

Contract Routing Form

ROUTING: Routine

printed on: 03/16/2009

Contract between: McAllen Properties 120, LLC  
 and Dept. or Division: Engineering Division  
 Name/Phone Number:

Project: Phase 1 McAllen 120 Business Park

Contract No.: 2209  
 Enactment No.: RES-08-01091  
 Dollar Amount: 0.00

File No.: 12485  
 Enactment Date: 12/08/2008

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	3-16-09	3-17-2009
Director of Civil Rights	3-17-09	3/29/09 MDD
Risk Manager	3-30-09	3/30/09 RTV
Comptroller	3-30-09	3-30-09 RW
City Attorney	3-30-09	4-01-09
Mayor	4-2-09	4-2-09

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

Original + 1 Copies

03/16/2009 09:39:43 enkmr - JANET DAILEY @ 261-9688

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



City of Madison

display  
original  
version

Legislative File ID 12485

print

email

Type: **Resolution** Status: **Passed**  
 Enactment Date: **12/8/2008** Enactment No.: **RES-08-01091**  
 Title: **Approving plans and specifications for public improvements required to serve Phase I of the Subdivision known as McAllen 120 Business Park and authorizing construction to be undertaken by the Developer, and rescinding RES-08-00862, ID No. 11699, Private Contract No. 2209. (16th AD)**  
 Controlling Body: **BOARD OF PUBLIC WORKS**  
 Introduced: **10/28/2008** Version: **1**  
 Final Action: **12/2/2008** Contact: **mhacker@cityofmadison.com**  
 Name: **Approving plans and specifications for public improvements required to serve Phase I of the Subdivision known as McAllen 120 Business Park and authorizing construction to be undertaken by the Developer, and rescinding RES-08-00862, ID No. 11699, Private**  
 Extra Date 1:  
 Requester: **BOARD OF PUBLIC WORKS**  
 Sponsors: **BOARD OF PUBLIC WORKS**  
 Attachments: **Legislative File Text**

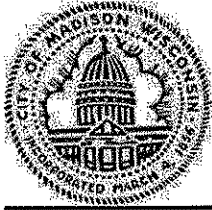
**Legislative History**

Date	Acting Body	Action Taken	Motion
11/5/2008	<i>Unpublished Meeting Data Pending*</i>		
11/19/2008	BOARD OF PUBLIC WORKS	Janet Dailey, City Engineering, presented the plans and specifications. A motion was made by Rewey, seconded by Clausius, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by voice vote/other.	Pass
	<i>Notes:</i>		
12/2/2008	COMMON COUNCIL	A motion was made by Ald. Bruer, seconded by Ald. Verveer, to Adopt. The motion passed by voice vote/other.	Pass
	<i>Notes:</i>		

**Approvals**

Approver	Date	Approval Status
Randy Whitehead	11/11/2008	Approved

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**City of Madison**

**Legislative File Number 12485 (version 1)**

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**Title**

Approving plans and specifications for public improvements required to serve Phase I of the Subdivision known as McAllen 120 Business Park and authorizing construction to be undertaken by the Developer, and rescinding RES-08-00862, ID No. 11699, Private Contract No. 2209. (16th AD)

**Body**

WHEREAS, the developer, McAllen Properties 120, LLC, has received the City of Madison's approval to create the subdivision known as McAllen 120 Business 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; and

WHEREAS, Section 16.23(9) of the Madison General Ordinances allows the developer to install the improvements in construction phases provided that a Declaration of Conditions, Covenants, and Restrictions is executed for those lots included in future construction phases until such time as surety is provided to the City to guarantee the installation of the public improvements to serve said lots; and,

WHEREAS, the developer proposes to provide public improvements to serve Lots 3-6, inclusive, OL 2 and OL 3 as Phase I.

