

# Contract Routing Form

ROUTING: Routine

printed on: 01/17/2018

Contract between: 722 Williamson LLC  
and Dept. or Division: Engineering Division  
Name/Phone Number:

Project: 722 Williamson Street Addendum 2

Contract No.: 7804  
Enactment No.: RES-18-00027  
Dollar Amount: 100,000.00

File No.: 49832  
Enactment Date: 01/05/2018

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	1/18/18	1-18-2018
Director of Civil Rights	1-19-18	1-19-2018 FNS
Risk Manager	1-22-18	1/25/18 RAN
Finance Director	1-25-18	1/26/18 MCR
City Attorney 97	1-29-18	1-30-18
Mayor	01.30.18	01.30.18

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

Original + 1 Copies

01/17/2018 13:54:03 enjls - Brenda Stanley 261-9127

Dis Rights: OK / N/A / Problem - Hold  
Prev Wage: AA / Agency / No  
Contract Value: 100,000  
AA Plan: N/A  
Amendment / Addendum # 2  
Type: POS / Dvlp / Sbdv / Gov't /  
Grant / PW / Goal / Loan / Agrmt



# City of Madison

7804  
City of Madison  
Madison, WI 53703  
www.cityofmadison.com

## Legislation Details (With Text)

**File #:** 49832      **Version:** 1      **Name:** Approving Addendum No. 2 to 722 Williamson Street, Contract No. 7804  
**Type:** Resolution      **Status:** Passed  
**File created:** 12/11/2017      **In control:** BOARD OF PUBLIC WORKS  
**On agenda:** 1/2/2018      **Final action:** 1/2/2018  
**Enactment date:** 1/5/2018      **Enactment #:** RES-18-00027  
**Title:** Approving Addendum No. 2 to 722 Williamson Street, Contract No. 7804. (6th AD)  
**Sponsors:** BOARD OF PUBLIC WORKS  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. 722 Williamson St.pdf

Date	Ver.	Action By	Action	Result
1/2/2018	1	COMMON COUNCIL		
12/13/2017	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
12/11/2017	1	Engineering Division	Refer	

The proposed resolution approves the addendum to the public works contract for storm sewer work for the developer project at 722 Williamson Street at a maximum allowable cost of \$50,000. \$100,000 of reauthorized Stormwater Utility GO Borrowing is budgeted in the Storm Box Replacement project within the Storm Sewer System Improvements program (MUNIS 11594).

MUNIS:  
11594-84-174

Approving Addendum No. 2 to 722 Williamson Street, Contract No. 7804. (6th AD)

WHEREAS, on December 27, 2016 the developer, 722 Williamson, LLC, hereinafter the "Developer" had entered into a *Contract For the Construction of Public Improvements that will be Accepted by the City of Madison* hereinafter the "Contract" with the City of Madison, and;

WHEREAS, on March 23, 2017 the developer and City mutually agreed to expand the scope of work and entered into Addendum 1 to the original Contract that allowed the replacement of 300 feet of storm sewer, \$25,000 for the installation of storm sewer and provide the developer with the storm sewer pipe necessary for the construction, and;

WHEREAS, the Developer and the City have since mutually agreed to amend the reimbursement amount in Addendum 1 to the Developer to the maximum amount allowable by law up to \$50,000, and;

WHEREAS, the upon completion of the storm sewer installation, the Developer shall restore and maintain the surface parking lot located south of the Capital City Trail and north of the property at 301 S Blount Street with base course or road gravel until such time that the City paves the lot in 2018.

NOW, THEREFORE, BE IT RESOLVE:

1. That the Mayor and City Clerk are hereby authorized and directed to execute Addendum No. 2 to 722 Williamson Street, Contract No. 7804, with 722 Williamson, LLC.
2. That the revised plans and specifications for the public improvements necessary to serve this project 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.
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.

ADDENDUM NO. 2

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS  
TO BE ACCEPTED BY THE CITY OF MADISON  
722 WILLIAMSON STREET  
CONTRACT NO. 7804  
PROJECT NO. 11487

THIS AGREEMENT, made and entered into this 30 day of January, 2018, by and between 722 Williamson, LLC, of Madison, Wisconsin, hereinafter the "Developer", and the City of Madison, hereinafter the "City", a municipal corporation located in Dane County, Wisconsin.

