

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
<<DEVELOPMENT NAME>>
CONTRACT NO. <<NUMBER>>
PROJECT NO. <<NUMBER>>**

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 <<Developer>>, of <<City>>, <<State>>, ("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 <<permitting approval (PUD, CU, etc)>> to <<explain improvements>>, 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. <<modify improvements as necessary>>
3. WHEREAS, the Developer proposes to complete the installation of the required public improvements to serve <<Lot numbers>>, hereinafter "Construction Phase <<?>>". Subsequent construction phases will be defined in scope by future *Contracts For The Construction Of Public Improvements To Be Accepted By The City*.

<<Delete one paragraph for number 3>>

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.
4. WHEREAS, as a condition of approval of phased development in said subdivision, the Developer is required to execute a Declaration of Conditions, Covenants, and Restrictions for all lots included in future construction phases, until such time as surety is provided to the City to guarantee the installation of public improvements to serve said lots.

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

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.

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.

During the term of 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, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated 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 and Release of Payment:

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 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 (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (**check one**):

☐ A. Contractor 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, Contractor 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 is in effect is less than fifty thousand dollars (\$50,000), 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.*

*** Options C and D are not available under this Agreement.**

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 of Madison, 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:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. 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 ten thousand dollars (\$10,000), 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

(This Article applies to public works contracts only.)

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.

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 Meetings

The Developer further agrees to coordinate preconstruction meetings with the City Construction Engineer for all public improvements including street, utilities, stormwater management outlots, and other public stormwater green infrastructure.

The preconstruction meeting for stormwater management outlots and other public stormwater green infrastructure shall include attendance by the Contractor's approved ecological restoration subcontractor. The Contractor may not perform final grading for stormwater management outlots and other public stormwater green infrastructure as defined in the final issued plans, unless a preconstruction meeting for these improvements has occurred.

D. Construction Plans

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

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above-mentioned improvements without the City Engineer's and Water Utility Manager's approval of starting date and schedule. On stormwater utility outlots or other public green infrastructure, any final seeding as part of Professional Ecosystem Establishment prior to a preconstruction meeting or as-built approval shall be at the risk of the Contractor as outlined under Section M of this contract.

F. Notification of Work

The Developer further agrees to notify the City Construction Engineer a minimum of two (2) working days prior to beginning work or resuming work in the right-of-way or any lands that will be dedicated to the public upon acceptance of the improvements, this includes Outlots dedicated to the public and/or public easements on private property.

The Developer further agrees to notify the City Construction Engineer a minimum of fifteen (15) working days prior to final grading of stormwater management outlots and other public stormwater green infrastructure that will be dedicated to the public upon acceptance of the improvements or that will treat public stormwater, this includes Outlots dedicated to the public and/or public easements on private property.

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. Improvements of storm water management facilities requires post construction survey and approval of the condition of native plantings.
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Street lighting.
 - f. Traffic Signals.
 - g. Other items of work within the Public Right of Way.
 - h. Ecological restoration for two years.
4. That the water main is tested and a bacteriologically safe sample is obtained by testing at the local health department. The Water Utility will flush the main and obtain the samples required for this testing.

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

I. Time of Completion

All work specified herein shall be completed within eighteen (18) months <<modify improvements as necessary for storm>> from the date of this agreement by the Developer, excluding implementation of 2 years of Professional Ecosystem Restoration of stormwater management outlots and other public stormwater green infrastructure.

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 vegetation, tree, and shrubbery plantings) 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 vegetation, tree, and shrubbery plantings 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 for streets whose right-of-way are contained within the development to subbase grades established by the City Engineer and approved by the Common Council, said grading shall include the grading of the terraces to a sidewalk grade established by the City Engineer and in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications.

- b. The Developer shall grade the terrace of those existing streets which abut the plat to a sidewalk grade or a grade established by the City Engineer, grade a ditch abutting said lots for temporary drainage and install culverts at driveway locations.
- c. The Developer shall grade vision clearance triangles on corner lots to a maximum height of two (2) feet above the proposed curb elevation within the triangular space formed by two intersecting street lines or their projections and a line adjoining said points on said street lines located a minimum of twenty-five (25) feet from such street intersections. No structures, screenings, plantings, or embankments of any kind are allowed within this triangular area if they violate Section 27.05(2)(bb), MGO.
- d. The Developer shall furnish and install barricades, signs and other traffic control devices as specified by the City Traffic Engineer at all street ends.
- e. 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. Submit plans for review or questions regarding this condition to Jonathan Kollman, 608-266-6526, jkollman@cityofmadison.com and Scott Kerr, 608-266-6536, skerr@cityofmadison.com.
- f. The Developer shall obtain an Erosion Control (EC) 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. It is noted that the EC permit does not authorize the construction of public green infrastructure improvements (greenways/ponds/infiltration basins) without the issuance of a plan set by City Engineering and completion of a pre-construction meeting.