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 of Madison for McAllen 120 Business Park, Phase I, with McAllen Properties 120, LLC, and a Release of the Declaration of Conditions, Covenants, and Restrictions on the lots for which public improvements are to be provided.
2. That Resolution RES-08-00862, ID No. 11699, is hereby rescinded.
3. That the plans and specifications for the public improvements necessary to serve this phase of the subdivision are hereby approved.
4. 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 of Madison at the sole cost of the developer, except as follows:  
NONE
5. That the Mayor and City Clerk are hereby authorized to sign easements or right-of-way release or procurement documents, maintenance agreements or encroachment agreements, 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 funds required.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS  
THAT WILL BE ACCEPTED BY THE CITY OF MADISON  
MCALLEN 120 BUSINESS PARK – PHASE I  
CONTRACT NO. 2209  
PROJECT NO. 53B2209**

**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 McAllen Properties 120, LLC, of Cottage Grove, 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 a subdivision known as McAllen 120 Business Park, 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 3-6, Outlot 2 & Outlot 3, hereinafter "Construction Phase I". Subsequent construction phases will be defined in scope by future *Contracts For The Construction Of Public Improvements That Will Be Accepted By The City*.
3. WHEREAS, the Developer intends to complete the installation of said public improvements with the Initial Construction Phase of said project and does not interid to complete any of said public improvements in subsequent construction phases.
4. WHEREAS, as a condition of approval of phased development in said subdivision, the Developer is required to execute a Declaration of Conditions, Covenants, and Restrictions for all lots included in future construction phases, until such time as surety is provided to the City to guarantee the installation of public improvements to serve said lots.

**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 29% 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 \$ 58,300.00 (Make check payable to City of Madison).

Madison Water Utility \$ 14,400.00 (Make check payable to Madison Water Utility).

City Traffic Engineering Division \$ 1,000.00 (Make check payable to City of Madison).

Charges for services performed for the construction of improvements in subsequent construction phases shall be on the basis of charges for such services in effect at the time of construction of said Subsequent Construction Phases, the estimated cost being deposited with the participating City Divisions/Departments prior to construction.

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 \$ 1,022,000.00 to secure performance of this contract.
- 2. The Developer agrees that prior to any land surface disturbances or construction commencing within the development associated with subsequent construction phases, that *A Contract For The Construction Of Public Improvements That Will Be Accepted By The City* will be executed by the Developer and the City, and the Developer will furnish the City with a corporate bond, certified check, official check or irrevocable letter of credit in the amount of the estimate of the City Engineer, sufficient to secure performance of said contract.
- 3. 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.

4. 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 Carl Chenoweth, Ruedebusch Development & Construction (249-2012 x 214) 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 sanitary sewer main and laterals, water main and service laterals, storm sewer and drainage system to serve Lot 3-6, Outlot 2 & Outlot 3, within McAllen 120 Business Park – Phase I.
- B. The Developer shall construct Madison Standard street improvements, including sidewalk on both sides, on the following streets:
  - McAllen Way from Femrite Drive to Meier Road
- C. The Developer shall construct sidewalk and street improvements on Meier Road from Femrite Drive to McAllen Way in accordance with the plans approved by the City Engineer. Street improvements shall consist of curb and gutter on both sides and sidewalk on the west side.
- D. The Developer shall construct sidewalk and ditching adjacent to Lot 3 & 6 on Femrite Drive in accordance with the plans approved by the City Engineer.
- E. The Developer shall execute a waiver of hearing and notice for future street and utility improvements on Femrite Drive. The City of Madison shall assess the Developer for the Street Improvements in accordance with our standard assessment policy with the following exception. The Developer has requested that the City lower Femrite Drive beyond what is necessary for reasonable street design, therefore the Developer agrees to be assessed for exactly 10,600 CY of additional excavation cut on Femrite Drive which is the agreed amount of additional excavation cut due to the additional lowering of the street grade. In computing the amount of excavation cut in the standard street assessment, the City shall first subtract the above amount of excavation cut from the total excavation cut and then apply the standard assessment policy to the balance of the excavation cut. The Developer shall be assessed for the additional excavation cut as one component of the assessment and shall be assessed for a portion of the balance of the excavation cut in accordance with the City standard assessment policy. The waiver of hearing and notice shall include both the standard street and utility improvements and the additional excavation cut.
- F. The Developer shall make improvements to Femrite Drive at Meier Road to facilitate ingress and egress to the plat. In Addition the Developer shall make improvements to Femrite Drive to access Lot 6. This requirement may be waived by the City Engineer if a project is undertaken by the City to reconstruct Femrite Drive in early 2009.
- G. By execution of this agreement, the developer hereby provides a temporary limited easement over all lots the plat. The temporary easements shall expire upon completion of the streets and infrastructure improvements in and adjacent to the Development. The temporary easement shall allow the City of Madison and their Contractors, Subcontractors and agents to enter upon the property with equipment used for constructing adjacent roadways and utilities and shall allow the for the grading of the properties adjacent to the right of ways to match the grade of the proposed streets.
- H. The Developer shall coordinate the construction with a separate City project to reconstruct Femrite Drive as required by the City Engineer.
- I. The Developer shall convey permanent 20 ft wide sanitary sewer easements across Lot 4 and along the north line of Outlot 2 with the recording of the plat. In Addition the Developer shall construct a crushed stone access road for maintenance.
- J. The Developer shall construct sanitary sewer from the northerly side of USH 12 and 18 within Outlot 4 in accordance with the plans approved by the City Engineer. All work within WIDOT right of way shall require separate approval, which shall be obtained by the Developer. The Developer shall dedicate public utility easements within Outlot 4 with the recording of the plat. All sewer

