

Contract Routing Form

printed on: 12/01/2010

ROUTING: Routine

Contract between: Erin Square LLC
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: 801 S Park St PUD

Contract No.: 2244
Enactment No.: RES-10-00733
Dollar Amount: 0.00

File No.: 19377
Enactment Date: 09/09/2010

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	12-02-10	12-2-10
Director of Civil Rights	12-2-10	12/10/10 <i>WLD</i>
Risk Manager	12-10-10	12/15/10 <i>REJU</i>
Comptroller	12-15-10	12-16-10 <i>fw</i>
City Attorney	12-16-10	12-17-10
Mayor	12-17-10	12-17-10

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

Original + 1 Copies

12/01/2010 13:09:15 enkmr - JANET DAILEY @ 261-9688

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



City of Madison

Legislative File ID 19377

display
original
version

print

email

Type: Resolution Status: **Passed**
 Enactment Date: 9/9/2010 Enactment No.: RES-10-00733
 Title: **Approving plans and specifications for public improvements necessary for the project known as 801 S. Park Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2244. (13th AD)**
 Controlling Body: **BOARD OF PUBLIC WORKS**
 Introduced: 7/28/2010 Version: 1
 Final Action: 9/7/2010 Contact: mhacker@cityofmadison.com
 Name: **Approving plans and specifications for public improvements necessary for the project known as 801 S, Park Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2244.**
 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
8/4/2010	BOARD OF PUBLIC WORKS	A motion was made by Palm, seconded by Pietz, to Refer Pass to the BOARD OF PUBLIC WORKS, due back on 8/18/2010. The motion passed by voice vote/other.	
8/18/2010	Notes: BOARD OF PUBLIC WORKS	Janet Dailey, City Engineering, presented plans and specifications. A motion was made by Pietz, seconded by Vaughn, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by voice vote/other.	Pass
9/7/2010	Notes: COMMON COUNCIL	A motion was made by Ald. Clear, seconded by Ald. Cnare, to Adopt. The motion passed by voice vote/other.	Pass
	Notes:		

Approvals

Approver	Date	Approval Status
Craig Franklin	8/10/2010	Approved

powered by Daystar Computer Systems, Inc.



City of Madison

Legislative File Number 19377 (version 1)

Title

Approving plans and specifications for public improvements necessary for the project known as 801 S. Park Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2244. (13th AD)

Body

WHEREAS, the developer, Erin Square, LLC, has received the City of Madison's conditional approval for a Planned Unit Development (PUD) to demolish an existing building and construct a mixed use building, and,

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

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a Contract For the Construction of Public Improvements that will be accepted by the City of Madison For 801 S. Park Street PUD, with Erin Square, LLC
2. That the plans and specifications for the public improvements necessary to serve the PUD are hereby approved.
3. That the developer is authorized to construct the public improvements in accordance with the terms of the 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
4. That the Mayor and City Clerk are hereby authorized to sign and grant easements or right-of-way release or procurement documents, maintenance agreements or encroachment agreements, as necessary and grant or accept dedication of lands and/or easements from/to the Developer/Owner for public improvements located outside of existing public fee title or easement right-of-ways.
5. The Common Council is approved to accept ownership of the improvements in the Maintenance Area if a maintenance agreement is executed and recorded as a condition of this contract.

Fiscal Note

Private Contract, No City Funds Required.



CERTIFICATE OF LIABILITY INSURANCE

OP ID KO

DATE (MM/DD/YYYY)

10/01/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Independent Insurance Services P.O. Box 44819 Madison WI 53744-4819 Phone:608-273-3325 Fax:608-273-4474	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
E-MAIL ADDRESS:		
PRODUCER CUSTOMER ID #: ERINS-2		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Erin Square LLC c/o McCaughey Properties LLC 914 West Shore Drive Madison WI 53715	INSURER A: ERIE Insurance Group	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			Q27-2600710	03/26/10	03/26/11	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		X				MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS							\$
	<input type="checkbox"/> NON-OWNED AUTOS							\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE							\$
	<input type="checkbox"/> RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N				E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The certificate holder is an additional insured with respect to Commercial General Liability.

