consultant, the extension shall be considered an "Extra Service" as that term is defined in the Scope of Services.

2.3 Termination for Cause: If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services performed by the Consultant under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of the damages due to the City from the Consultant is determined.

2.4 Termination for Convenience: The City may terminate this Agreement at any time and for any reason by giving written notice to the Consultant of such termination and specifying the effective date, at least seven (7) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this Section 2.4, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Consultant covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by the Consultant will be determined by the City.

### **ARTICLE III** **Scope of Services**

The Consultant is required to perform, do and carryout, in a satisfactory, timely and professional manner, the services set forth in the Contract Documents. The Consultant is required to furnish all services and labor necessary as indicated herein, including without limitation, materials, equipment, supplies and incidentals. The scope of services to be performed hereunder shall include, without limitation, those services set forth in *Exhibit II* attached hereto. The City may, from time-to-time, request the Consultant to perform additional services which are not set forth in the Contract Documents. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement and shall be compensated as extra services, as outlined in the Scope of Services (Exhibit II).

### **ARTICLE IV** **Standards of Performance**

The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all Federal, State and Local laws, regulations and ordinances, and all provisions of this Agreement.

## **ARTICLE V**

### **Compensation and Terms of Payment**

5.1 Compensation: The Consultant will be compensated by the City for the services provided under this Agreement on a lump sum basis plus approved expenses.

5.2 Not to Exceed: Notwithstanding the foregoing Section 5.1, total compensation to the Consultant under this Agreement shall not exceed \$90,000.

5.3 Invoicing and Payments: Payments to the Consultant for services will be based on invoices submitted monthly by the Consultant showing the labor hours and hourly labor costs for the work items listed (*Exhibit II*). These invoices must be itemized by work order or contract number as furnished by the Commissioner of Public Works or his designee and show the current cost and the accumulated total payments to date. Invoices shall be reviewed and approved by the Commissioner of Public Works or his designee. The final five percent (5%) of the contract amount shall be retained. The final payment of the balance due the Consultant for the completed services shall be made upon completion and acceptance by the City of the services performed by the Consultant under this Agreement. All payments made under this Agreement shall be subject to the City's *Prompt Payment Policy* set forth in Section 5.4 (below).

5.4 Prompt Payment Policy The City, as a matter of policy, shall strive to pay all timely and properly completed invoices within thirty (30) days of submission. Payment to the Consultant will be deemed timely if the payment is mailed, delivered or transferred within sixty (60) days after receipt of a properly completed and undisputed invoice or receipt and acceptance of the service under this Agreement, whichever is later. If the City does not make payment by the sixtieth (60<sup>th</sup>) calendar day, the City shall pay simple interest beginning with the thirty-first (31<sup>st</sup>) calendar day at the rate of one percent (1%) per month, unless the City disputes the amount of the invoice.

5.5 Additional Fringe or Employee Benefits The Consultant shall not receive nor be eligible for, any fringe benefits or any other benefits to which City employees are entitled to, or are receiving.

5.6 Taxes, Social Security, Insurance and Government Reporting Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

5.7 Withholding of Salaries If, in the performance of this Agreement, there is an underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant, out of payments due to it, an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall



be disbursed by the City for and on account of the Consultant or subcontractor, if any, to the respective employees to whom they are due.

**ARTICLE VI**  
**Personnel, Qualifications and Subcontracting**

6.1 Required Personnel The Consultant represents that it has or will secure at its own expense all personnel required to perform the services set forth in the Contract Documents. These personnel shall not be employees of, or have any contractual relationship to, the City.

6.2 Fully Qualified The Consultant represents that all personnel engaged in the performance of the services set forth in the Contract Documents shall be fully qualified and shall be authorized or permitted under State and Local law to perform the services.

6.3 Subcontracting None of the services to be performed under the Contract Documents shall be subcontracted to entities who are not listed as part of the design team in the Scope of Services, without the written approval of the City. If any of the services are subcontracted, whether to members of the design team or not, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for acts and omissions of persons directly employed by Consultant.

**ARTICLE VII**  
**Indemnification and Defense of Suits**

In case any action in court, claim, or proceeding before an administrative agency is brought against the City, or any of its officers, agents or employees, for the failure, omission or neglect of the Consultant, in whole or in part, to perform any of the covenants, acts, matters or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Consultant, its officers, agents and employees, the Consultant shall defend, indemnify and save harmless the City and its officers, agents and employees from all losses, damages, costs, expenses, judgments or decrees arising out of such action. Provided however, that in no event shall the Consultant's total liability for loss (indemnity or defense) exceed Consultant's prorata share of all fault causing any injury or loss. The City shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom. Nothing in this Article VII shall be construed to impose liability on the Consultant for the negligence of the City, or of its officers, agents or employees, in the performance of this Agreement.

