

Contract Routing Form

ROUTING: Routine

printed on: 04/22/2008

Contract between: Wingra Shores, LLC
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: 2607 Monroe Street PUD

Contract No.: 2160
Enactment No.: RES-07-00821
Dollar Amount: 0.00

File No.: 07004
Enactment Date: 08/08/2007

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	4-22-2008	4-22-2008
Director of Civil Rights	4/24/08	4/24/08 MCO
Risk Manager	4-28-08	4/28/08 RTV
Comptroller <i>Randy</i>	4-28-08	4-28-08 RW
City Attorney <i>468</i>	4-28-08	6-04-08
Mayor	6.4.08	6.4.08

Please return signed Contracts to the City Clerk's Office
Room 103, City-County Building for filing.

Original + 1 Copies

04/22/2008 13:47:26 enkmr - Janet Dailey @ 261-9688

Dis Rights: OK / N/A / Problem - Hold
 Prev Wage: AA / Agency / No
 Contract Value: *Hold by Funds*
 AA Plan: *30 Days*
 Amendment / Addendum #
 Type: POS / *DVP* / Sbdv / Gov't /
 Grant / PW / Loan / Agrmt

Dailey, Janet

From: Dailey, Janet
Sent: Wednesday, June 04, 2008 3:33 PM
To: May, Michael
Subject: RE: Contract # 2160; 2607 Monroe Street

*OK
now.*

Hi,
well the bank finally got me the new LOC. Actually, an amendment to the existing LOC, but it does have the 60 day notice on it. I will drop this off at your office for inclusion with the contract. Sorry it took so long. Nothing is fast with the bank (and I'm sure they say the same with us).

Thanks

Janet

From: May, Michael
Sent: Tuesday, May 20, 2008 2:51 PM
To: Dailey, Janet
Subject: Contract # 2160; 2607 Monroe Street

Janet:

I called you on May 1 regarding the problems with the letters of credit on this project. I still haven't received new ones.

Mike

MPMay
Madison City Attorney



City of Madison

Legislative File ID **07004**

display
original
version

print

email

Type: **Resolution** Status: **Passed**
 Enactment Date: **8/8/2007** Enactment No.: **RES-07-00821**
 Title: **Approving plans and specifications for public improvements necessary for the project known as 2607 Monroe Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2160. (10th AD)**
 Controlling Body: **BOARD OF PUBLIC WORKS**
 Introduced: **7/11/2007** Version: **1**
 Final Action: **8/7/2007** Contact: **Marsha Hacker 608-264-9277**
 Name: **Approving plans and specifications for public improvements necessary for the project known as 2607 Monroe Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2160.**
 Extra Date 1:
 Requester: **BOARD OF PUBLIC WORKS**
 Sponsors: **Common Council By Request**
 Attachments: **Legislative File Text**

Legislative History

Date	Acting Body	Action Taken	Motion
7/11/2007	Engineering Division	Fiscal Note Required / Approval to the Comptroller's Office/Approval Group Completed on 7/16/2007	
7/16/2007	Comptroller's Office/Approval Group	Approved Fiscal Note By The Comptroller's Office to the BOARD OF PUBLIC WORKS Completed on 7/16/2007	
	<i>Notes: Franklin</i>		
7/18/2007	BOARD OF PUBLIC WORKS	Christy Bachmann, City Engineering, presented plans and specifications.	Pass
8/7/2007	COMMON COUNCIL	Adopt	Pass

powered by Daystar Computer Systems, Inc.