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. Further, the Developer shall provide a contact to City Engineering and City Building Inspection that is responsible to address inlet protection and perimeter controls left in place for lot construction.

- g. 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 (this includes easements and Outlots). The Developer shall clean up, topsoil, seed and mat any public property, which is disturbed. The Developer shall grade, topsoil, seed and mat all public or dedicated frontage at a 4:1 slope to meet existing grade, unless it is specified otherwise or permitted by the City's representative. The Developer shall provide and install any erosion control measures required on public property or property to be dedicated due to the grading specified in this contract.

2. Sanitary Sewer Facilities:

- a. The Developer shall install sanitary sewer mains, sanitary sewer access structures and laterals to serve all lots within the development. No construction shall commence until plans and specifications have been approved by the Madison

Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.

- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by 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.
- c. For all public sanitary sewer that is installed beyond the street construction limits of this development phase, the Developer shall be required to construct an interim crushed stone access road of sufficient width and depth to accommodate sewer cleaning, maintenance, and televising equipment, as required by the City Engineer. These requirements may also include a 'locked' barricade installation that allows entry by authorized sewer equipment and personnel. All costs associated with these interim improvements are the responsibility of the Developer.

3. Storm Sewer and Public Drainage System:

- a. The Developer shall install a public drainage system including all storm sewer mains, mainline structures, inlets, lateral pipes, culverts, retention/detention basins and public green infrastructure in accordance with the plans approved by the City Engineer. Green infrastructure includes but is not limited to, the following practices: rainwater harvesting/reuse, rain gardens, bioretention systems, infiltration basins, underground infiltration fields (note these may be Class V injection wells), planters that are connected to roof drainage, bioswales, permeable pavement, green roofs, and rain barrels as defined on plans in accordance with the approved plans. The Developer shall be responsible for the construction costs of the public storm sewer and drainage system improvements 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. The Developer shall have the public stormwater outlots and/or other public green infrastructure designed by their Engineer, the Developer shall have those plans approved and provided to City Engineering a minimum of one week before the issuance date agreed to in the contract schedule. The plans shall be sealed by a Professional Engineer and shall be printed to scale on 11" x 17" sheets. Further, the plans shall be of sufficient detail to allow construction of the basin/greenway and shall include all seeding and erosion control matting specifications (as approved by City Engineering), detail drawings, and contour maps/cross sections of the basin/greenway. Plans shall not be issued until these sheets are provided and approved by City Engineering.
- c. The Developer shall be required to submit a draft contract to the City Engineer for approval, for Professional Ecosystem Establishment for public outlots or other public green infrastructure improvements that are to be restored with native vegetation, as a condition of this contract. The Professional Ecosystem Establishment draft contract shall be submitted a minimum of four (4) weeks prior to the issuance of final construction plans by City Engineering. This draft contract shall include a management plan for ecosystem establishment and include all

means and methods and timing for professional ecosystem establishment. Once approved, this plan and the executed contract for Professional Ecosystem Establishment shall be considered a part of this contract. This is not required for public stormwater easements on private property which are maintained by the Owner of the property. All other applicable sections of this section shall still apply.

- d. Professional Ecosystem Establishment shall be required for all stormwater management outlots and other public green infrastructure which includes establishing native seed and/or vegetation, as called out in the plans, with minimal invasive species and as defined in this contract. See Section M.3.n. Professional Ecosystem Establishment on Public Stormwater Outlots and Other Public Green Infrastructure. Initial seeding shall be included in the initial construction costs and not the cost of professional ecosystem establishment.
- e. Professional Ecosystem Establishment Plan shall not be required for public stormwater easements on private property, which are maintained by the Owner of the property. Professional Ecosystem Establishment Plan shall also not be required for private maintenance agreements that are maintained by Others over public lands. All other applicable sections of this section shall still apply.
- f. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive storm 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 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 1 for each end and bend in underdrains) 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.
- g. During establishment of seeding for an infiltration basin, flow shall be routed around the active infiltration area using channels/pipes or other means as approved by City Engineering.
- h. The infiltration basin acceptance will not occur until all seeding/planting is completed and the basin is brought online as required under WDNR Technical Standard 1003.
- i. Temporary Sediment Basins
 - i. Construction of detention/ wet retention basin(s) shall include over-excavation of the basin to allow it to serve as an interim sediment trap until any street with active storm sewer draining to the detention/retention basin is completed, after which the Developer must meet sediment control through lot-by-lot erosion control. For wet retention basin, the minimum standard depth shall be nine (9) feet.
 - ii. Infiltration basins shall only be approved as temporary sediment basins when a wet retention basin with infiltration basin bypass cannot be installed.
 - iii. When conditionally approved for sediment storage, infiltration basins that are used as temporary sediment traps, shall be constructed to a temporary finish elevation two (2) feet or more above the final design native soil subgrade