CERTIFICATE HOLDER

CANCELLATION

City of Madison 210 Martin Luther King Jr Blvd Madison WI 53703	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE David P Montgomery

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**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
THAT WILL BE ACCEPTED BY THE CITY OF MADISON
801 S PARK STREET PUD
CONTRACT NO. 2244
PROJECT NO. 53B2244**

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 Erin Square, LLC, of Madison, Wisconsin, ("Developer"), 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 conditional approval from the City for Planned Unit Development demolish and existing building and construct a mixed use building to, 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 intends to complete the installation of said public improvements with the Initial Construction Phase of said project and does not intend to complete any of said public improvements in subsequent construction phases.

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. Prequalification of Contractors and Prevailing Wage Rates

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. and Section 66.0903, Wisconsin State Statutes (Prevailing Wage Rate). For the current Prevailing Wage Rate please go to:

<http://www.cityofmadison.com/Business/PW/documents/PrevailingWageRates.pdf>.

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.

This Contract is subject to Section 66.0903 of the State Statutes regarding prevailing wage rates. By executing this Contract, the Developer agrees to ensure that its contractor and all subcontractors performing work under this Contract shall comply with the requirements of Section 66.0903. More specifically, the Developer shall ensure that the contractor and all subcontractors file certified payroll records with the Department of Workforce Development (DWD) on a monthly basis and in a format that meets the DWD reporting requirements. Certified payroll reports must be filed with DWD by the end of the first week following the month in which the work was conducted. If DWD finds a contractor has violated the prevailing wage law, DWD shall assess liquidated damages of 100% of the wages owed to employees.

The certified payroll reports may only be filed electronically. The method for fulfilling the statutory electronic filing requirements is found on the DWD website: http://dwd.wisconsin.gov/er/prevailing_wage_rate/default.htm. This certified payroll reporting requirement is distinct and separate from any other independent reporting requirements of the City of Madison.

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 laterals.
 - b. Water 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, disability benefit, or other employee benefit acts, statutes or laws.

The obligations of the Developer under this paragraph J. 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 procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Developer's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Such insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII. The Developer shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Developer shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Developer shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Developer and/or insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

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 prior to the commencement of any work under this contract.

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 that are adjacent to the development. The sidewalk, pavement and curb grades shall be established by the City Engineer in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications, and approved by the Common Council.
 - b. 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.
 - c. The Developer shall obtain an 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. 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.
 - d. The Developer shall not disturb, grade, fill or store materials on public property 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 terraces, 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 laterals to serve the development
 - 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.

3. Storm Sewer and Public Drainage System:

- a. The Developer shall install a public drainage system including mainline structures, inlets, and lateral pipes in accordance with the plans approved by the City. 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.

4. Streets and Sidewalks:

- a. The Developer shall install Madison Concrete Curb and Gutter and other types of curb and gutter as specified, Madison Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement in accordance with the plans approved by the City Engineer.
- b. The Developer shall comply with all provisions as outlined in Section 107 of the City of Madison Standards for Public Works Construction and shall reimburse the City for the value of the public street tree if damaged or removed, in accordance with the fee schedule outlined in section 107.14(i). The reimbursement to the City shall be taken from the deposits or surety as required for this project. The Developer or his agent shall contact City Forestry to review the trees prior to any trimming or removal. Prior to the closure of this contract City Forestry shall do a final inspection of the trees.

5. 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.

6. 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.

7. 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.

8. Street Lights:

The Developer shall pay all costs associated with the installation of street lighting, conduit 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 shall install street lighting facilities per the City-prepared plans and specifications.

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.

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, including all televising of storm and sanitary sewer as necessary.
 - 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 \$ 3,500.00 (Make check payable to City of Madison).
 - b. A deposit to secure inspection.

City Engineering Division \$ 1,300.00 (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 \$ 26,000.00 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 John Bieno, TJK Design Build (jibieno@tikdesignbuild.com or 257-1090) 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 laterals, water service laterals, storm sewer and drainage system to serve 801 S. Park Street.
- B. The Developer shall replace curb and gutter, sidewalk and pavement (in accordance with the City's Pavement Patching Criteria) on the streets abutting the development as detailed in the plans approved by the City Engineer. The work shall also include abandoning all unused driveways, replacing the curb in front of the drives and restoration of the terrace. All pavement patching shall adhere to the City's Pavement Patching Criteria.
- C. The Developer shall replace any sidewalk or curb and gutter which is damaged as a result of the construction, or any sidewalk and curb and gutter which the City Engineer determines needs to be replaced because it is not at a desirable grade, regardless of whether the condition existed prior to the beginning of construction.
- D. The Developer shall abandon unused private storm sewer laterals in accordance with the approved plans.
- E. The Developer shall pay Park Impact Fees associated with this development at the time of application for building permits. A lot hold has been applied to this property until such time as the fees have been paid.
- F. Any soil nailing or soil stabilization measures that extend into the right of way shall be approved by the City Engineer prior to the start of work. The Developer shall assume all responsibility for any damage to the public right-of-way and public utilities or facilities, caused by implementation of soil stabilization measures. The Developer shall submit a soil stabilization plan, stamped by a Professional Engineer, for review and approval by the City Engineer prior to being authorized to

