

Contract Routing Form

printed on: 12/10/2013

ROUTING: Routine

Contract between: 306 W. Main, LLC.
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: 306 W. Main Street PUD

Contract No.: 2326
Enactment No.: RES-13-00018
Dollar Amount: 0.00

File No.: 28561
Enactment Date: 01/09/2013

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	12-11-2013	12-11-2013
Director of Civil Rights	12-12-13	12/26/13 MDD
Risk Manager	12-27-13	2/14/14 RTV
Finance Director	2/14/14	2/14/14 pm
City Attorney	2-19-14	2-19-14
Mayor	2-19-14	2-19-14

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

No PD Required
pm 2/14/14

Original + 1 Copies

12/10/2013 16:08:36 enjls - Janet Dailey, 261-9688

Wasn't checked out of DCR.
Shown as completed in
The Online Routing System.
Done 2-2-14

This is
NOT IN
CONTRACT
Rtg - Eng.
(J. Dailey is aware of
this problem) - lat
Dis Rig
Prev Wage: AA / Agency / NO
Contract Value: No City funds Reg'd.
AA Plan: EXEMPT
Amendment / Addendum #
Type: POS / Ovp / Shdv / Gov't /
Grant / PW / Goal / Loan / Agrmt



City of Madison

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

Legislation Details (With Text)

File #: 28561 **Version:** 1 **Name:** Approving plans and specifications for public improvements necessary for the project known as 306 W. Main Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2326.

Type: Resolution **Status:** Passed

File created: 12/5/2012 **In control:** BOARD OF PUBLIC WORKS

On agenda: 1/8/2013 **Final action:** 1/8/2013

Enactment date: 1/9/2013 **Enactment #:** RES-13-00018

Title: Approving plans and specifications for public improvements necessary for the project known as 306 W. Main Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2326. (4th AD)

Sponsors: BOARD OF PUBLIC WORKS

Indexes:

Code sections:

Attachments: 1. 2012-12-03 306 Site plan with ROW trees pdf.pdf

Date	Ver.	Action By	Action	Result
1/8/2013	1	COMMON COUNCIL	Adopt	Pass
12/12/2012	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass

Private Contract, No City Funds Required.

Approving plans and specifications for public improvements necessary for the project known as 306 W. Main Street PUD and authorizing construction to be undertaken by the Developer, Private Contract No. 2326. (4th AD)

WHEREAS, the developer, 306 W. Main, LLC, has received the City of Madison's conditional approval for a Planned Unit Development (PUD) to construct a new 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 PUD.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a Contract For the Construction of Public Improvements that will be accepted by the City of Madison For 306 W. Main Street PUD, with 306 W. Main, LLC.
2. That the plans and specifications for the public improvements necessary to serve the PUD are hereby approved.
3. That the developer is authorized to construct the public improvements in accordance with the terms of the Contract For the Construction of Public Improvements that will be accepted by the City of Madison at the sole cost of the developer, except as follows: NONE
4. That the Mayor and City Clerk are hereby authorized to sign and grant easements or right-of-way release or procurement documents, maintenance agreements or encroachment agreements, as

necessary and grant or accept dedication of lands and/or easements from/to the Developer/Owner for public improvements located outside of existing public fee title or easement right-of-ways.

5. The Common Council is approved to accept ownership of the improvements in the Maintenance Area if a maintenance agreement is executed and recorded as a condition of this contract.

(a) If the Company authorizes the issuance or sale by the Company of any Units or any other equity securities (other than (i) to any lender of the Company or other third party incident to a bona fide commercial transaction, (ii) as a pro rata distribution to the holders of outstanding Units of the Company, or (iii) those issued by reason of a unit distribution or unit split, or (iv) in connection with any acquisition of all, or substantially all or a material amount of the equity or assets of any other entity) to any Person or its Affiliates (an "Offered Person"), the Company shall first offer to sell to each Member a portion of such securities equal to the quotient determined by dividing (A) the number of Units held by such Member by (B) the total number of Units owned by all Members. Each Member shall be entitled to purchase such securities at the most favorable price and on the most favorable terms as such securities are to be offered to the Offered Person. Each Member may elect to purchase all or any portion of the securities being offered to such Member.

