

Contract Routing Form

ROUTING: Routine

printed on: 09/23/2013

Contract between: Domain Apartments LLC c/o Fiduciary Real Esta
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: Domain Apts (415 W Johnson St 226 N Broom St & 424 W Dayton
St)

Contract No.: 2347
Enactment No.: RES-13-00424
Dollar Amount: 0.00

File No.: 30159
Enactment Date: 06/06/2013

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	9.23.13	9.23.13
Director of Civil Rights		10/2/13 MDO
Risk Manager	10-03-2013	10/3/13 KOB
Finance Director	10-3-13	10-3-13 QW
City Attorney	14/10/10 10-03-13	10-7-2013
Mayor	10-8-13	10/9/13

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

Original + 1 Copies

09/23/2013 15:11:05 enjls - Janet Dailey, 261-9688

Dis Rights: OK / N/A / Problem - Hold
Prev Wage: AA / Agency / No
Contract Value: \$150,000.00
AA Plan: On-File
Amendment / Addendum #
Type: POS / Dvlp / Sbdv / Gov't /
Grant / PW / Goal / Loan / Agrmt



City of Madison

City of Madison
Madison, WI 53703
www.cityofmadison.com

Legislation Details (With Text)

File #: 30159 **Version:** 1 **Name:** Approving plans & specs for public improvements necessary for the project known as Domain Apts (415 W. Johnson St, 226 N. Broom St and 424 W. Dayton St) and authorizing construction to be undertaken by the Developer, Private Contract No. 2347.

Type: Resolution **Status:** Passed

File created: 5/14/2013 **In control:** BOARD OF PUBLIC WORKS

On agenda: 6/4/2013 **Final action:** 6/4/2013

Enactment date: 6/6/2013 **Enactment #:** RES-13-00424

Title: Approving plans and specifications for public improvements necessary for the project known as Domain Apartments (415 W. Johnson Street, 226 N. Broom Street and 424 W. Dayton Street) and authorizing construction to be undertaken by the Developer, Private Contract No. 2347. (4th AD)

Sponsors: BOARD OF PUBLIC WORKS

Indexes:

Code sections:

Attachments: 1. Utility Plan.pdf

Date	Ver.	Action By	Action	Result
6/4/2013	1	COMMON COUNCIL	Adopt Under Suspension of Rules 2.04, 2.05, 2.24, and 2.25	Pass
5/22/2013	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT UNDER SUSPENSION OF RULES 2.04, 2.05, 2.24, & 2.25 - REPORT OF OFFICER	Pass
5/14/2013	1	Engineering Division	Refer	

Private Contract, No City Funds Required.

Approving plans and specifications for public improvements necessary for the project known as Domain Apartments (415 W. Johnson Street, 226 N. Broom Street and 424 W. Dayton Street) and authorizing construction to be undertaken by the Developer, Private Contract No. 2347. (4th AD)

WHEREAS, the developer, Domain Apartments, LLC c/o Fiduciary Real Estate Development, Inc., has received the City of Madison's conditional approval for a rezoning request to construct an apartment 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 development.

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 Domain Apartments (415 W. Johnson Street, 226 N. Broom Street and 424 W. Dayton Street), with Domain Apartments, LLC c/o Fiduciary Real Estate Development, Inc.

2. That the plans and specifications for the public improvements necessary to serve the development 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.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
DOMAIN APARTMENTS (415 W. JOHNSON STREET, 226 N. BROOM STREET & 424 W. DAYTON STREET)
CONTRACT NO. 2347
PROJECT NO. 53B2347

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 Domain Apartments, LLC c/o Fiduciary Real Estate Development, Inc., of Milwaukee, 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 a rezoning request to construct an apartment building, 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

The Developer shall furnish the City Engineer with the names of all Contractors and their subcontractors, with the classification of the work they perform, prior to any work beginning.

B. Nondiscrimination and Affirmative Action

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

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

2. The following section applies to all contractors employing fifteen (15) or more employees: (MGO 39.02(9)(c).)

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

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

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

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

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

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) (Applies only to agreements that include payment to the contractor by the City.) All contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below, prior to release of payment.

ARTICLES OF AGREEMENT

Article I

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

Article II

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

Article III

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

Article IV

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

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

☒ A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison Ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

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

Article V

(This article applies only to public works contracts).