constructed outside the improved right of way shall have a gravel access road constructed as designed by the City Engineer.

- K. The Developer shall be responsible to obtain all applicable WDNR and/or Army Corp of Engineer permits for crossing the wetlands with sanitary sewer. Furthermore the Developer shall be responsible for obtaining a Chapter 30 permit for grading over 10,000 square feet of land immediately adjacent to a navigable water of the State of Wisconsin.
- L. The Developer shall be responsible to obtain any applicable NR 103 permits as necessary for grading adjacent to the wetlands for the installation of the sanitary sewer. Fill shall be required to provide adequate cover over the sanitary sewer mains. In addition, a gravel access road shall be installed as a maintenance path for service vehicles within Outlot 4.
- M. The Developer shall construct a retention pond in Outlot 2 in accordance with the plans approved by the City Engineer, which may include construction of storm sewer outside this phase.
- N. The Developer shall install storm sewer on Femrite Drive that may require construction outside this construction phase.
- O. The Developer shall dedicate a 25 ft public storm sewer and drainage easement along the west line of Lot 3 with the recording of the plat.
- P. The Developer shall install drainage measures to facilitate the immediate development of Lot 6, in accordance to the plans and as directed by the City Engineer. These measures shall include, but not be limited to the following:
- Removal of the 4'x6' culvert under Femrite Drive;
  - Diversion ditching along Femrite Drive from Lot 2 easterly;
  - Installation of storm main on Old Meier Road to direct waters from the north of Femrite Drive to the pond located within Outlot 2.
- Q. The Developer shall execute a Declaration of Conditions, Covenants, and Restrictions restricting the sale or transfer of Lots 1, 2, and Outlot 1 of the McAllen 120 Business Park Subdivision, until such time as surety is provided to the City to guarantee the installation of public improvements to serve said lots.
- R. The Developer shall assume all risks and responsibility for any construction under this agreement started prior to plat recordation. Surety shall be required for staking of the lots and shall be maintained with this contract until all lots in McAllen 120 Business Park are staked. The City Engineer shall authorize the start of construction only after the McAllen 120 Business Park Subdivision requirements are satisfactorily completed.
- S. Partial acceptance sufficient for the issuance of building permits may be allowed if approved by the City Engineer or City Construction Engineer.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS  
THAT WILL BE ACCEPTED BY THE CITY OF MADISON  
MCALLEN 120 BUSINESS PARK  
CONTRACT NO. 2209  
PROJECT NO. 53B2209  
MADISON, WISCONSIN**

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

MCALLEN 120 PROPERTIES, LLC

BY: \_\_\_\_\_  
(signature) Date

\_\_\_\_\_  
(print name and title of person signing)

BY: Mac McAllen 1-5-09  
(signature) Date

Mac McAllen  
(print name and title of person signing)

CITY OF MADISON, WISCONSIN

APPROVED AS TO FORM:

BY: Michael May 4/1/09  
Michael May, City Attorney Date

APPROVED:

BY: Eric T. Veum 3/30/09  
Eric T. Veum, Risk Manager Date

BY: David J. Cieslewicz 4-2-09  
David J. Cieslewicz, Mayor Date

BY: Maribeth Witzel-Behl 3-17-09  
Maribeth Witzel-Behl, City Clerk Date

COUNTERSIGNED:

