

Contract Routing Form

printed on: 04/22/2008

ROUTING: Routine

Contract between: Marsh Road Development Corporation
 and Dept. or Division: Engineering Division
 Name/Phone Number:

Project: Tradesmen Commerce Park

Contract No.: 2189
 Enactment No.: RES-08-00383
 Dollar Amount: 0.00

File No.: 09562
 Enactment Date: 04/11/2008

(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 MOD
Risk Manager	4-28-08	4/28/08 ETV
Comptroller <i>Randy</i>	4-28-08	4-28-08 RW
City Attorney <i>469</i>	4-28-08	5-14-08
Mayor	5-15-08	5-15-08

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

Original + 1 Copies

04/22/2008 13:46:00 enkmr - Janet Dailey @ 261-9688

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



City of Madison

Legislative File ID **09562**

display
original
version

print

email

Type: **Resolution** Status: **Passed**
 Enactment Date: **4/11/2008** Enactment No.: **RES-08-00383**
 Title: **Approving plans and specifications for public improvements necessary for the Subdivision known as Tradesmen Commerce Park and authorizing construction to be undertaken by the Developer, Private Contract No. 2189. (16th AD)**
 Controlling Body: **BOARD OF PUBLIC WORKS**
 Introduced: **3/12/2008** Version: **1**
 Final Action: **4/8/2008** Contact: **mhacker@cityofmadison.com**
 Name: **Approving plans and specifications for public improvements necessary for the Subdivision known as Tradesmen Commerce Park and authorizing construction to be undertaken by the Developer, Private Contract No. 2189.**
 Extra Date 1:
 Requester: **BOARD OF PUBLIC WORKS**
 Sponsors: **BOARD OF PUBLIC WORKS**
 Attachments: **Legislative File Text**

Legislative History (* Unpublished Data)

Date	Acting Body	Action Taken	Motion
3/26/2008	BOARD OF PUBLIC WORKS	A motion was made by Palm, seconded by Duren, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by voice vote/other.	Pass
4/8/2008	<i>Notes: Unpublished Meeting Data Pending*</i>		

Approvals

Approver	Date	Approval Status
Craig Franklin	3/27/2008	Approved

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City of Madison

Legislative File Number 09562 (version 1)

Title

Approving plans and specifications for public improvements necessary for the Subdivision known as Tradesmen Commerce Park and authorizing construction to be undertaken by the Developer, Private Contract No. 2189. (16th AD)

Body

WHEREAS, the developer, Marsh Road Development Corporation, has received the City of Madison's approval to create the subdivision known as Tradesmen Commerce Park; and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances requires the developer to install the public improvements necessary to serve the subdivision.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a contract for the construction of public improvements that will be accepted by the City for Tradesmen Commerce Park with Marsh Road Development Corporation.
2. That the plans and specifications for the public improvements necessary to serve the subdivision are hereby approved.
3. That the developer is authorized to construct the public improvements in accordance with the terms of the contract for the construction of public improvements that will be accepted by the City at the sole cost of the developer, except as follows: NONE
4. That the Mayor and City Clerk are hereby authorized to 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.

**Wisconsin Office of the Commissioner of Insurance
Licensed Producer Search***

Tuesday, April 29, 2008

[Print Report](#)

SMITH, JULIE A
FORT ATKINSON WI

Year of Birth: 1970
Status: Active
License Number: 2323835
NPN**: 6506009
Effective Date: 11-13-1992
Expiration Date: 08-31-2008
License Type: Resident Intermediary Indv
CE Compliance: 08-31-2008

Lines of Authority

Line of Authority	Residency	Effective Date	Status
Accident & Health	Resident	11-14-1997	Active
Life	Resident	11-14-1997	Active
Casualty	Resident	11-13-1992	Active
Property	Resident	11-13-1992	Active