**ARTICLE VIII**  
**Insurance**

The Consultant shall be solely responsible to meet the Consultant's insurance needs as required by the City, including public and professional liability and property damage, during the term of this Agreement or any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City as an additional insured for public liability and property damage, and providing for a thirty (30) day notice to the City prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement. The minimum

limits of insurance required by the City under this Agreement are set forth in *Exhibit IV*, attached hereto.

## **ARTICLE IX** **Conflicts of Interest**

9.1 The City – Governing Body No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the Governing Body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

9.2 Consultant The Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

## **ARTICLE X** **Non-Discrimination and Equal Employment**

10.1 Discrimination The Consultant agrees not to willfully refuse to employ, to discharge or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status; not to discriminate for the same reasons in regard to tenure, terms or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

10.2 Subcontracts The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement, a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

## **ARTICLE XI** **Addresses and Notices**

Unless otherwise provided in the Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience called *notice*) herein provided or permitted to be given, made or accepted by one party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage-paid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3)

days after it is deposited. Notice given in any other manner should be effective only if and when received by the party to be notified. For the purpose of notice, the address of the parties shall be as follows:

If to the City: Name: Jeff Mantes  
Title: Commissioner of Public  
Works  
City of Milwaukee  
Frank P. Zeidler Municipal Building  
841 North Broadway  
Room 501  
Milwaukee, WI 53202

If to the Consultant: Name: Chris Reed  
Title: President and Principal  
Stoss Inc.  
51 Melcher Street, #601  
Boston, Ma 02210

## **ARTICLE XII**

### **Records, Audits and Confidentiality**

12.1 Access to Records The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, papers or any records of the Consultant which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

12.2 Public Records Law The City and the Consultant shall comply with the Public Records Law of Wisconsin and the Consultant will assist the City in conforming to the law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

## **ARTICLE XIII**

### **Emerging Business Enterprise (EBE) Program**

13.1 Policy and Goal In accordance with *Chapter 360 of the Milwaukee Code of Ordinances*, Emerging Business Enterprise requirement, it is the City's policy to accomplish Emerging Business Enterprise (EBE) participation in all contracting activities in the City's Department of Public Works. The City has established for itself an overall goal of eighteen percent (18%) EBE participation for Public Works contracts. In an effort to meet these overall goals, the Commissioner of Public Works, as Contracting Officer for the City, expects the Consultant to use its best efforts to enable EBE firms to be considered fairly as subcontractors and material suppliers if additional subcontractors are added to the design team.

13.2 Forms and Reports If an EBE firm is added to the design team, the Consultant shall prepare and submit accurate and timely EBE utilization forms and reports to the City. The reports shall include, but not be limited to, *Project Participation (EBE Form A)*, *Monthly Utilization (EBE Form D)*, and *EBE Subcontractor Payment Certification (Form E)*, forms as directed. Failure to submit the required forms and reports to the City may result in



disqualification of future bids, delay of payments or other appropriate sanctions. Final contract payments will not be made until final *EBE Utilization Reports* and *EBE Subcontractor Payment Certification* forms are on file with the City.

13.3 Compliance Reviews During the performance of this Agreement, the Commissioner reserves the right to conduct compliance reviews. If the Consultant is not in compliance with the specifications, the Commissioner will notify the Consultant in writing of the corrective action that will bring the Consultant into compliance. If the Consultant fails or refuses to take corrective action as directed, the Commissioner may take one or more of the following actions: (i) Terminate or cancel this Agreement, in whole or in part; (ii) Remove the Consultant from the list of qualified firms and refuse to accept future proposals for a period not to exceed three (3) years; or (iii) Impose other appropriate sanctions.

#### **ARTICLE XIV** **Additional Provisions**

14.1 Captions The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience, but shall never be considered or given any effect in construing this Agreement or the duties, obligations or liabilities of the respective parties hereto, or in ascertaining intent if any questions of intent should arise.

14.2 Severability The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

14.3 Entire Agreement This Agreement and the exhibits attached hereto, constitute the entire Agreement between the parties hereto relating to the subject matter hereof, and all prior Agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and made a part thereof, it being the intention of the parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

14.4 No Additional Waiver Implied The failure of any party to insist in any one or more instance upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performances shall continue in full force and effect.

