

Contract Routing Form

ROUTING: Routine

printed on: 12/23/2011

Contract between: the Lenhart Company Inc of Madison, WI
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: University Crossing - Public Improvements

Contract No.: 2266
Enactment No.: RES-11-00971
Dollar Amount: 0.00

File No.: 24341
Enactment Date: 12/02/2011

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	12-27-11	12-27-11
Director of Civil Rights	12/28/11	12/29/11
Risk Manager	12/30/11	1/3/12 REJ
Finance Director	1-3-12	1-3-12 RW
City Attorney	104 2-3-11	2-7-12
Mayor	2-7-12	2-7-12

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

Original + 2 Copies

AB # 81532266

12/23/2011 13:38:03 enjap - J Dailey - 266-4751

Dis Rights: OK / N/A / Problem - Hold
Prev Wage: AA / Agency / No
Contract Value: \$7,500.00
AA Plan: 30 Days
Amendment / Addendum #
Type: POS / Dvlp / Sbdv / Gov't /
Grant / PW / Loan / Agrmt



City of Madison

Legislative File ID 24341

display
original
version

print

email

Type: **Resolution** Status: **Passed**
 Enactment Date: **12/2/2011** Enactment No.: **RES-11-00971**
 Title: **Approving plans and specifications for public improvements necessary for the project known as University Crossing and authorizing construction to be undertaken by the Developer, Private Contract No. 2266. (19th AD)**
 Controlling Body: **BOARD OF PUBLIC WORKS**
 Introduced: **10/24/2011** Version: **1**
 Final Action: **11/29/2011** Contact: **mhacker@cityofmadison.com**
 Name: **Approving plans and specifications for public improvements necessary for the project known as University Crossing and authorizing construction to be undertaken by the Developer, Private Contract No. 2266.**
 Extra Date 1:
 Requester:
 Sponsors: **BOARD OF PUBLIC WORKS**
 Attachments: **Legislative File Text**

Legislative History

Date	Acting Body	Action Taken	Motion
11/2/2011	BOARD OF PUBLIC WORKS	Janet Dailey, City Engineering, presented plans and specifications. A motion was made by Ald. Skidmore, seconded by Dailey, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by voice vote/other.	Pass
11/29/2011	COMMON COUNCIL	A motion was made by Ald. Cnare, seconded by Ald. Bidar-Sieiaff, to Adopt. The motion passed by voice vote/other.	Pass

Notes:

Approvals

Approver	Date	Approval Status
Craig Franklin	11/7/2011	Approved

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City of Madison

Legislative File Number 24341 (version 1)

Title

Approving plans and specifications for public improvements necessary for the project known as University Crossing and authorizing construction to be undertaken by the Developer, Private Contract No. 2266. (19th AD)

Body

WHEREAS, the developer, The Lenhart Company, Inc., has received the City of Madison's approval for a Planned Unit Development (PUD-GDP) and a subdivision plat to create 7 lots for future development and 1 outlot for public stormwater management; 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 and plat.

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 to be accepted by the City of Madison For University Crossing, located at 5063-5119 University Avenue and 702 N. Whitney Way, with The Lenhart Company, Inc.
2. That the plans and specifications for the public improvements necessary to serve the PUD and plat 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 to be Accepted by the City of Madison at the sole cost of the developer, except as follows: Reimbursement not to exceed the statutory limit for the cost of bike path improvements that benefit the City and abut lands owned by the City, in accordance with Section 16.23 (9)(d)(6)(d).
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

Est. cost not to exceed \$7,500.00

Budget authority is available in Acct. No. CS53-58250-810354-53B2266 "Rural to Urban Streets"

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
UNIVERSITY CROSSING
CONTRACT NO. 53B2266
PROJECT NO. 53B2266**

MADISON, WISCONSIN

THIS CONTRACT for the Construction of Public Improvements to be Accepted by the City (hereafter "Contract" or "Agreement") is made and entered into by The Lenhart Company, Inc., 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 to demolish 11 commercial buildings, rezone the properties to a Planned Unit Development (PUD) and replat into 7 commercial lots, 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 TO 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 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 furnish certified payroll records to the Department of Workforce Development (DWD) and/or the City of Madison if requested to do so. If DWD finds a contractor has violated the prevailing wage law, DWD shall assess liquidated damages of 100% of the wages owed to employees.