Appointments and Terminations

Company Name	Qualification Type/Status	Effective Date	Termination Date	Termination Reason
Accident Fund General Insurance Company	CAS/Active	07-24-2007		
Accident Fund Insurance Company of America	CAS/Active	07-24-2007		
Accident Fund National Insurance Company	CAS/Active	07-24-2007		
ACUITY, A Mutual Insurance Company	CAS/Active PROP/Active	04-25-2006 04-25-2006		
Affirmative Insurance Company	PROP/Inactive	08-13-1996	07-03-1998	Vol. Surrender per Agent Rqst
	CAS/Inactive	08-13-1996	07-03-1998	Vol. Surrender per Agent Rqst
Allied Mutual Insurance Company	AH/Inactive	04-09-1996	10-01-1998	Company Merger
	PROP/Inactive	04-09-1996	10-01-1998	Company Merger
	CAS/Inactive	04-09-1996	10-01-1998	Company Merger
AMCO Insurance Company	AH/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst
	PROP/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst

	CAS/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst
American Casualty Company of Reading, Pennsylvania	AH/Inactive	06-08-1999	07-18-2005	Inadequate Production
	CAS/Inactive	06-08-1999	07-06-2005	Inadequate Production
	CAS/Inactive	09-30-2005	09-30-2005	Inadequate Production
	PROP/Inactive	09-30-2005	09-30-2005	Inadequate Production
	PROP/Inactive	06-08-1999	07-06-2005	Inadequate Production
American Fire and Casualty Company	PROP/Active	09-26-2007		
	CAS/Active	09-26-2007		
American Medical Security Life Insurance Company	LI/Inactive	11-16-2001	12-13-2004	Canceled
American Zurich Insurance Company	PROP/Active	07-26-2007		
	CAS/Active	07-26-2007		
Anthem Life Insurance Company	AH/Active	09-11-2006		
	LI/Active	09-11-2006		
Artisan and Truckers Casualty Company	PROP/Active	01-15-2008		
	CAS/Active	01-15-2008		
Assurance Company of America	PROP/Active	07-26-2007		
	CAS/Active	07-26-2007		
Automobile Insurance Company of Hartford, Connecticut, The	AH/Inactive	06-14-2001	11-13-2007	Canceled
	PROP/Inactive	06-14-2001	09-26-2007	Vol. Surrender per Agent Rqst
	CAS/Inactive	06-14-2001	09-26-2007	Vol. Surrender per Agent Rqst
Badger Mutual Insurance Company	PROP/Active	07-17-2007		
	CAS/Active	07-17-2007		
Berkley Regional Insurance Company	CAS/Active	07-11-2005		
	PROP/Active	07-11-2005		
Blue Cross Blue Shield of Wisconsin	AH/Active	11-15-2001		
Capitol Indemnity Corporation	AH/Active	07-21-1994		
	PROP/Active	07-21-1994		
	CAS/Active	07-21-1994		
Charter Oak Fire Insurance Company, The	AH/Inactive	07-28-1997	11-13-2007	Canceled
	PROP/Inactive	07-28-1997	09-26-2007	Vol. Surrender per Agent Rqst
	CAS/Inactive	07-28-1997	09-26-2007	Vol. Surrender per Agent Rqst
Chubb Indemnity Insurance Company	CAS/Inactive	08-01-1995	02-25-1997	Vol. Surrender per Agent Rqst
	PROP/Inactive	09-21-1999	06-15-2000	Vol. Surrender per Agent Rqst