14.5 Amendment This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

14.6 Applicable Law and Venue This Agreement, and all questions arising in connection herewith, shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of, or in any way related to this Agreement, shall be exclusively in the City of Milwaukee for matters arising under State law and in Federal District Court for matters arising under federal jurisdiction.



14.7 Independent Consultant In performing its obligations under this Agreement, the Consultant shall act as an Independent Consultant solely for its own account and not as an agent, representative or employee of the City.

14.8 Assignment This Agreement shall be binding on the heirs, successors and assigns of each party hereto. The employment by the City of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agents of the City.

14.9 Counterparts This Agreement may be executed in one (1) or more counterparts; all of which shall be considered but one (1) and the same Agreement, and shall become effective when one (1) or more counterparts have been signed by each of the parties and delivered to the other party.

14.10 Conflicts In the event of conflicts between provisions of the base contract and/or the provisions of any of the contract exhibits, the various documents shall govern in the following order: 1. The base contract. 2. The Scope of Services (Exhibit II). 3. The Consultant's proposal (Exhibit III). 4. The RFQ (Exhibit I).

14.11 WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year set forth above.

**Stoss Inc.**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF MILWAUKEE**

By: \_\_\_\_\_  
Commissioner of Public Works

Date: \_\_\_\_\_

**COUNTERSIGNED**

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

Date: \_\_\_\_\_

**CITY ATTORNEY**

**CITY ATTORNEY**

Examined and approved as to content  
this \_\_\_\_\_ day of \_\_\_\_\_ 2006

Examined and approved as to content  
this \_\_\_\_\_ day of \_\_\_\_\_ 2006

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Assistant City Attorney

1047-2005-1199v4

# stossLANDSCAPEURBANISM

51 melcher st #601 boston ma 02210 usa t 617 832 0660 f 617 832 0670 stoss.net

29 January 2006

**Tom Miller**  
**City of Milwaukee**

Department of Public Works  
841 N Broadway Room 501  
Milwaukee WI 53202

Project: **Erie Street Plaza Full Design Services**  
StoSS Project #: MKE0601

Dear Tom:

We are pleased to submit this proposal for Professional Services in connection with the project referenced above.

This agreement is by and between StoSS inc. (hereinafter "StoSS") and the City of Milwaukee (hereinafter "Client").

## SCOPE OF SERVICES

A. StoSS shall provide professional services on the Project referenced above, the extent of which is defined as the publicly owned right of way in the City of Milwaukee bordered by Erie Street on the northeast; the Federal Shipping Channel on the south; the Milwaukee River on the west; and by a private development on the northwest (see attached plan titled "Erie Street Plaza Limit of Work"). The project will be based upon the winning design of the Erie Street Plaza Design Competition (see attached drawing entitled "Erie Street Plaza Winning Design").

The scope of these services shall include:

1. Finish grading and surface drainage of pedestrian pavements and planting areas.
2. Pedestrian pavements.
3. Landscape walls, steps, railings and related site structural elements not a part of the buildings.
4. Fences, decks and seating devices.
5. Site furniture.
6. Selection and location of fixtures for site lighting.
7. Planting and soil preparation.
8. Irrigation
9. Travel to meetings and site visits as specified below.

B. StoSS will retain and direct the services of registered professional consulting engineers for:

1. Urban design: Vetter Denk Architecture
2. Structural engineering: Graef Anhalt Schloemer and Associates
3. Mechanical, electrical and plumbing engineering: Graef Anhalt Schloemer and Associates.
4. Civil engineering: Graef Anhalt Schloemer and Associates.
5. Geotechnical engineering: Graef Anhalt Schloemer and Associates.
6. Urban Ecology: Graef Anhalt Schloemer and Associates.

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## 7. Lighting Design: TBD

C. The contribution of StoSS to the project shall be limited to areas of design and aesthetics and StoSS does not assume responsibility for the work of others in the production of construction documents and the sufficiency thereof necessary to the execution of the work.

D. Design of Scope Items shall not include structural provisions for support of such items in the structure of nearby buildings or structures; penetrations of the structure of buildings for structural, mechanical or electrical connections; actual connection to the structural, mechanical and electrical systems of the building; or for waterproofing of the structure or of penetrations of the structure.

## PROCEDURE

### Working Drawings

**8-12 weeks**

Upon Client's approval of the design development plans and preliminary cost estimate, StoSS will develop drawings and technical sections of specifications to construct the work and shall prepare a final estimate of construction cost. Client shall be responsible for Bidding and Contract Requirements and General Requirements divisions of the specifications.