City of Madison

Legislative File Number 07004 (version 1)

Title

Approving plans and specifications for public improvements necessary for the project known as 2607 Monroe Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2160. (10th AD)

Body

WHEREAS, the developer, Wingra Shores, LLC, has received the City of Madison's approval for a Planned Unit Development (PUD) to demolish existing buildings and construct a new condominium building, and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances and the conditions of approval require the developer to install the public improvements necessary to serve the PUD.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a Development Agreement For 2607 Monroe Street PUD with Wingra Shores, LLC.
2. That the plans and specifications for the public improvements necessary to serve the PUD are hereby approved.
3. That the developer is authorized to construct the public improvements in accordance with the terms of the Development Agreement at the sole cost of the developer, except as follows: NONE
4. That the Mayor and City Clerk are hereby authorized to sign easements or right-of-way release or procurement documents as necessary and accept dedication of lands and/or easements from the Developer/Owner for public improvements located outside of existing public fee title or easement right-of-ways.

Fiscal Note

Private Contract, No City Funds Required.

**DEVELOPMENT AGREEMENT
2607 MONROE STREET PUD
CONTRACT NO. 2160
PROJECT NO. 53B2160**

MADISON, WISCONSIN

THIS AGREEMENT, made and entered into this 11 day of March, 2008, by and between Wingra Shores, LLC, hereinafter the "Developer", and the City of Madison, hereinafter the "City", a municipal corporation located in Dane County, Wisconsin.

RECITALS

1. WHEREAS, the Developer has received approval from the City for a PUD to demolish existing buildings and to construct a new condominium building at 2607 Monroe Street, a copy of which is incorporated by reference.
2. WHEREAS, Section 16.23(9) of the Madison General Ordinances (MGO) and the conditions of approval require that provisions be made for street improvements, including storm sewer, and other minor public infrastructure improvements to accommodate the Developer's project.
3. WHEREAS, the Developer intends to complete the installation of said public improvements with the Initial Construction Phase of said project and does not intend to complete any of said public improvements in subsequent construction phases.

DEVELOPMENT AGREEMENT

NOW, THEREFORE, the Developer and the City hereby agree as follows:

SECTION I - GENERAL CONDITIONS

A. Contractors Qualified By Board of Public Works

The Developer agrees to engage Contractors for all construction included in this agreement who shall be listed as qualified for such work by the Director of Public Works and who shall comply with every requirement of Section 23.01, M.G.O. (Minimum Wage Scale). The Developer shall furnish the City Engineer with the names of all Contractors and their subcontractors, with the classification of the work they perform, prior to any work beginning.

B. Nondiscrimination and Affirmative Action

(The term "Contractor" used in this paragraph shall be synonymous with the term "Developer" used in the remainder of this Agreement, and the term "Contract" shall be synonymous with the term "Agreement.")

1. Nondiscrimination. In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

2. The following section applies to all contractors employing fifteen (15) or more employees: (MGO 3.58(9)(c).)

The Contractor agrees that, within thirty (30) days after the effective date of this contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from this paragraph (B.2.) at the time the Request for Exemption under paragraph B.3. is made.

3. Request for Exemption, and Release of Payment:

The "ARTICLES OF AGREEMENT" in paragraph 4. below shall apply to this Agreement, unless the developer is determined to be exempt under the following table and

procedures. (If exempt, the ARTICLES OF AGREEMENT do not apply and Article IV may be left blank.)

NUMBER OF EMPLOYEES	LESS THAN \$25,000	\$25,000 OR MORE
	Aggregate Annual Business with the City*	Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the City Comptroller

** As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 3.58(9)(a)2.) Contractors who believe they are Exempt from the following "Articles of Agreement" according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights ("Department"), within thirty (30) days of the effective date of this Agreement. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the "Articles of Agreement" shall apply. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE "ARTICLES OF AGREEMENT" UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

RELEASE OF PAYMENT: (MGO 3.58(9)(e)1.b.) (Applies only to agreements that include payment to the contractor by the City.) All non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below, prior to release of payment. Contractors that are exempt under the Table above, must have a "Request for Exemption" form on-file with the Department, prior to release of payment by the City.

4. ARTICLES OF AGREEMENT:

Article I

The contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the contractor. The contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

Article II

The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

Article III

The contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

Article IV

(This article applies only to non-public works contracts).