Said contract is hereby amended as follows:

Page 12, ARTICLE II - SUPPLEMENTAL CONDITIONS, amend the following sections:

- K. The Developer shall replace approximately 300 feet of storm sewer main on E. Wilson Street – Unimproved. The City shall reimburse the Developer the maximum amount allowable by law up to \$50,000 ~~\$25,000~~ for the installation of storm sewer and provide the developer with the storm sewer pipe necessary for the construction of this work.
- L. 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 storm sewer installation on E. Wilson Street - Unimproved. After approval by the City Engineer, the City shall reimburse the developer the maximum amount allowable by law up to \$50,000 ~~\$25,000~~, in accordance with Section 16.23(9)(d)6.d. of the Madison General Ordinances. The Developer shall complete a New Vendor Form and related W-9 form to allow for the City to reimburse the Developer for this work.

Page 12, ARTICLE II - SUPPLEMENTAL CONDITIONS, add the following sections:

M. Upon completion of the storm sewer installation, the Developer shall restore and maintain the surface parking lot located south of the Capital City Trail and north of the property at 301 S Blount Street with base course or road gravel until such time that the City paves the lot in 2018.

All other terms and conditions of said contract remain unchanged.

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

722 WILLIAMSON, LLC

BY: Lance T. McGrath 1/12/18  
(signature) Date  
LANCE T. McGRATH, Manager  
(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 30 January 2018  
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: Michael May 1/30/18  
Michael May, City Attorney Date

BY: Maribeth Witzel-Behl 1-18-2018  
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: Eric T. Veum 1/25/18  
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY: David Schmiedicke 1/29/18  
David Schmiedicke, Finance Director Date


Return completed certificate to:  
 City of Madison Engineering  
 Attn: Keana Bracey  
 210 Martin Luther King, Jr. Blvd., Rm. 115  
 Madison, WI 53703-3345  
 608-264-9275 (FAX)  
 608-266-4620 (PHONE)

This Form Must be Completed in its Entirety

# Certificate of Insurance

-To-  
 City of Madison  
 Madison, Wisconsin

*Original Contract  
 Signed by Lara*



This certifies to the Municipality the following described Policies have been issued to the insured named below and are in force at this time.

Name of Insured: 722 Williamson LLC

Address: 1228 E Washington Ave Madison, WI 53703 (mailing) 722 Willaimson St Madison WI  
53703-4646 (risk address)

This certificate is furnished to the Municipality to induce the Municipality to take official action and may be relied upon by the Municipality.

Description of operations insured: Builders Risk

Policies and Insurers	Limits	Policy Number	Policy Period
Commercial General Liability American Family Insurance	Each Occurrence \$ 2,000,000 Aggregate \$ 4,000,000	Q48W215902	12/21/2016 - 12/21/2017
(Insurer)			
Business Auto Liability	Coverage Symbol Combined Single Limit \$		
(Insurer)			
Umbrella Liability	Occurrence/Aggregate \$ Retention \$		
(Insurer)			
Worker's Compensation	Employer's Liability \$ Statutory (states)		
(Insurer)			
Professional/Other Liability	Per Claim/Other \$ Aggregate \$		
(Insurer)			

The following coverages or conditions are in effect: (MUST BE ANSWERED "YES" FOR APPROVAL)..... YES NO

The Municipality, its officials, and employees are named on the Commercial General Liability policy(ies) described above as additional insured as respects:

- (a) activities performed for the Municipality by or on behalf of the insured..... ☒ ☐
- (b) products and completed operations of the Named Insured, and..... ☒ ☐
- (c) premises owned, leased or used by the Named Insured..... ☒ ☐

Products and completed operations..... ☒ ☐

The undersigned will mail to the Municipality a written notice within 30 days of cancellation or reduction of coverage or limits..... ☒ ☐

Contractual Liability Coverage applying to this Contract..... ☐ ☐

This certificate is not a policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirements, terms or conditions of any contractor other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

Brad Bodden Agency

Lori Olson

Agency or Brokerage

3821 Nakoma Rd Madison, WI 53711.

Name of Contact Person

608-231-2453

855-512-0824

Address/City/State/Zip Code

Telephone Number

FAX Number

American Family Insurance

Insurance Company

*Brad Bodden*

Authorized Signature\*

Date

12-21-2016

\*NOTE: Authorized signature may be the agent's if the agent has placed insurance through an agency agreement with the insurer. If the insurance is brokered, the authorized signature must be that of official insurance.