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. Acceptance of the work requires televising of all sewer mains at the Developer's expense.
 - b. Water main and laterals.
 - c. Storm sewer and storm water management facilities. Acceptance of the work requires televising of all sewer mains at the Developer's expense
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Street lighting.
 - f. Traffic Signals.
 - g. 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 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.
- 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 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.
- e. 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. 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.

- f. 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.

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, infiltration basins or other related storm water management feature 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 and 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, infiltration basins or other related storm water management feature. Final acceptance areas 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.

5. Streets and Sidewalks:

- a. The Developer shall install Madison Standard 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).
- c. The Developer shall comply with all provisions as outlined in Section 107 of the City of Madison Standards for Public Works Construction. 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. A Tree Removal Permit shall be issued by City Forestry prior to removal of any City owned trees.

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.

10. 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.

11. Traffic Signals:

The Developer shall pay all costs associated with the installation of traffic signals, conduit, structures and related equipment 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 traffic signal 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 sewer mains.
 - 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.
 - e. Damages to trees in accordance with the fee schedule outlined in section 107.14(i).

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 \$48,500.00 (Make check payable to City of Madison).

Water Utility \$ 8,300.00 (Make check payable to City of Madison).

City Traffic Engineering Division \$156,000.00 (Make check payable to City of Madison).
(\$10,000 signing and marking)
(\$100,000 signals on University Avenue)
(\$36,000 new street lighting)
(\$10,000 conduits)

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 \$ 785,000.00 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 Dan Day, D'Onofrio Kottkee and Associates (dday@donofrio.cc or 833-7530) 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 the plat known as University Crossing.
- B. The Developer shall construct a modified bioretention along with a grit treatment facility within Outlot 1 in accordance with the plans approved by the City Engineer. Additionally, the Developer shall provide access easements to the City across portions of Lot 1 to drive over the private street and parking lot to access Outlot 1.
- C. The Developer shall relocate the existing 42" storm sewer and shall provide a sketch, legal description and \$500 fee for the administration required for the City to release the existing public storm sewer easement. New storm sewer easements shall be conveyed with the plat. Reference Real Estate Project No. 9773 on all transmittals.
- D. The Developer shall construction Madison Standard street improvements, including sidewalk on both sides, on the following streets:
 - University Row from University Avenue to Silvertree Run
 - Silvertree Run from Whitney Way to University Row
- E. The Developer shall construct a roundabout on University Row and Silvertree Run. The Developer shall work with City Engineering and City Traffic Engineering to determine the right of way needs for the streets within the development.
- F. The Developer shall install 8ft wide sidewalks on University Avenue and Whitney Way in accordance with the plans approved by the City Engineer.
- G. The Developer shall construct a right turn lane from south bound Whitney Way into the development at Silvertree Run as required for ingress and egress from the plat.
- H. The Developer shall construct a 10 ft wide asphalt pedestrian and bicycle path within a public easement on the west side of the plat adjacent to Lot 1. The pedestrian and bicycle path shall be considered a Type IV path, which shall be publicly owned and accepted within a public easement. The abutting property owners shall be responsible to clear snow and ice per MGO 10.28. The City shall provide routine inspection and repairs to the path. The cost of the repairs shall be assessed in accordance with City Ordinance.
- I. The Developer shall construct a Type V sidewalk along one of the private roads that would connect the propose path to University Row. The sidewalk would be considered private but shall not inhibit public usage. The repairs and maintenance of the sidewalk would be the abutting property owner's responsibility.
- J. The Developer shall be responsible for 100% of the cost to design and construct the median improvements or other right of way improvements that are required for this development but would be constructed with the University Avenue Reconstruction project scheduled for 2012. The Developer shall provide a check in the amount of \$33,656.93 payable to the City Treasurer to cover the design fees to include this work in the reconstruction project. If for any reason the improvements cannot be constructed with the University Avenue reconstruction project the Developer shall be responsible to construct the improvements as required for this development.
- K. The Developer shall be responsible for the cost to install conduit, bases and half -traffic signal as required for the ingress /egress to the development from University Avenue. The Developer shall also be responsible for securing Dane County's approval for reconstructing the proposed median break on University Avenue for a special design and signalized intersection in order to secure enough traffic capacity to adequately serve the development.
- L. The Developer shall be responsible for reconstructing the all-way access point on N. Whitney Way to City Traffic Engineer specifications, to include the potential for future traffic signals, and interconnections with nearby traffic signals and railroad signals. The applicant may be required to reconstruct all four sides of this intersection to provide an acceptable design.