	CAS/Inactive	09-21-1999	06-15-2000	Vol. Surrender per Agent Rqst
	PROP/Inactive	08-01-1995	02-25-1997	Vol. Surrender per Agent Rqst
Cincinnati Casualty Company, The	AH/Active	03-08-1996		
	PROP/Inactive	03-08-1996	07-30-2007	Canceled
	CAS/Inactive	03-08-1996	07-30-2007	Canceled
Cincinnati Indemnity Company, The	PROP/Inactive	03-08-1996	07-30-2007	Canceled
	CAS/Inactive	03-08-1996	07-30-2007	Canceled
Cincinnati Insurance Company, The	AH/Active	10-27-1994		
	PROP/Inactive	10-27-1994	07-30-2007	Canceled
	CAS/Inactive	10-27-1994	07-30-2007	Canceled
Cincinnati Life Insurance Company, The	LI/Inactive	02-07-2000	07-30-2007	Canceled
	AH/Inactive	02-07-2000	07-30-2007	Canceled
Colonial American Casualty and Surety Company	PROP/Active	05-11-2001		
	CAS/Active	05-11-2001		
Compcare Health Services Insurance Corporation	AH/Active	11-15-2001		
Consolidated Insurance Company	CAS/Active	03-04-2008		
	PROP/Active	03-04-2008		
	CAS/Inactive	04-21-1995	06-03-1997	Vol. Surrender per Agent Rqst
	AH/Inactive	04-21-1995	06-03-1997	Vol. Surrender per Agent Rqst
	PROP/Inactive	04-21-1995	06-03-1997	Vol. Surrender per Agent Rqst
Continental Casualty Company	AH/Inactive	06-08-1999	07-18-2005	Inadequate Production
	PROP/Inactive	06-08-1999	09-29-2005	Inadequate Production
	CAS/Inactive	06-08-1999	09-29-2005	Inadequate Production
Continental Western Insurance Company	PROP/Active	07-31-2007		
	CAS/Active	07-31-2007		
Dean Health Insurance, Inc.	LI/Inactive	02-02-1999	09-10-2001	Vol. Surrender per Agent Rqst
	AH/Inactive	02-02-1999	09-10-2001	Vol. Surrender per Agent Rqst
Dean Health Plan, Inc.	AH/Inactive	04-08-1998	04-09-2002	Canceled
Delta Dental of Wisconsin, Inc.	AH/Active	03-31-1998		
Depositors Insurance Company	AH/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst

	PROP/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst
	CAS/Inactive	04-09-1996	04-27-2000	Vol. Surrender per Agent Rqst
EMC Property & Casualty Company	PROP/Active	07-19-2007		
	CAS/Active	07-19-2007		
Emcasco Insurance Company	PROP/Active	07-19-2007		
	CAS/Active	07-19-2007		
Employers Mutual Casualty Company	PROP/Active	07-19-2007		
	CAS/Active	07-19-2007		
EPIC Life Insurance Company, The	LI/Inactive	12-15-1997	08-08-2007	Canceled
	AH/Inactive	12-15-1997	08-08-2007	Canceled
Executive Risk Indemnity Inc.	PROP/Inactive	11-28-2005	08-02-2007	Canceled
	CAS/Inactive	11-28-2005	08-02-2007	Canceled
Farmington Casualty Company	AH/Inactive	07-28-1997	11-20-2000	Vol. Surrender per Agent Rqst
	PROP/Inactive	07-28-1997	11-20-2000	Vol. Surrender per Agent Rqst
	CAS/Inactive	07-28-1997	11-20-2000	Vol. Surrender per Agent Rqst
Federal Insurance Company	AH/Active	09-21-1999		
	CAS/Inactive	01-25-1994	02-25-1997	Vol. Surrender per Agent Rqst
	PROP/Inactive	09-21-1999	08-02-2007	Canceled
	CAS/Inactive	09-21-1999	08-02-2007	Canceled
	AH/Inactive	01-25-1994	02-25-1997	Vol. Surrender per Agent Rqst
	PROP/Inactive	01-25-1994	02-25-1997	Vol. Surrender per Agent Rqst
Fidelity and Deposit Company of Maryland	PROP/Active	11-24-1992		
	CAS/Active	11-24-1992		
Fidelity and Guaranty Insurance Company	PROP/Inactive	07-21-1994	12-18-2003	Vol. Surrender per Agent Rqst
	CAS/Inactive	07-21-1994	08-01-2004	Vol. Surrender per Agent Rqst
Fidelity and Guaranty Insurance Underwriters, Inc.	CAS/Inactive	07-21-1994	08-01-2004	Vol. Surrender per Agent Rqst
	AH/Inactive	07-21-1994	08-01-2004	Vol. Surrender per Agent Rqst
	PROP/Inactive	07-21-1994	12-18-2003	Vol. Surrender per Agent Rqst
General Casualty Company of Wisconsin	PROP/Active	07-19-2007		
	CAS/Active	07-19-2007		