(b) In order to exercise the purchase rights hereunder, each Member must, within ten (10) business days after delivery (per Section 9.05) of written notice from the Company describing in reasonable detail the securities being offered, the purchase price thereof, the payment terms and such Member's percentage allotment, deliver a written notice to the Company describing such Member's election hereunder and full payment, in cash, for all purchases hereunder.

(c) Upon the expiration of the offering periods described above, the Company shall be entitled to sell such securities which the Members have not elected to purchase during the one hundred twenty (120) days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Members. Any securities offered or sold by the Company to any Offered Person after such 120-day period must be reoffered to the Members pursuant to the terms of this Section 2.08.

(d) Notwithstanding any provision hereof to the contrary, in lieu of complying with the provisions of this Section 2.08, the Company may elect to give notice to the Members within thirty (30) days after the issuance of Units or any other equity securities to an Offered Person. Such notice shall describe the type, price, and terms of the Units or other equity securities so issued. Each Member shall have twenty (20) days from the date notice is given to elect to purchase up to the number of the Units or any other equity securities that would, if purchased by such Member, maintain such Member's percentage of all issued and outstanding Units or other equity securities held by the Members as calculated before giving effect to the issuance of such Units or other equity securities. The closing of such sale shall occur within sixty (60) days of the date notice is given to the Members.

ARTICLE III

Management

Section 3.01 Management By Manager. The business and affairs of the Company shall be managed by a Manager (the "Manager"). Except as limited by Section 3.06 or where the express consent of Members is required by this Agreement or by nonwaivable provisions of the Act, the Manager shall have full and complete authority, power and discretion to manage and control the business affairs and property of the Company, to make all decisions regarding those

matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

Section 3.02 Initial Manager. The Manager shall be The Alexander Company, Inc., a Wisconsin corporation ("Alexander Company"). The Alexander Company shall serve as Manager until it voluntarily resigns as Manager.

(a) Management Fees and Expenses. Except as set forth in this Agreement, the Manager shall not be paid any fees in consideration of its services as Manager, but all reasonable and customary out-of-pocket expenses incurred by a Manager or an Affiliate of the Manager in connection with the Company's business shall be paid by the Company or be reimbursed to the Manager or such Affiliate by the Company. Notwithstanding the foregoing, the Company agrees to pay the following fees to the Manager or an Affiliate of the Manager for the following services:

[REDACTED]

[REDACTED]

(b) Successor Manager. If the Alexander Company ceases to be a Manager (or any successor Manager ceases to be a Manager), the Common Members shall designate a successor Manager by the affirmative vote, approval or consent of Common Members holding a majority of the outstanding Common Units then held by all Common Members ("Common Member Vote"). Any successor Manager shall serve as Manager until such Manager's resignation, death, dissolution or removal by a Common Member Vote.

(c) No Exclusive Relationship. The Manager shall devote such of its time and energies as it reasonably deems necessary to carry out its duties as a Manager, it being acknowledged by the other Members that the Manager has other business interests and responsibilities which also require such Manager's time.

Section 3.03 Delegation of Authority. The Manager may, from time to time, delegate to one or more Persons (including any Unitholder) such authority and duties as the Manager may deem advisable. Any delegation pursuant to this Section 3.03 may be revoked at any time by the Manager in its sole discretion. The Members acknowledge and agree that the Manager may appoint a third-party management company to manage the day-to-day operations of the Property at rates that do not exceed those of similar services for properties located within the Madison, Wisconsin market area.

Section 3.04 Execution of Documents. All instruments or documents affecting the Company shall be executed in the name of the Company by the Manager or a designee under Section 3.03 and, when so executed, shall be binding upon the Company and all Unitholders.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
306 W. MAIN STREET PUD
CONTRACT NO. 2326
PROJECT NO. 53B2326**

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 306 W. Main, 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 a Planned Unit Development (PUD) to construct a new 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. Pregualification 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.

Exempt per
AAD records
12/26/13
MDC

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

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.
 - 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 \$ 7,300.00 (Make check payable to City of Madison).

City Traffic Engineering Division \$16,000.00 (Make check payable to City of Madison).
(\$15,000.00 lighting and electrical)
(\$1,000.00 signing and marking)

- b. A deposit to secure inspection.