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

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison Ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

Article V

(This article applies only to public works contracts).

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City, including the contract compliance requirements. The contractor agrees to submit the model affirmative action plan for public works contractors in a form approved by the Director of Affirmative Action.

Article VI

The contractor will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

Article VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

The contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance. (This article applies to public works contracts only).

Article IX

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

C. Preconstruction Meeting

The Developer further agrees to coordinate a preconstruction meeting with the City Construction Engineer.

D. Construction Plans

The Developer further agrees to work from Construction Plans that have been approved by the Common Council. The plan shall be prepared by the Developer or by the City Engineer from data submitted by the Developer, as determined by the City Engineer. The Developer shall note that Plan Commission approval of the project does not constitute approval of the improvements within the public right-of-way. Separate approval is required. The Plan shall be signed by the City Engineer.

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above-mentioned improvements without the City Engineer's and Water Utility Manager's approval of starting date and schedule.

F. Notification of Work

The Developer further agrees to notify the City Construction Engineer two (2) working days prior to beginning work or resuming work in the right-of-way.

G. Change Order to Work

The Developer further agrees that the City shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed in this or other written agreements between the City and the Developer.

H. Acceptance of Work

The Developer further agrees that the acceptance of public improvements is conditioned on completion of the following:

1. That all outstanding engineering and inspection charges indicated herein have been paid in full.
2. That affidavits and lien waivers are received by the City indicating that the Contractor has been paid in full for all work and materials furnished under this contract.
3. That a complete breakdown of costs incurred by the Developer is provided to the City for the following public improvement components in the public right of way and within public easements:
 - a. Streets including sidewalks, pavement marking, signage and street plantings.
 - b. Other items of work within the Public Right of Way.

The maintenance of specified public improvement components becomes the responsibility of the City upon acceptance of those components by the Common Council.

I. Time of Completion

All work specified herein shall be completed within eighteen (18) months from the date of this agreement by the Developer.

J. Indemnification and Insurance

To the fullest extent permitted by law, the Developer shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees, and consultants from and against all suits, claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease, death, personal injury, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and, (b) is caused in whole or in part by any negligent act or omission of the Developer, its Contractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law regardless of the negligence of any such party.

In any and all claims against the City, its officials, officers, agents, employees or consultants, by any employee of the Developer, its Contractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Developer hereunder shall not extend to the liability of the City's consultants or consultants' agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, and designs or specifications.

The Developer shall require all Contractors engaged in the construction of this project to maintain the insurance required by Section 107.4 of the City's Standard Specifications, and to submit a current Certificate of Insurance with the City Engineer.

K. Guarantee of the Work

The Developer agrees to guarantee all work performed under this contract, except tree and shrubbery planting, for a period of one year from the date of final acceptance by the City Common Council, against defects in workmanship or materials. If any defect should appear during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at his own expense. This expense includes total and complete restoration of any disturbed surface or component of the improvement to the standard provided in the plans and specifications, regardless of improvements on lands where the repairs or replacement is required.

The Developer agrees to guarantee all tree and shrubbery planting for a period of two years from the date of final acceptance by the City Common Council, in accordance with Section 209.6 of the City of Madison Standard Specifications for Public Works Construction.

L. Specifications for Improvement

The Developer agrees to install the improvements specified in this Agreement in accordance with the plans and specifications approved by the Common Council and in accordance with the City of Madison Standard Specifications for Public Works Construction and the following conditions:

1. Grading, Erosion Control, Barricades, and Traffic Control:
 - a. The Developer shall undertake the grading, erosion control and barricade requirements for streets whose right-of-way are contained within the subdivision

to subbase grades established by the City Engineer and approved by the Common Council, said grading shall include the grading of the terraces to a sidewalk grade established by the City Engineer and in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications.