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
THAT WILL BE ACCEPTED BY THE CITY OF MADISON
TRADESMEN COMMERCE PARK
CONTRACT NO. 2189
PROJECT NO. 53B2189

MADISON, WISCONSIN**

THIS Contract for the Construction of Public Improvements that will be Accepted by the City (hereafter "Contract" or "Agreement") is made and entered into by Marsh Road Development Corporation of Middleton, Wisconsin, ("Developer" or "Contractor"), and the City of Madison, ("City"), a Wisconsin municipal corporation located in Dane County, Wisconsin. This Agreement is effective as of the date signed by the Mayor on behalf of the City.

RECITALS

1. WHEREAS, the Developer has received approval from the City for the Tradesmen Commerce Park subdivision, a copy of which is incorporated by reference.
2. WHEREAS, Section 16.23(9) of the Madison General Ordinances (MGO) requires that provisions be made for the installation of public sanitary sewer facilities, storm sewer and drainage system, water mains and water service laterals, the grading of public and private lands, erosion and stormwater runoff control, street improvements, street signs and pavement marking to serve the development. Section 16.23(9) also permits the installation of said public improvements by construction phases.
3. WHEREAS, the Developer proposes to complete the installation of the required public improvements to serve Lots 1-10 and Outlots 1-3, of said subdivision as "Initial Construction Phase" and does not intend to complete any of said public improvements in subsequent construction phases.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS THAT WILL BE ACCEPTED BY THE CITY:

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 39.02(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.

3. Articles of Agreement for Affirmative Action, Release of Payment:

The "ARTICLES OF AGREEMENT" below shall apply to this Agreement.

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) (Applies only to agreements that include payment to the contractor by the City.) All 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.

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 39.02(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 39.02(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 39.03 and 39.02 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. Sanitary sewer and sanitary sewer laterals.
 - b. Water main and laterals.
 - c. Storm sewer and storm water management facilities.
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Other items of work within the Public Right of Way.
4. That the water main is tested and a bacteriologically safe sample is obtained by testing at the local health department. The Water Utility will flush the main and obtain the samples required for this testing.

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, their agents, 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 of Madison Standard Specification for Public Works Construction*, 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 development 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 development 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. Sanitary Sewer Facilities:

- a. The Developer shall install sanitary sewer mains, sanitary sewer access structures and laterals to serve all lots within the development. No construction shall commence until plans and specifications have been approved by the Madison Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.
- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each sanitary sewer lateral. The City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.
- c. For all public sanitary sewer that is installed beyond the street construction limits of this development phase, the Developer shall be required to construct an interim crushed stone access road of sufficient width and depth to accommodate sewer cleaning, maintenance, and televising equipment, as required by the City Engineer. These requirements may also include a 'locked' barricade installation that allows entry by authorized sewer equipment and personnel. All costs associated with these interim improvements are the responsibility of the Developer.

3. Storm Sewer and Public Drainage System:

- a. The Developer shall install a public drainage system including all storm sewer mains, mainline structures, inlets, lateral pipes, greenways, culverts, and detention/retention basins in accordance with the plans approved by the City Engineer unless other arrangements have been approved by the City Engineer as detailed in the supplemental conditions. Any field changes by the City Engineer shall become part of the approved plan and shall be incorporated at the Developer's expense.

- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each storm sewer lateral. The Storm Sewer Electronic Markers shall be provided where non- metallic storm sewer pipe is installed in the public Right of Way, and where no access or inlet structures are available on the surface to allow the pipe to be visually located. City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.
- c. The detention/retention basin(s) shall be over-excavated and constructed to serve as an interim sediment trap. The volume of over excavation shall be calculated to collect the anticipated sediment from the plat over a minimum period of 2-years. In general, this over-excavation will be two (2) feet minimum. In the case of a retention basin, the minimum standard depth shall be seven (7) feet as measured from the normal water level. This will result in an initial depth of nine (9) feet.

This construction and all other erosion control measures shall be installed prior to any other plat grading or utility construction. An inspection and approval by the City Engineer must be obtained prior to start of other plat improvements.

- d. Upon completion of improvements, the detention/retention basin shall be reconstructed to the original approved design prior to acceptance by the City. Prior to beginning this reconstruction the Developer shall provide an as-built to the City Engineer such that the extent of the work to be completed can be determined. This as-built shall consist of cross sections of the pond including the "safety bench" and slopes of the banks, both above and below the water surface. Additionally, sufficient random shots shall be taken on the floor of the basin to determine how much (if any) dredging shall be required. The as-built submittal must be sealed by a Professional Land Surveyor or a Professional Engineer. The other components of the stormwater system may be accepted independently of the detention / retention basin. Final acceptance of basins or greenways seeded with Prairie mix, shall be delayed a minimum of (1) year to ensure proper seeding and stabilization has been achieved.
- e. Prior to the issuance of building permits, the Developer shall submit a master storm water drainage plan to the City Engineering Division for review and approval, in accordance with the conditions of Plat approval.

The master storm water drainage plan shall be submitted to City Engineering in digital format. The digital plan shall contain, at a minimum, lot corner elevations on an overlay of the recorded plat map of the development. Other information, as needed, such as contours and cross sections may be provided in either digital or hard copy. The digital record shall be provided using the state plane coordinate system - NAD 27.

No building permits shall be issued prior to City Engineering's approval of this plan.

- f. If the Developer chooses to have the detention/retention basin and/or greenway designed by his/her engineer, the Developer shall have those plans approved and provided to City Engineering a minimum of one week before the issuance date agreed to in the contract schedule. The plans shall be sealed by a

Professional Engineer and shall be on 11" x 17" sheets. Further, the plans shall be of sufficient detail to allow construction of the basin/greenway and shall include all seeding specifications (as approved by City Engineering), detail drawings and contour maps/cross sections of the basin/greenway. Plans shall not be issued until these sheets are provided and approved by City Engineering.

4. Water Mains and Water Service Laterals:

- a. The Developer shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the development and as required by the plans and specifications prepared by the Water Utility and approved by the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. All water service laterals three (3) inches and larger shall be completed with a controlling valve box. All materials used shall conform to *City of Madison Standard Specifications For Public Works Construction*. The City Water Utility will furnish all pipes and fittings over ten (10) inches in diameter and the Developer will furnish all other required materials.
- b. Prior to acceptance of the water main by the City, the Developer shall grant to the City a public water main easement as shown on the approved water main plan, if required. The easement shall include, but not be limited to, the right of ingress and egress thereon and the right to excavate, operate, repair, replace, or maintain the City water system, including the water main, and to perform all work incidental thereto. In addition, the Developer shall also provide the City with a legal description and sketch of this public water main easement. No buildings or structures of any kind shall be built over said public water main easement without the written permission of the Madison Water Utility. The water main easement shall be graded to final grade prior to installation of the water main. After installation of the water main, there shall be no grade change in excess of one foot without written permission from the Madison Water Utility.
- c. After final acceptance of the water main by the City, the Developer shall provide, to City of Madison Engineering, a list of all water hydrant locations with benchmark elevations provided for each. The elevations provided shall be for the 'top nut' of each hydrant, and shall be to "NAVD 88" as published by the City of Madison on PLS section corners. The elevations shall be determined in accordance with accepted surveying techniques for establishing vertical control to the nearest hundredth of a foot.

5. 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 development.
- b. The Developer shall install Madison Standard Sidewalk with Madison Standard Crosswalks on all streets abutting the development (on the one side of the street abutting the development).