BY: Dean Brassek 3-30-09  
for Dean Brassek, City Comptroller Date

**IRREVOCABLE LETTER OF CREDIT #1978  
IN THE FAVOR OF THE CITY OF MADISON**

DATE March 5, 2009

PROJECT NAME: McAllen 120 Business Park – Phase I

CONTRACT NO.: 2209

PROJECT NO. 53B2209

DEVELOPERS NAME: McAllen Properties 120, LLC

TO: Mayor &amp; Common Council, City of Madison, Wisconsin

**ATTENTION: LARRY D. NELSON, CITY ENGINEER**

We hereby issue our irrevocable standby in the favor of the City of Madison, a Municipal Corporation, located at Madison, Wisconsin, available by your drafts at sight on AnchorBank, fsb (the Bank), for a sum or sums not to exceed a total amount of \$1,022,000.00 (One Million Twenty Two Thousand and 00/100 U.S. Dollars) for the account of McAllen Properties 120, LLC (the "Developer").

Drafts will be honored by the bank within five (5) days of our receipt of the original of this standby, any amendments hereto and the City's signed statement certifying either:

1. That an official demand by the City of Madison has been made to have Developer complete certain work and/or to pay certain costs to Contractors, Subcontractors, Laborers or Suppliers for work and/or materials furnished; **OR**
2. That Developer has failed, refused or is unable to complete certain work and/or to pay Contractors, Subcontractors, Laborers or Suppliers; **OR**
3. That Developer has failed, refused or is unable to pay for engineering, inspection, and testing services in accordance with the attached Development Agreement dated January 5, 2009.

Drawings under this standby must be received at 25 W. Main Street no later than March 5, 2010; provided, however, that this credit shall not expire unless the Bank shall have given sixty (60) days prior notice in writing to the City Attorney, 210 Martin Luther King, Jr. Boulevard, Madison, WI 53703-3340, as agent for the City.

We hereby agree with you that all drawings made under and in compliance with the terms and conditions of this standby will be duly honored upon presentation and delivery to us of the documents specified above. Each drawing hereunder must reference this standby by date and number.

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

Except to the extent otherwise expressly stated herein; this instrument is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590, and as to matters not governed by ISP 98 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.

BY:

  
Stephen M Rice, Commercial Real Estate Loan Officer

CITY OF MADISON

APPLICATION FOR THE APPROVAL OF CONTRACTORS  
AND SUBCONTRACTORS FOR PRIVATE CONTRACTS

In accordance with the *Contract for the Construction of Public Improvements That Will be Accepted by the City of Madison*, I hereby furnish the City of Madison City Engineer the names of all contractors and their subcontractors who shall be employed by me on the following development:

Project Name: MCALLEN 120 BUSINESS PARK – PHASE I

Contract No. 2209

FOR CITY USE ONLY		Name of Contractor/Subcontractor	Type of Work
Approved	Disapproved		
1. <input checked="" type="checkbox"/>	<input type="checkbox"/>	PARISI CONSTRUCTION	ALL SANITARY WORK
2. <input type="checkbox"/>	<input type="checkbox"/>		
3. <input type="checkbox"/>	<input type="checkbox"/>		
4. <input type="checkbox"/>	<input type="checkbox"/>		
5. <input type="checkbox"/>	<input type="checkbox"/>		

PLEASE ATTACH COMPLETE MAILING ADDRESS FOR SUBCONTRACTORS — ATTACHED

I agree that I am fully responsible to the City for the acts and omissions of my contractors and their subcontractors and I understand that the City's approval of any or all of the contractors and their subcontractors listed above shall not create any contractual relation between any contractor or their subcontractor and the City. I also agree that these contractors and their subcontractors must be prequalified by the Board of Public Works for the classification of work performed.

I further agree that, if during the life of the project it is necessary to amend this list of Contractors/Subcontractors, I shall request approval of the City Engineer in writing before any work is undertaken by Contractors/Subcontractors which have not been approved by the City Engineer.

MCALLEN PROPERTIES 120, LLC

Signed

Date

3-30-09

Determination

by the City Engineer

Date

3-30-09

Please complete this form in duplicate and return both copies to the City Engineer. After determination by the City Engineer has been made, one copy shall be returned for your file.

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**Full Name:** Bob Endres  
**Last Name:** Endres  
**First Name:** Bob  
**Company:** Parisi Construction

**Business Address:** 508 S Nine Mound Road  
Suite A  
Verona, WI 53593-0277

**Business:** (608) 848-5991 , ext.1976  
**Mobile:** (608) 358-3939  
**Business Fax:** (608) 848-5992

**E-mail:** Bob@parisiconstruction.com  
**E-mail Display As:** Bob Endres