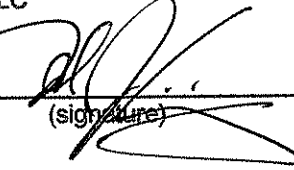
start construction. If the soil stabilization measures encroach into the right of way, the contractor performing the soil nailing operation or shoring must be pre-qualified to work in the City right-of-way and must maintain \$1,000,000 in liability insurance and provide proof of insurance. All shoring in the right of way must be removed to a depth of 4 ft below existing grade. Excavation cannot begin prior to approval of the soil retention system plan. All public storm sewer and sanitary sewer within the limits or adjacent to the soil nailing, shall be televised by the Developer before the start of soil nailing and upon completion of soil nailing. If the Developer fails to televise, he / she concedes that the public pipe was in good condition prior to start of soil nailing and any repairs required, as determined by the City Construction Engineer shall be at their expense.

- G. The Developer and its contractor have permission from the City for crane operation within public right-of-ways and within the air space over public right-of-ways. The Developer shall submit a plan with the location of the crane(s) with the swing radii details. The crane operation contractor must be pre-qualified to work in the public right-of-way. The Developer and its contractor assume all liability and responsibility resulting from these activities. The City does not grant permission to operate the crane in the air space over private property not owned by the Developer. The City recommends that the Developer or the contractor enter into agreements with those property owners for those privileges. If any crane foundations are to be constructed in the public right of way, the Developer shall enter into an encroachment agreement for those foundations.

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

ERIN SQUARE, LLC

BY:  9/10/2010
 (signature) Date
 PATRICK MCCAUGHEY - MEMBER
 (print name and title of person signing)

BY:  12-17-10
 (signature) Date

 (print name and title of person signing)

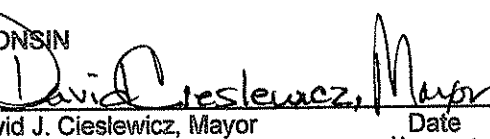
CITY OF MADISON, WISCONSIN

APPROVED AS TO FORM:

BY:  12/17/10
 Michael May, City Attorney Date

APPROVED:

BY:  12/15/10
 Eric T. Veum, Risk Manager Date

BY:  Mayor
 David J. Cieslewicz, Mayor Date
 12-17-20

BY:  12-2-10
 Maribeth Witzel-Behl, City Clerk Date

COUNTERSIGNED:

BY:  12-16-10
 for Dean Brasser, City Comptroller Date

P.O. BOX 8969
MADISON, WI 53709-8969



PHONE: 608-278-2801
TOLL FREE: 800-350-7275

**IRREVOCABLE STANDBY NO. 902
IN FAVOR OF THE CITY OF MADISON**

PROJECT NAME: 801 S. PARK STREET

CONTRACT NO.: 2244

DEVELOPER'S NAME: ERIN SQUARE, LLC

TO: Mayor & Common Council, City of Madison, Wisconsin (the "City")

ATTENTION: ROB PHILLIPS, CITY ENGINEER

We hereby issue our irrevocable standby in favor of the City of Madison, a Municipal Corporation located at Madison, Wisconsin available by your drafts at sight on The Park Bank ("the Bank") for a sum or sums not to exceed a total amount of \$26,000.00 (Twenty Six Thousand and 00/100 U.S. Dollars) for the account of Erin Square, 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.


Drawings under this standby must be received at 1815 Greenway Cross, Madison, WI 53713 no later than 5:00 PM on November 17, 2011; 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 Blvd, Madison, WI 53703, 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 reference to 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.

THE PARK BANK


By: MICHAEL LAWRENCE
Title: VICE PRESIDENT