City Engineering Division \$ 4,900.00 (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 \$98,000.00 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 Adam Winkler, Alexander Company, 268-8129, ajw@alexandercompany.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 main and service laterals, storm sewer and drainage system to serve 306 W. Main Street PUD.
- B. The Developer shall dedicate a public sanitary sewer easement for the construction of the public sewer within Washington Place (private street).
- C. The Developer shall install Bassett District standard pedestrian lights along the W. Main Street and S. Henry Street frontage of the apartment building and at 328 W. Main Street and 80 Washington Place adjacent to the parking ramp.
- D. All damage to the pavement on W. Main Street and S. Henry Street, adjacent to this development shall be restored in accordance with the City of Madison's Pavement Patching Criteria.
- E. The Developer shall close all abandoned driveways by replacing the curb in front of the driveways and restoring the terrace with grass.
- F. 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.
- G. 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.
- 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. Upon receipt of this contract, fully executed by the Developer, together with the required surety and deposits, the City Engineer will draft and record a Release of the Declaration of Conditions, Covenants for Document No. 4253567 as recorded at the Dane County Register of Deeds. After the property is transferred to 306 W. Main, LLC, the City will immediately record a new deed restriction to restrict the sale or transfer of the property until such time as the surety and deposits as necessary for this contract are provided to the City.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
306 W. MAIN STREET PUD
CONTRACT NO. 2326
PROJECT NO. 53B2326

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

By: The Alexander Company, Inc., Manager 306 W. MAIN, LLC
[Signature] 5/20/13
(signature) Date
Joseph M. Alexander, President
(print name and title of person signing)

BY: _____
(signature) Date

(print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: [Signature] 2-19-14
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: [Signature] 2/19/14
Michael May, City Attorney Date

BY: Maribeth Witzel-Behl 12-11-2013
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: [Signature] 2/14/14
Eric T. Veum, Risk Manager Date

COUNTERSIGNED

BY: [Signature] 2/14/2014
David Schmiedicke, Finance Director Date



JOHNSON BANK®

Member Johnson Financial Group

IRREVOCABLE STANDBY NO. 9571 IN FAVOR OF THE CITY OF MADISON

PROJECT NAME: 306 W. MAIN STREET PUD

CONTRACT NO.: 2326

DEVELOPER'S NAME: 306 W. MAIN, LLC

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

ATTENTION: ROB PHILLIPS, CITY ENGINEER

We hereby issue our irrevocable standby in favor of the City of Madison, a Municipal Corporation located at Madison, Wisconsin available by your drafts at sight on Johnson Bank ("the Bank") for a sum or sums not to exceed a total amount of \$98,000.00 (Ninety Eight Thousand and 00/100 U.S. Dollars) for the account of 306 W. Main, LLC (the "Developer").

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

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

Drawings under this standby must be received at 159 Martin Luther King Jr. Blvd., Madison, WI 53703 no later than June 6, 2015; provided, however, that this credit shall not expire unless the Bank shall have given sixty (60) days' prior notice in writing to the City Engineer, 210 Martin Luther King, Jr. Boulevard, Room 115, Madison, WI 53703-3340, as agent for the City.

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

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

JOHNSON BANK

5201 E. TERRACE DRIVE SUITE 100
P.O. BOX 8636
MADISON, WI 53708
PHONE: 608.249.7800
FAX: 608.249.7830

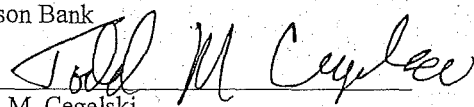
525 JUNCTION ROAD
MADISON, WI 53717
PHONE: 608.203.3900
FAX: 608.203.3939

159 MARTIN LUTHER KING JUNIOR BLVD.
MADISON, WI 53703
PHONE: 608.250.7200
TOLL FREE: 877.273.1821
FAX: 608.250.7220

Except to the extent otherwise expressly stated herein, this instrument is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590, and as to matters not governed by ISP 98 shall be construed and enforced in accordance with the laws of the state of Wisconsin. In the event of inconsistency, the latter shall take precedence.

Johnson Bank

By:


Todd M. Cegelski

Title: Sr. Vice President

* Date LOC 18 months after contract date