- b. The Developer shall grade the terrace of those existing streets which abut the plat to a sidewalk grade or a grade established by the City Engineer, grade a ditch abutting said lots for temporary drainage and install culverts at driveway locations.
- c. The Developer shall grade vision clearance triangles on corner lots to a maximum height of two (2) feet above the proposed curb elevation within the triangular space formed by two intersecting street lines or their projections and a line adjoining said points on said street lines located a minimum of twenty-five (25) feet from such street intersections. No structures, screenings, plantings, or embankments of any kind are allowed within this triangular area if they violate Section 28.04(12)(e), M.G.O.
- d. The Developer shall furnish, install barricades, signs and other traffic control devices as specified by the City Traffic Engineer at all street ends.
- e. The Developer shall prepare a traffic control plan, which shall be submitted for approval to the Traffic Engineering Division. Work shall not begin until the traffic control plan is approved by the Traffic Engineering Division and a copy of the approved traffic control plan has been submitted to the Construction Engineer. The Developer shall furnish, install and maintain during construction, barricades, signs, pavement markings and other traffic control devices as specified on the approved traffic control plan or as directed by the City Traffic Engineer.
- f. The Developer shall obtain a Erosion Control and Stormwater Management Permit for the erosion and runoff control as required by Chapter 37, M.G.O. prior to the grading, utility installation or other land disturbance activity. A permit shall be obtained for each construction phase. The Developer shall adhere to conditions specified on the permit and grants the right-of-entry on the subdivision to designated personnel of the City to inspect and monitor compliance with this Agreement.

Prior to acceptance, the Developer shall submit a post construction erosion control plan to the City. This plan shall address erosion control in the interim between the completion of the public works improvements specified in this contract and ultimate development. The Developer shall install those facilities and structures required by the post development erosion control plan.

- g. The Developer shall not disturb, grade, fill or store materials on public property or property required to be dedicated, unless specifically approved by the City's representative. The Developer shall clean up, topsoil, seed and mulch any public property which is disturbed. The Developer shall grade, topsoil, seed and mulch all public or dedicated frontage at a 4:1 slope to meet existing grade, unless it is specified otherwise or permitted by the City's representative. The Developer shall provide and install any erosion control measures required on public property or property to be dedicated due to the grading specified in this contract.

2. Streets and Sidewalks:

- a. The Developer shall install Madison Standard One Course Concrete, Curb and Gutter and other types of curb and gutter as specified, Madison Standard Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement on all streets within the subdivision.

- b. The Developer shall install Madison Standard Sidewalk with Madison Standard Crosswalks on all streets abutting the subdivision (on the one side of the street abutting the plat).
3. Runoff Control Structures:

The Developer shall install the runoff control structures including related storm sewers required by the Erosion Control and Stormwater Management Permit and the plans and specifications approved by the City Engineer.

4. Section Corners:

All PLSS section and witness corners (including center of sections) situated within the subdivision, or within planned improvement areas for the development thereof, must be included in final survey data transmittal. Any PLSS section and/or witness corners, including center of sections, must be perpetuated by the Developer's contracted Professional Land Surveyor. In the event any PLSS section corner, including center of sections, are disturbed or destroyed as a result of any form of construction included in the private contract and private construction associated with this subdivision Development, the PLSS restoration must be completed by the Developer's contracted Professional Land Surveyor, at the sole cost of the Developer. New PLSS tie sheets must be filed by the contracted Professional Land Surveyor in accordance with Wisconsin Administrative Code AE-7.08.

5. Signs:

The Developer shall pay all costs associated with the installation of all traffic signs and structures as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection and engineering. The Developer following the provisions in the Standard Specifications for Public Works Construction may install temporary street name signs.

6. Pavement Markings:

The Developer shall pay all costs associated with the installation of all pavement markings as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection, and engineering.

M. Fees Payable Prior to Construction

The Developer agrees to pay the City the following charges prior to construction beginning:

1. All outstanding area charges levied against the project by the City and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities.