INS. O.K.

12-22-16 mcl *Pos*

# RUSH

## Contract Routing Form

ROUTING: Urgent Rush

printed on: 12/22/2016

Contract between: 722 Williamson LLC  
and Dept. or Division: Engineering Division  
Name/Phone Number:

Project: 722 Williamson Street - approving plans specs for public improvements

Contract No.: 7804  
Enactment No.: RES-16-00789  
Dollar Amount: 0.00

File No.: 44574  
Enactment Date: 10/20/2016

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	12.22.16	12.22.16
Director of Civil Rights	12.22.16	12/22/16
Risk Manager	12.22.16	12.22.16
Finance Director	12.22.16	12.22.16
City Attorney	12.22.16	12.22.16
Mayor	12.22.16	12.27.16

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

Original + 1 Copies

12/22/2016 10:12:20 enjls - Brenda Stanley 261-9127

# RUSH

Dis Rights: OK / N/A / Problem - Hold  
Prev Wage: AA / Agency / No  
Contract Value: As City Rules Reg'd  
AA Plan: 30 DAYS  
Amendment / Addendum #         
Type: POS / Env / Sbdv / Gov't /  
Grant / PW / Goal / Loan / Agrmt

SURETY

1359

LT McGRATH, LLC  
3849 Caribou Rd.  
Verona, WI 53593  
(608) 345-3975

BMO  Private Bank  
BMO Harris Bank N.A.  
Chicago, Illinois  
2-2566-710

12/19/2016

PAY TO THE  
ORDER OF

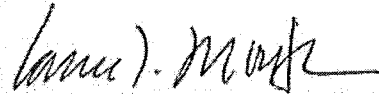
City of Madison Treasurer

\$ \*\*100,000.00

One Hundred Thousand and 00/100

DOLLARS

City of Madison Treasurer  
PO Box 2999  
Madison, WI 53701



AUTHORIZED SIGNATURE

MEMO

#7804 sURETY (722 Williamson St)

⑈001359⑈ ⑈07102566⑈

46852256⑈

Security features. Details on back.







# City of Madison

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

## Legislation Details (With Text)

**File #:** 44574 **Version:** 1 **Name:** Approving plans and specifications for public improvements necessary for the project known as 722 Williamson Street and authorizing construction to be undertaken by the Developer, Private Contract No. 7804.

**Type:** Resolution **Status:** Passed

**File created:** 9/26/2016 **In control:** BOARD OF PUBLIC WORKS

**On agenda:** 10/18/2016 **Final action:** 10/18/2016

**Enactment date:** 10/20/2016 **Enactment #:** RES-16-00789 ✓

**Title:** Approving plans and specifications for public improvements necessary for the project known as 722 Williamson Street and authorizing construction to be undertaken by the Developer, Private Contract No. 7804. (6th AD)

**Sponsors:** BOARD OF PUBLIC WORKS

**Indexes:**

**Code sections:**

**Attachments:** 1. 722 williamson st.pdf, 2. Williamson St 722 Site .pdf, 3. Blount St Sewer Replacement.pdf

Date	Ver.	Action By	Action	Result
10/18/2016	1	COMMON COUNCIL	Adopt Under Suspension of Rules 2.04, 2.05, 2.24, and 2.25	Pass
10/5/2016	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
9/26/2016	1	Engineering Division	Refer	

Private Contract, No City Funds Required.