StoSS shall assist Client in filing the appropriate plans and documents which are required to secure the necessary design approvals from the various governmental agencies having jurisdiction over the project, but Client shall be solely responsible for securing all such approvals. StoSS shall prepare working drawings and technical sections of specifications to conform to applicable codes and regulations of governmental bodies having jurisdiction over the work.

In developing working drawings and technical sections of specifications, StoSS shall coordinate with other consultants as required and shall use its best efforts to maintain a construction budget in accordance with the preliminary design estimate of \$644,000. When the final estimate of construction cost is one hundred ten percent (110%) of the preliminary budget estimate, or less, the final estimate will be acceptable to Client.

StoSS shall travel to participate in two meetings with the Client and one additional meeting with the project team during this phase of the project.

### Bid

**2 weeks**

StoSS shall attend one bid meeting and shall assist the City in responding to requests for information as potential contractors assemble their bids.

### Construction Observation

**8-16 weeks**

StoSS shall make periodic visits to the site to familiarize itself generally with the progress and quality of construction and to determine in general if the construction is proceeding in accordance with StoSS design intent and construction documents. On the basis of its observations while at the site, StoSS will keep Client informed of the progress of construction. StoSS may condemn work failing to conform to the contract documents. StoSS shall prepare and issue change orders only with prior approval of Client.

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StoSS shall endeavor to secure compliance by the contractor to the plans and specifications. StoSS shall not be responsible for construction means, methods, techniques, sequences or procedures in connection with the work and StoSS shall not be responsible for the contractor's errors of omission or failure to carry out the work in accordance with the contract documents.

StoSS shall travel to Milwaukee 3 times during the construction observation process to monitor construction progress. StoSS's representatives will be available on a more regular basis to observe and monitor construction progress.

## **EXCLUSIONS TO SCOPE OF SERVICES**

Client shall provide the following information or services as required for performance of the work. StoSS assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should StoSS be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Extra Services.

- A. Topography and boundary surveys, including accurate information on water levels.
- B. Legal descriptions of property.
- C. Soils testing and/or engineering and utility base information.
- D. Existing site engineering and utility base information.
- E. Geotechnical investigations.
- F. Tests, inspections, and reports required by law or the construction documents, including structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- G. Overhead aerial photographs at controlled scale.
- H. Engineering other than that provided with the Scope of Services, including environmental engineering services required to assess and remedy hazardous waste on site.
- I. Permit applications.
- J. River hydrology and hydraulics modeling.
- K. Inspection and reports of existing bulkhead walls.
- L. All design and engineering services necessitated by removal or reconstruction of the existing bulkhead wall along the Milwaukee River to the west and the Federal Navigation Channel to the south. This Scope of Services assumes that the existing bulkhead wall has a minimum 25-year life and will remain in place.
- M. Design and engineering of navigational structures, aids, lighting, etc.
- N. Design and engineering of docks, piers, and marina facilities, including water supply, power supply, fuel supply, and sewage.
- O. Design and engineering of ornamental pools, fountains, water features, and drinking fountains.

## **CONSTRUCTION BUDGETS**

- A. The proposed construction budget for all items of work under the Scope of Services shall be established as \$644,000.
- B. In the event that this development budget is reduced by more than 10% between the time of approval of the design development and the time of award of a construction contract, cost of

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modification of drawings and specifications to meet the reduced project budget shall be considered Extra Services.

## FEES AND TERMS

Services described above shall be provided for the fixed sum of **US\$90,000.00** in accordance with the terms and conditions in Appendix A attached hereto and which is incorporated and made part of this Agreement by reference. Fees and expenses are broken down roughly as follows:

Working Drawings Phase	\$x
Bid Phase	\$x
Construction Observation Phase	\$x
Travel Expenses	\$12,000

We would be pleased to answer questions you may have or to clarify various points above. If this proposal meets with your approval, please sign below and return one copy for our files.

Sincerely,

**Chris Reed**  
President and Principal  
StoSS inc.

Accepted: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## APPENDIX A

Appended to and part of Agreement for Professional Services between StoSS and the City of Milwaukee dated 29 January 2006.

### FEE FOR PROFESSIONAL SERVICES

Services outlined under the Scope of Services or under Extra Services shall be provided on a time basis computed as follows:

	Rate
Reed	\$130.00/hour
Project Manager / Senior Staff	\$100.00-\$110.00/hour
Staff	\$50.00-85.00/hour
Intern	\$40.00-45.00/hour

All of these rates are current for six months from the date of the Agreement for Professional Services, but may be increased subsequently without written notice.