N. Developer to Reimburse the City for Costs Sustained

1. The Developer shall reimburse the City for its actual cost of design, inspection, testing, construction, and associated legal and real estate expenses for the required public improvements for the project. The City's expenses shall be determined as follows:
 - a. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
 - b. The cost of City equipment employed.

- c. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 20% of the cost of the materials.
 - d. All consultant fees associated with the project at the invoiced amount plus 10% for administration.
2. The Developer shall advance to the City the following payments/deposits:

- a. An amount equal to an estimate of the City's expenses, as prepared by the participating City Divisions/Departments, at the time the Developer files a Development Agreement. At the conclusion of the project, the respective agencies shall bill the actual cost to the Developer. In the event that the actual cost is calculated to be less than the advanced amount, the difference shall be refunded to the Developer. In the event the advance is less than the actual amount, the Developer shall be billed the difference and payment shall be a condition precedent to acceptance of any major components of construction. The estimated cost of services to be performed by the City is as follows:

City Engineering Division \$ 2,300.00 (Make check payable to City of Madison).

- b. A deposit to secure inspection.

City Engineering Division \$ 2,000.00 (Make check payable to City of Madison).

O. Surety

- 1. The Developer agrees to furnish the City with corporate bond, certified check, official check or irrevocable letter of credit in the amount of \$ 27,000.00 to secure performance of this agreement.
- 2. Upon acceptance by the City Common Council of the improvements constructed as part of this agreement, the City agrees to reduce the surety to an amount equal to an estimate of the City Engineer to secure performance of the guarantee described in this agreement.
- 3. If the Developer provides a certified or official check to secure performance of this contract, the Developer agrees that the City may deposit the check in an interest bearing account and retain all interest accruing to such a deposit."

P. Developer's Designated Project Coordinator

The Developer hereby appoints Randy Bruce, Knothe & Bruce Architects, LLC (836-3690) as the Project Coordinator, said individual who shall act as the Developer's representative during the Construction Phase of the installation of these improvements.

Q. Penalties

The Developer further agrees that failure to comply with the provisions of this agreement shall have the following results:

- 1. Forfeiture of all payments/deposits under Par. N, and
- 2. Extension of the guarantee in Par. K to two (2) years, and
- 3. The City holding the surety in Par. O until such time as the guarantee expires.

SECTION II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall remove and replace curb and gutter, sidewalk and pavement, close existing driveways, construct new driveways on Monroe Street and Knickerbocker Street, in accordance with plans prepared and approved by the City Engineer.
- B. Any pavement damaged as a result of this development shall be replaced according to the City's criteria for pavement patching. The Developer shall replace any sidewalk or curb and gutter that abuts the property that is damaged by construction or any sidewalk and curb and gutter in which the City Engineer determines needs to be replaced because it is not at a desirable grade, regardless of whether the condition existed prior to beginning construction.
- C. The Developer shall construct public sidewalk along Arbor Drive in accordance with the plans approved by the City Engineer.
- D. The Developer's Contractor shall obtain a *Street Excavation Permit* for installation or abandonment of utility connections to serve this site.

IN WITNESS WHEREOF, the parties hereto have set their hand(s) at Madison, Wisconsin, this 17 day of March, 2008.

WITNESS:

Shanda Kennedy
James G. Edwards

WITNESS:

Shanda Sulphore
David J. Cieslewicz

WINGRA SHORES, LLC

BY: [Signature]

CITY OF MADISON, WISCONSIN

David J. Cieslewicz, Mayor

Maribeth Witzel-Behl
Maribeth Witzel-Behl, City Clerk

APPROVED AS TO FORM:

Michael May, City Attorney

COUNTERSIGNED

Dean Brasser, City Comptroller



M&I Marshall & Ilsley Bank
Global Trade Services
770 North Water Street
Milwaukee, WI 53202-3509
414-765-7700

ORIGINAL

Date: June 3, 2008

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NO. SB 55521

BENEFICIARY:

City of Madison
Engineering Division
210 Martin Luther King Jr. Blvd
Room 115
Madison, WI 53703

APPLICANT:

Wingra Shores, LLC
2702 Monroe St
Madison, WI 53711

Attn: Larry D. Nelson, City Engineer

We hereby amend our Irrevocable Standby Letter of Credit No. SB 55521 dated March 25, 2008 as follows:

QUOTE:

This is Amendment No. One (1).