Approving plans and specifications for public improvements necessary for the project known as 722 Williamson Street and authorizing construction to be undertaken by the Developer, Private Contract No. 7804. (6th AD)

WHEREAS, the developer, 722 Williamson, LLC has received the City of Madison's conditional approval for renovation of the "Olds Seed Building" into a mixed-use building containing 45 apartments and 7,200 square feet of commercial space, and construction of a separate five-story, 96-unit 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 to be Accepted by the City of Madison for 722 Williamson Street with 722 Williamson, LLC.
2. That the plans and specifications for the public improvements necessary to serve the development are hereby approved.

RES  
SOR

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  
722 WILLIAMSON STREET  
CONTRACT NO. 7804  
PROJECT NO. 11487**

**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 722 Williamson, LLC of Madison, Wisconsin, ("Developer"), and the City of Madison, ("City"), a Wisconsin municipal corporation located in Dane County, Wisconsin. This Agreement is effective as of the date signed by the Mayor on behalf of the City.

**RECITALS**

1. WHEREAS, the Developer has received approval from the City for the renovation of the "Olds Seed Building" into a mixed-use building containing 45 apartments and 7,200 square feet of commercial space, and construction of a separate five-story, 96-unit 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.
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**

1. The Developer agrees to engage Contractors for all construction included in this agreement who shall be listed as qualified for such work by the City Engineer as described in MGO 33.07(7).

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.

Ban the Box - Arrest and Criminal Background Checks. MGO 39.08, the City's Ban the Box ordinance, does not apply directly to the Developer under this agreement. However, MGO 39.08 will apply to any of the Developer's Contractors and their subcontractors under this agreement if they are required to be prequalified to perform work hereunder (and the Developer only if Developer is acting as a Contractor under this Agreement). Such contractors and subcontractors are required to Ban the Box. Compliance with MGO 39.08 will be enforced by the City through the prequalification process.

2. Developer agrees to engage Contractors 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/forms.cfm>

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 work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, 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, sexual orientation, gender identity 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.

The Developer agrees and understands that an Affirmative Action Plan is required under this Agreement. Options C. and D. in Article IV below are not available to the Developer, per MGO sec. 39.02(9)(a)3., which requires the submission of an Affirmative Action Plan by all developers or other parties who enter into a contract for the construction of public improvements that will be accepted by the City, and their contractors.

**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, sexual orientation, gender identity 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, sexual orientation, gender identity 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 one of the following paragraphs 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.

☐ C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.\*

☐ D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than twenty-five thousand dollars (\$25,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.\*

#### 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).

**\* Options C and D under Article IV are not available to the Developer under this Agreement.**

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 and sanitary sewer laterals. Acceptance of the work requires televising of all sewer mains at the Developer's expense.
  - b. Water laterals.
  - c. Storm sewer and storm water management facilities.
  - 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

The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law against the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and Subcontractor's acts or omissions in the performance of this agreement. Negligence on the part of the City or its officers, officials, agents or employees shall not eliminate the Contractor's obligations stated in the preceding sentence.

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.

**Proof of Insurance, Approval.** The Developer shall provide the City with certificate(s) of insurance showing the type, amount, 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. If any of the policies required above expire while this Contract is in effect, Developer shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:



City of Madison  
ATTN: Risk Management, Room 406  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703

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 in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications.
  - 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 clean up, topsoil, seed and mulch any public property, which is disturbed. 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 storm sewer mains, mainline structures, inlets, or 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 and as required by the plans and specifications prepared by the Water Utility. 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*.

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 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 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:

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.

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.
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 \$9,400.00 (Make check payable to City of Madison).

City Traffic Engineering Division \$11,000.00 (Make check payable to City of Madison).

(\$1,000.00 signing and marking)

(\$10,000.00 electric, lighting, signals, communication)

- b. A deposit to secure inspection.