6. 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.

7. 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.

8. 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.

9. 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 lots within the development by the City and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities.
2. An amount determined by the City Water Utility to reflect the cost to the Water Utility of furnishing water mains and fittings whose diameter is in excess of ten (10) inches. Said amount shall be based upon the cost of furnishing ten (10) inch diameter pipe and fittings, irrespective of the size of the pipe actually furnished by the Water Utility, it being the intent of the Water Utility to pay the difference in cost between ten (10) inch diameter pipe and the pipe and fittings actually furnished.

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 \$ 44,400.00 (Make check payable to City of Madison).

Madison Water Utility \$ 6,600.00 (Make check payable to Madison Water Utility).

City Traffic 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 \$ 828,000.00 to secure performance of this contract.
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 Bill Biesmann, Vierbicher Associates (826-0532), 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 construct public water mains and water service laterals, storm sewer and drainage system, sanitary sewer and sanitary sewer laterals to serve Tradesmen Commerce Park.
- B. The Developer shall construct Madison Standard Street Improvements, including sidewalk on both sides, on the following streets:
- Tradesmen Drive from Marsh Road to Ballast Drive
 - Kipp Street from Ballast Drive to the north line of OL 3 (north plat line)
 - Ballast Drive from Kipp Street to the south line of Lot 5
- C. The Developer shall construct Madison Standard Sidewalk Improvements on the following streets:
- Ballast Drive (north right of way only) adjacent to Lots 6 and 7.
 - Marsh Road adjacent to the plat
- D. The Developer shall make improvements to Marsh Road as required by the City Engineer, to facilitate ingress and egress to the plat.
- E. The Developer shall grade and install base course (within the 20 ft Bike / Pedestrian easement) for the bike path adjacent to Lot 10, in accordance with the plans approved by the City Engineer. The final bike path location shall be approved by all necessary agencies (WDNR, Capitol Area Regional Plan Commission) prior to construction of the path. The City shall hire a contractor to pave this path at a later date.
- F. The Developer shall convey a 20 foot wide Bike / Pedestrian easement at a location determined by the City Engineer and the Traffic Engineer. The Developer shall supply a sketch and legal description of the Bike / Pedestrian Easement along with a check for \$500 for the administration of the easement to Eric Pederson of City Engineering. Please make check payable to City Treasurer. All correspondence shall reference RE Project # 8944 and City Engineering project Number 53B2189.
- G. The Developer shall sign a *Waiver of Notice of Public Hearing* for water main assessments on Marsh Road.
- H. The Developer shall construct storm water detention facilities within Outlots 2 and 3, in accordance with the plans approved by the City Engineer.
- I. The Developer may be required to convey sanitary sewer easements to serve this plat. Any required easements shall be conveyed prior to the start of the sewer construction.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
THAT WILL BE ACCEPTED BY THE CITY OF MADISON
TRADESMEN COMMERCE PARK
CONTRACT NO. 2189
PROJECT NO. 53B2189
MADISON, WISCONSIN**

IN WITNESS WHEREOF, the parties hereto have set their hand(s) at Madison, Wisconsin.

MARSH ROAD DEVELOPMENT CORPORATION

BY: J. R. Gallina 4-9-08
(signature) Date
Joseph R. Gallina President
(print name and title of person signing)

BY: _____
(signature) Date

(print name and title of person signing)

CITY OF MADISON, WISCONSIN

APPROVED AS TO FORM
BY: Michael P. May 5/14/08
Michael May, City Attorney Date

BY: [Signature] 5-15-08
David J. Cieslewicz, Mayor Date

APPROVED:

BY: Eric T. Veum 4/28/08
Eric T. Veum, Risk Manager Date

BY: Maribeth Witzel-Behl 4-22-2008
Maribeth Witzel-Behl, City Clerk Date

COUNTERSIGNED:

BY: Dean Brassler 4-28-08
for Dean Brassler, City Comptroller Date