Page 1, add the following paragraph: "As a condition of this Letter of Credit, M&I Marshall & Ilsley Bank will provide you written notice ("Proper Notice") of the expiry date, not less than 60 (sixty) calendar days prior to such expiry date. If our Proper Notice is not given within the time specified, this Letter of Credit will terminate 60 (sixty) calendar days after our Proper Notice to the City of Madison."

All other terms and conditions remain the same.

UNQUOTE.

This Amendment becomes an integral part of the original Letter of Credit and must be attached thereto.

M&I MARSHALL & ILSLEY BANK



Authorized Signature



RECEIVED MAR 26 2008

M&I Marshall & Isley Bank
Global Trade Services
770 North Water Street
Milwaukee, WI 53202-3509
414-765-7700

ORIGINAL

Date: March 25, 2008

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SB 55521

BENEFICIARY:

City of Madison
Engineering Division
210 Martin Luther King Jr. Blvd
Room 115
Madison, WI 53703

APPLICANT:

Wingra Shores, LLC
2702 Monroe St
Madison, WI 53711

Attn: Larry D. Nelson, City Engineer

MAXIMUM AMOUNT:

USD27,000.00

**EXPIRATION DATE AT OUR
GLOBAL TRADE SERVICES:**

September 11, 2009

We hereby open our Irrevocable Standby Letter of Credit No. SB 55521 ("Letter of Credit") in your favor, which is available at SIGHT up to the amount of USD27,000.00 (the "Maximum Amount"), upon presentation of the following documents:

- A) This original Letter of Credit and any subsequent Amendment(s). All Amendment(s) must indicate whether they are approved or refused by the Beneficiary at time of drawing. **AND**
- B) Beneficiary's statement, on its letterhead, completed, dated and signed by an authorized individual, stating: "Wingra Shores, LLC has failed to comply with the terms of the Development Agreement for Project #53B2160 between Wingra Shores, LLC and the City of Madison. We are drawing for USD _____, under Letter of Credit No. SB 55521. Please wire proceeds to us: _____."

Multiple drawings are allowed. If a drawing is presented and paid, the original Letter of Credit will be endorsed and returned to you. If your drawing exhausts the Maximum Amount, we will retain the Letter of Credit.

All banking fees incurred, other than those of the issuing bank, are for the account of the Beneficiary. If discrepant documents are presented and drawing is honored, our discrepancy fees will be deducted from the proceeds.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Letter of Credit, except only the International Standby Practices referred to herein, and any such reference shall not be deemed to incorporate herein any reference to a document, instrument or agreement.

Continued on Page 2.



M&I Marshall & Ilsley Bank
Global Trade Services
770 North Water Street
Milwaukee, WI 53202-3509
414-765-7700

ORIGINAL

Page 2, of Letter of Credit No. SB 55521.

This Letter of Credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590, and as to matters not governed by ISP98 shall be construed and enforced in accordance with the laws of the State of Wisconsin. In the event of inconsistency, the latter shall take precedence.

Pursuant to U. S. Law, we are prohibited from issuing, transferring, accepting or paying letters of credit to any party or entity identified by the Office of Foreign Assets Control, U. S. Department of Treasury, or subject to the Denial of Export Privileges by the U. S. Department of Commerce.

Presentation and payment of your drawing(s) under this Letter of Credit are restricted M&I Marshall & Ilsley Bank, Attn: Global Trade Services, 770 N. Water Street, 10th floor, Milwaukee, WI 53202.