Services outlined under the Scope of Services shall be provided for the fixed sum stipulated in the Agreement for Professional Services.

### REIMBURSABLE COSTS

The following costs shall be reimbursed and are not included in the Fee for Professional Services:

- A. Cost of copies of drawings, specifications, reports and cost estimates; xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this Contract. No receipts for reimbursables under \$25.00 will be submitted.
- B. Costs of commercial carrier and public transportation, lodging, car rental and parking, subsistence and out-of-pocket expenses. Private automobile travel at \$0.485 per mile.
- C. Cost of postage and shipping expenses other than first class mail.
- D. Long distance telephone charges, fax charges.
- E. Photographic services, film processing.
- F. Cost of models, special renderings, promotional photography, special process printing, special equipment, special printed reports or publications, maps and documents approved in advance by Client.
- G. Fees for additional special consultants retained with approval of Client.
- H. A 10% administrative fee will be added to all reimbursable expenses.

### EXTRA SERVICES

- A. Extra Services shall be provided on a time basis using rate schedule at front of Appendix.
- B. Extra Services include but are not limited to:
  1. Making planning surveys, feasibility studies, and special analyses of Client's needs to clarify his requirements for the project programming.
  2. Master Planning.

3. Revisions and changes in approved drawings and the preparation of alternates or deductive change orders requested by the Client.
4. Plan preparation for and construction observation of portions of a Project let on segregated bid basis or to be phased during construction.
5. Services with respect to replacement of any work damaged during construction.
6. Services required as a result of the default or insolvency of contractor.
7. Preparation of record drawings or of measured drawings of existing conditions.
8. Providing prolonged contract observation should the construction time be substantially extended through no fault of StoSS.
9. Work extending past the duration described in the Agreement to which this appendix is appended.
10. Additional trips beyond those listed in the Agreement to which this appendix is appended.
11. Work products other than those described in the Agreement.
12. Fees for additional special consultants, including environmental engineers, retained with approval of Client.

## **STATEMENTS**

Fees for Professional Services and Reimbursable Costs shall be billed monthly.

## **STATEMENT AND PROGRESS PAYMENTS**

- A. For the fees outlined above, we shall submit monthly invoices for progress payment based upon percentage or work complete. The cumulative total of these progress payments shall not exceed the limits established in the following table.

Working Drawings complete	x% of fee
Bid Phase complete	x% of fee
Construction complete	100% of fee

- B. Reimbursable Costs shall be billed monthly with fee invoices.

## **OWNERSHIP OF DOCUMENTS**

The City shall own the drawings and other documents delivered as products under this contract. Drawings, specifications, models, and other documents, including those in electronic form, prepared by StoSS are Instruments of Service. StoSS shall be deemed the author of StoSS's Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Upon execution of this Agreement, StoSS grants to the City a non-exclusive license to reproduce StoSS's Instruments of Service as the City deems necessary for public purposes. The City shall not utilize the Instruments of Service for for-profit reasons without the written consent of StoSS.

## **CREDIT/ACKNOWLEDGEMENTS**

StoSS shall be given proper credit and acknowledgement for all services including but not limited to: planning, design and implementation. Proper credit shall be defined as being named by Client or their Agent in such circumstances as project identification boards, published articles or promotional brochures.

# stossLU

## **TERMINATION BY STOSS**

It is understood that these services may be terminated by StoSS for cause or convenience upon 10 days written notice. In this event, StoSS shall be compensated for all work performed prior to date of termination at the rates set forth above.

## **RECIPROCAL INDEMNIFICATION**

In case any action in court, claim, or proceeding before an administrative agency is brought against StoSS or any of its officers, agents, or employees for the failure, omission, or neglect of the City, or any of its officers, agents, or employees, in whole or in part, to perform any of its covenants, acts, matters, or things by this Agreement undertaken or for injury or damage caused by the negligence of the City, its officers, agents, and employees, the City shall defend, indemnify and save harmless StoSS and its officers, agents, and employees from all losses, damages, costs, expenses, judgments or decrees arising out of such action provided, however, that in no event that the City's total liability for loss (indemnity or defense) exceed City's pro rata share of all fault causing any injury or loss.

## **SUCCESSORS AND ASSIGNS**

It is understood and agreed that this Agreement shall be binding upon Clients and its successors and assigns and upon StoSS, its successors and assigns. Neither party shall assign nor transfer its interest in this Agreement or any part thereof without the written consent of the other party.

## **REVOCATION**

This proposal shall be considered revoked if acceptance is not received within 90 days of the date thereof.