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

Article VI

The contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required

by law.

Article VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

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

Article VIII

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

Article IX

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

C. Preconstruction Meeting

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

D. Construction Plans

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

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above-mentioned improvements without the City Engineer's 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 service and laterals.
 - c. Storm sewer laterals.
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Street lighting.
 - f. Other items of work within the Public Right of Way.

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

I. Time of Completion

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

J. Indemnification and Insurance

To the fullest extent permitted by law, the Developer shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees, and consultants from and against all suits, claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease, death, personal injury, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and, (b) is caused in whole or in part by any negligent act or omission of the Developer, its Contractor, 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. Weapons Prohibition

The Developer shall prohibit, and shall require its contractors or subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

L. 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*.

M. 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.
- 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. 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.

- d. 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 grade and restore all public frontages in accordance with the plan approved by the City Engineer. 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 all lots within 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 storm sewer mains, mainline structures, inlets, and lateral pipes 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.
4. Water Mains and Water Service Laterals:
- a. The Developer shall install water service laterals to serve the development.
5. Streets and Sidewalks:
- a. The Developer shall install Madison Standard Concrete, Curb and Gutter and other types of curb and gutter as specified.
 - b. The Developer shall install Madison Standard Sidewalk with Madison Standard Crosswalks on all streets as specified.
 - 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.

N. Fees Payable Prior to Construction

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

NONE

O. Developer to Reimburse the City for Costs Sustained

1. The Developer shall reimburse the City for its actual cost of design, inspection, testing, construction, erosion control review and inspection, 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 \$ 7,500.00 (Make check payable to City of Madison).

City Traffic Engineering Division \$ 46,500.00 (Make check payable to City of Madison).

(\$1,500.00 signing and marking)
(\$45,000.00 electric lighting)

- b. A deposit to secure inspection.

City Engineering Division \$ 3,000.00 (Make check payable to City of Madison).

P. 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 \$60,000.00 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.

Q. Developer's Designated Project Coordinator

The Developer hereby appoints Bill Ohm, Fiduciary Real Estate (414-226-4635, bohmfred-inc.com) as the Project Coordinator, said individual who shall act as the Developer's representative during the Construction Phase of the installation of these improvements.

R. 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. O, and
- 2. Extension of the guarantee in Par. L to two (2) years, and
- 3. The City holding the surety in Par. P until such time as the guarantee expires.


SECTION II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall construct public sanitary sewer laterals, water service laterals, and storm sewer to serve 415 W. Johnson Street, 226 N. Broom Street and 424 W. Dayton Street.
- B. All damage to the pavement on W. Johnson Street, N. Broom Street and W. Dayton Street shall be restored in accordance with the City of Madison's Pavement Patching Criteria.
- C. The Developer shall dedicate a sidewalk easement by CSM to allow for the construction of an 8ft wide mainline sidewalk on W. Johnson Street adjacent to the development. The CSM shall be recorded prior to the start of construction of the building.
- D. The Developer shall close all abandoned driveways by replacing the curb in front of the driveways and restoring the terrace with grass.
- E. The Developer shall replace all sidewalk and curb and gutter which abuts the property which is damaged by 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 beginning construction.
- F. The Developer shall install Bassett District pedestrian lights in accordance with the plans approved by the City Engineer and City Traffic Engineer.
- G. The Developer shall be required to obtain a Tree Removal Permit from City Forestry prior to the removal of any City owned trees adjacent to this development. The Developer shall plant replacement trees and install tree grates adjacent to the development in accordance with the requirements of the City Forester and per the plans approved by the City Engineer.
- H. 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 Developer shall assume all responsibility for any damage to the public right-of-way and public utilities or facilities, caused by implementation of the earth retention measures. The Developer shall submit an earth retention plan, stamped by a Professional Engineer, for review and approval by the City Engineer prior to being authorized to start construction. If the earth retention 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 earth retention system plan and the execution and receipt of any supplemental conditions of approval, as required by the City Engineer.
- I. The Developer shall execute a waiver of hearing and notice for assessments for public infrastructure related to this contract. Upon successful completion and close out of this contract the waiver shall be considered null and void. In the case the Developer is unable or unwilling to install the improvements as required the City shall then hire a contractor for the installation of the public infrastructure and assess all lots covered under this contract for said improvements.
- J. 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.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
DOMAIN APARTMENTS (415 W. JOHNSON STREET, 226 N. BROOM STREET & 424 W. DAYTON STREET)
CONTRACT NO. 2347
PROJECT NO. 53B2347

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

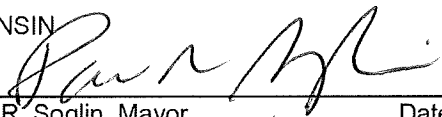
THE DOMAIN APARTMENTS, LLC
C/O FIDUCIARY REAL ESTATE DEVELOPMENT, INC.