City Engineering Division \$6,250.00 (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 \$100,000.00 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 Mike Metzger, McGrath Property Group, 920-344-5000, michael.metzger@mcgrathpropertygroup.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 main and laterals, water service laterals, storm sewer and drainage system to serve 722 Williamson Street.
- B. The Developer shall obtain a water service tapping permit from the Water Utility for the service installation for the development prior to the installation of the new water service(s). A permit to excavate in the right of way for the service installation shall not be required.
- C. All damage to the pavement on Williamson Street, adjacent to this development shall be restored in accordance with the City of Madison's Pavement Patching Criteria.
- 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 be required to obtain a Tree Removal Permit from City Forestry prior to the removal of any City owned trees. A tree planting plan shall be approved by Forestry and incorporated in the City's construction plans, as required as part of the SIP approval.
- G. The Developer shall maintain existing street lighting; traffic signal pole, bases and signal; lighting and communication fiber optic conduit and cabling during construction.
- H. 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.
- I. 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.
- J. The Developer shall be responsible for notification to all adjacent property owners regarding the start of the infrastructure improvements. If any existing roadways are being impacted the Developer shall provide notification to impacted properties as determined by the City. If the properties that receive notification are within the jurisdiction of the County or Town, the Developer shall provide written notification to the respective municipality. All correspondence shall be provided to the City of Madison as well.
  - a. The Developer and his/her 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. While the Developer and his/her Contractor have permission from the City for crane operation within public right-of-ways and within the air space over public right-of-ways, Developer and his/her Contractor agree crane(s) will not be left hanging over City right-of-way or structures overnight or while crane(s) are not in use. The crane operation

contractor must be pre-qualified to work in the public right-of-way. The specific insurance requirements for the crane operator are as follows:

- i. Workers' Compensation. The crane operator shall procure and maintain during the life of this Contract, statutory Workers' Compensation Insurance as required by the State of Wisconsin and other applicable laws on employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the crane operator shall require the subcontractor(s) similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the crane operator's Workers' Compensation Insurance. The crane operator and subcontractor(s) shall also carry minimum Employers Liability limits of \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit, or those limits necessary to meet underlying Umbrella Liability insurance requirements.
  - ii. General Liability. The crane operator shall procure and maintain during the life of this Contract, Commercial General Liability insurance including, but not limited to, products liability, completed operations, contractual liability, and explosion, collapse and underground coverage in an amount not less than \$1,000,000 per occurrence/\$2,000,000 aggregate on a per project basis. Products-completed operations coverage shall be carried for two years after completion of work. crane operator's coverage shall be primary and non-contributory, and list the City of Madison, its officers, officials, agents and employees as Additional Insureds.
  - iii. Umbrella Liability. The crane operator shall procure and maintain during the life of this Contract Umbrella Liability coverage at least as broad as the underlying Commercial General Liability and Employers Liability with minimum limits of \$10,000,000 per occurrence and aggregate.
  - iv. Subcontractor's Insurance. The crane operator shall insure the activities of his/her subcontractors in his own policy.
  - v. Acceptability of Insurers. Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Category rating of no less than VII.
  - vi. Certificates of Insurance. The crane operator shall furnish the City of Madison with insurance certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies prior to commencement of work. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Madison." The crane operator shall provide copies of additional insured endorsements or insurance policies if requested by the City.
- b. The Developer and his/her Contractor agree that crane operator will follow all applicable regulations and safety requirements regarding crane operations, including but not limited to those of the manufacturer, OSHA, and federal, state and local agencies. The Developer and his/her 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  
722 WILLIAMSON STREET  
CONTRACT NO. 7804  
PROJECT NO. 11487  
MADISON, WISCONSIN

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

722 WILLIAMSON, LLC

BY: Lance T. McGrath 12/13/16  
(signature) Date  
LANCE T. MCGRATH - MANAGER  
(print name and title of person signing)

BY: \_\_\_\_\_  
(signature) Date  
\_\_\_\_\_  
(print name and title of person signing)

CITY OF MADISON, WISCONSIN

APPROVED AS TO FORM:

BY: Leea for 12.22.16  
Michael May, City Attorney Date

APPROVED:

BY: Eric T. Veum for 12.22.16  
Eric T. Veum, Risk Manager Date

BY: Paul R. Soglin 12.27.16  
Paul R. Soglin, Mayor Date

BY: Maribeth Witzel-Behl for 12.22.2016  
Maribeth Witzel-Behl, City Clerk Date

COUNTERSIGNED:

BY: David Schmiedicke 12/22/16  
David Schmiedicke, Finance Director Date