- M. The applicant shall close all abandoned driveways by replacing the curb in front of the driveways and restoring the terrace with grass.
- N. The applicant shall replace all sidewalk and curb and gutter abutting the property, which is damaged by the construction, or any sidewalk and curb and gutter that the City Engineer determines needs to be replaced because it is not at a desirable grade regardless of whether the condition existed prior to beginning construction.
- O. All damage to the pavement on University Avenue and N. Whitney Way adjacent to this development shall be restored in accordance with the City's Pavement Patching Criteria.
- P. The Developer shall plant street trees in accordance with the plans approved by the City Engineer. The street tree locations are required to meet the fire aerial access requirements for the development.
- Q. The applicant shall obtain a privilege in streets agreement for any encroachments inside the public right of way. Additionally, the Developer shall enter into a maintenance agreement for any non-standard right of way improvements and for the maintenance of the median and roundabout landscaping.
- R. The Developer acknowledges that the public improvement project cannot be constructed until the additional right of way on Silvertree Run is dedicated to the City, per Real Estate Project No. 9738. This land is outside of the University Crossing plat and will provide for approximately the south 33 feet of the required 66ft right of way.
- S. Any soil nailing or earth retention measures that extend into the right of way shall be approved by the City Engineer prior to the start of work. The Applicant 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 Applicant 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. 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.
- T. After acceptance of said improvements by the Common Council, the Developer shall submit an itemized invoice, based on final quantities and costs, to the City Engineer, for the bike path improvements adjacent to Outlot 1. After approval by the City Engineer, the City shall reimburse the developer, up to the statutory limit, in accordance with Section 16.23(9)(d)(6)(d) of the Madison General Ordinance.
- U. The Developer shall report any potential contamination discovered during demolition, grading, and earthwork to the Wisconsin Department of Natural Resources and the Madison Water Utility, as well as report on the measures taken for disposal/cleanup of such contamination. The Madison Water Utility suggests that the applicant keep a daily log to document and report encounters with potential sources of contamination. The Developer shall also provide copies to the Spring Harbor, Glen Oak Hills and University Hill Farms neighborhood associations on any DNR correspondence regarding any spill notifications during the demolition and related construction of this development.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
UNIVERSITY CROSSING
CONTRACT NO. 53B2266
PROJECT NO. 53B2266

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

THE LENHART COMPANY, INC.
BY: [Signature] 12/30/2011 BY: _____
(signature) Date (signature) Date
Paul Lenhart, President
(print name and title of person signing) (print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: [Signature] 2-7-12
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: [Signature] 2/7/12
Michael May, City Attorney Date

BY: Eric A. Christensen For 12.27.2011
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: [Signature] 1/3/12
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY: [Signature] 2/3/2012
David Schmiedicke, Finance Director Date



FIRST BUSINESS BANK®

IRREVOCABLE STANDBY NO. 812
IN FAVOR OF THE CITY OF MADISON

PROJECT NAME: UNIVERSITY CROSSING

CONTRACT NO.: 2266

DEVELOPER'S NAME: THE LENHART COMPANY, INC.

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 First Business Bank ("the Bank") for a sum or sums not to exceed a total amount of \$785,000.00 (Seven Hundred Eighty Five Thousand and 00/100 U.S. Dollars) for the account of The Lenhart Company, Inc. (the "Developer").

Drafts will be honored by the Bank within five (5) days or 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 *Contract for the Construction of Public Improvements to be Accepted by the City of Madison* dated _____.

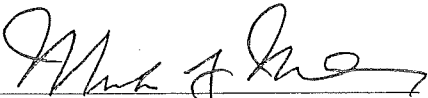
Drawings under this standby must be received at 401 Charmany Dr, Madison, WI 53719 no later than June 15, 2013 ; provided, however, that this credit shall not expire unless the Bank shall have given sixty (60) days' prior notice in writing to the City Engineer, 210 Martin Luther King, Jr. Boulevard, Room 115, 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 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.

First Business Bank

By: 
Title: Mark J. Meloy, President & CEO

* Date LOC 18 months after contract date