BY:  8/21/13
(signature) Date
BRETT K. MILLER, PRESIDENT
(print name and title of person signing)

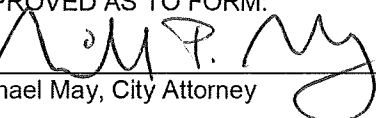
BY: _____
(signature) Date


(print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: 
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

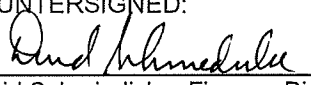
BY:  10/7/13
Michael May, City Attorney Date

BY:  FOR 9-23-13
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY:  10/3/13
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY:  10-3-13
David Schmiedicke, Finance Director Date



BMO Harris Bank N.A.

STANDBY/LETTERS OF CREDIT
C/O Bank of Montreal
234 Simcoe Street, 3rd Floor
Toronto, Ontario M5T 1T4
Tel: 1-877-801-0414
Fax: 1-877-801-7787
SWIFT: HATRUS44

DOCUMENTARY COLLECTIONS
C/O Bank of Montreal
129 St Jacques Street, 10th Floor
Montreal, Quebec H2Y 1L6
Tel: 1-888-258-6378
Fax 1-888-258-6380
SWIFT: HATRUS44

**Irrevocable
Standby Letter of Credit No.: HACH413723OS**

Date Issued: August 27, 2013

Beneficiary:
City of Madison
210 Martin Luther King Jr. Blvd
Room 115
Madison, WI 53703-3340
Attn: Rob Phillips, City Engineer

Applicant:
Fiduciary Real Estate Development, Inc.
on behalf of The Domain Apartments, LLC
789 N. Water St., Suite 200
Milwaukee, WI 53202

Amount: Sixty Thousand and 00/100's United States Dollars (USD60,000.00)

Expiry Date: February 21, 2015

PROJECT NAME: DOMAIN APARTMENTS (415 W. JOHNSON STREET, 226 N. BROOM STREET AND
424 W. DAYTON STREET)
CONTRACT NO.: 2347
DEVELOPER'S NAME: FIDUCIARY REAL ESTATE DEVELOPMENT, INC. ON BEHALF OF THE
DOMAIN APARTMENTS, LLC
TO: MAYOR & COMMON COUNCIL, CITY OF MADISON, WISCONSIN (THE "CITY")

We hereby issue our irrevocable Standby Letter of Credit in favor of the City of Madison, a Municipal Corporation located at Madison, Wisconsin available by your drafts at sight on BMO Harris Bank N.A. ("the Bank") for a sum or sums not to exceed a total amount of Sixty Thousand and 00/100's United States Dollars (USD60,000.00) for the account of Fiduciary Real Estate Development, Inc. on behalf of The Domain Apartments, LLC (the "Developer").

ORIGINAL



Drafts will be honored by the Bank within five (5) days or our receipt of the original of this Standby Letter of Credit, 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, Labourers 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, Labourers or Suppliers; OR
3. That Developer has failed, refused or is unable to pay for engineering, inspection, and testing services in accordance with the Contract for the Construction of Public Improvements to be Accepted by the City of Madison dated 8/21/13.

Drawings under this Standby Letter of Credit must be received at BMO Harris Bank N.A., 311 West Monroe Street, 6th Floor, Chicago, IL 60606, Attn: Trade Finance Operations, no later than February 21, 2015; provided, however, that this Standby Letter of 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 Letter of Credit will be duly honored upon presentation and delivery to us of the documents specified above. Each drawing hereunder must reference this Standby Letter of Credit number HACH413723OS dated August 27, 2013.

This Standby Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Standby Letter of Credit, 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 Standby Letter of Credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590, and as to matters not governed by 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.



Signing Officer



Authorized Signing Officer

ORIGINAL