We agree with you to honor your drawing(s) when presented in compliance with the terms of this Letter of Credit when received at M&I Marshall & Ilsley Bank, Attn: Global Trade Services, 770 N. Water Street, 10th Floor, Milwaukee, WI 53202, prior to 4:00 PM, Milwaukee time, Monday through Friday, on or before the current Expiration Date, upon which date this Letter of Credit expires even if this original Letter of Credit and Amendment(s), if any, are not returned to M&I Marshall & Ilsley Bank, Attn: Global Trade Services.

If you return this original Letter of Credit and Amendment(s) prior to the then current Expiration Date with your intent to terminate same, it must be accompanied by your originally signed letter, addressed to M&I Marshall & Ilsley Bank, indicating you no longer require this Letter of Credit and release M&I Marshall & Ilsley Bank of any obligation thereunder.

M&I MARSHALL & ILSLEY BANK



Authorized Signature

S:\LC\STANDBY ISSUANCES\SB 55000-56000\sb55521.doc



LIST OF AUTHORIZED SIGNATURES

770 North Water Street/Milwaukee, Wisconsin 53202 U.S.A.

Global Trade Services

Phone 414 765-7700
S.W.I.F.T. MARLUS 44

We are pleased to furnish you with our latest list of authorized signatures for our correspondent banks. This list does not include the names and facsimile signatures of all officers and employees authorized to sign on behalf of our Bank but is limited to signatures of those who may sign individually any and all letters of credit issued or confirmed, checks, drafts, foreign exchange confirmations and/or orders drawn on this bank or any of its depositories.

Any person in Group A is also authorized to sign correspondence and reconcilements in connection with the Audit Services Division.

This will supersede all lists of signatures previously issued. In case of changes, supplemental information may be forwarded to you.

Yours respectfully,
M&I Marshall & Ilsley Bank

Patricia R. Justiliano
Senior Vice President & Corporate Controller

Group A

Signatures of Officers & Employees with Unlimited Authority

1. Lori A. Brauer

2. Ann M. Benschoter

3. David T. Braam

4. Robert J. Buerger

5. Gail A. Drost

6. M.F. Furlong

7. Randall J. Erickson

8. Keith S. Gores

9. Mark Hogan

10. Thomas R. Johnson

11. P. Klaffenboeck

12. Nicholas J. Knobel

RECEIVED MAR 18 2008

PROJECT NO. 53B2160

PROJECT NAME: 2607 MONROE STREET PUD

- Attend Development Schedule Meeting with City Engineering Staff. Contact Janet Dailey at 608—261-9688.
- Sign Development Agreement
- Check one of the following:
 - Submit Survey data to City Engineer for preparation of Plan (Contact Jim Wolfe at 608—266-4099)
 - Submit Plan to City Engineer for review and approval (Contact Jim Wolfe at 608— 266-4099)
- Only work off approved Plan – (NOTE: Separate approval is required. Plan Commission Approval of the project does not constitute approval of the improvements within the right-of-way)
- Set up Preconstruction Meeting with John Fahrney, (608—266-9091) City Construction Engineer
- Submit Subcontractors List for Approval on form provided by City Engineer (Contact Janet Dailey at 608—261-9688)
- Notify City Construction Engineer two (2) working days prior to beginning work or resuming work within the public right-of-way. (Contact John Fahrney 608—266-9091).
- Obtain Punch List from City Construction Engineer and complete punch list items
- Complete Warranty work to allow elimination of Surety.

I, Wingra Shores, LLC, as Developer of 2607 Monroe Street PUD, understand the contract I execute with the City of Madison for Improvements within the right-of-way requires me to follow the above procedure. I further understand that failure to follow the procedure will result in penalties as outlined in the Contract and may result in additional consequences as outlined in the Contract.



Developer's Signature/Name

Date: 3/17/08