elevation during use as a sediment trap. The native soil shall be free from construction sediment when the basin is fully constructed. In cases where this is conditionally approved, additional requirements for infiltration basin testing, along with deposits, and contract requirements for Professional Ecosystem Establishment shall be required beyond those identified in this contract.

- iv. Construction of bioretention basins for infiltration that are used as temporary sediment traps, shall not be excavated to less than two (2) feet above the final native soil subgrade elevation during this use. The native soil shall be free from construction sediment when the basin is fully constructed.
- j. Start of Work – Public Outlots and Publicly Maintained Green Infrastructure:
 - i. Prior to beginning work on public outlots and publicly maintained green infrastructure a preconstruction meeting shall be held and notice of the start of work shall be provided to the City Engineer with a minimum of fifteen (15) working days prior to starting work. If this land is to be publicly maintained, the Developer's ecosystem/ecological subcontractor shall be required to attend the preconstruction meeting for any work that includes native seeding, planting and professional ecosystem establishment.
 - ii. Rough grading of the lands to be dedicated to the public may occur prior to the preconstruction meeting provided all required land disturbance permits are in place and any applicable site grading and erosion control plans have been approved.
 - iii. Final grading shall not occur until the pre-construction meeting has occurred and the final plans are issued by the City Engineer.
 - iv. Final seeding/planting for any lands to be maintained by the City may not occur until the following has been approved by the City Engineer:
 - i. As-built survey.
 - ii. A site walk-thru.
 - iii. Construction Submittals including, but not limited to seed mix labels, erosion control material submittals, and storm structure shop drawings.
 - iv. Approval of basin infiltration rates, based on submittal requirements outlined in Section M.3.I.
 - v. During establishment of seeding for an infiltration basin, flow shall be routed around the active infiltration area using channels/pipes or other means as approved by City Engineering.
 - vi. Final grading and seeding for all improvements within the stormwater outlot shall be completed within 30 days. This does not include grading required to bring infiltration basins online at a later date as required by WDNR Technical Standard 1003.
 - vii. Any seeding/planting that is done at a later date to restore infiltration or bioretention basins that are used as temporary sediment basins shall extend the ecological restoration contract until two (2) growing seasons after completion of that final seeding/planting.
 - viii. Final grading and seeding/planting for professional ecosystem establishment for stormwater management outlots and other publicly maintained green infrastructure shall be completed as described in this contract. The Developer shall be responsible for ensuring compliance with both the erosion control plan and this contract so that they are not in conflict with each other.
- k. As-Built Surveys – Public Outlots and Publicly Maintained Green Infrastructure

- i. Either the Developer or the City shall be responsible for obtaining as-built surveys prior to the Developer's initial seeding/planting in stormwater outlots and areas of other publicly maintained green infrastructure. The Developer shall inform the City at the pre-construction meeting if they will take on the as-built surveying responsibilities or defer to the City to complete. The as-built surveys shall be for all improvements within the public outlot.
 - ii. The Developer shall provide the City with a schedule of construction and notify the City at least fifteen (15) working days prior to the anticipated final grading work commencing. The Developer shall then notify the City at least five (5) working days prior to the anticipated date of final grading completion and the site being ready for as-built surveying. The Developer shall reimburse the City for any costs sustained by the City as set forth in Section O.
 - iii. If the City is responsible for completing the as-built survey, and proper notice is provided by the Developer as defined above, and if the City then fails to obtain the as-built survey within five (5) working days of final grading being noticed, the site-grading shall be considered approved.
 - iv. If the Developer is responsible for completing the as-built survey the City shall have two (2) working days to review and approve or reject the as-built survey from the date it is submitted by the Developer. The as-built survey will be considered approved should the City fail to approve or provide response to the Developer's as-built survey submittal within the two (2) working days allowed.
- I. Infiltration Testing Requirements for Bioretention and Infiltration Basins
- i. Testing Requirements for Subgrade Soils: All native subgrades shall be tested as outlined below. Test results shall be submitted to the City Engineer a minimum of one week prior to adding engineered fill.
 - a. For infiltration basins > 50 SF: Complete a minimum of two (2) double ring infiltrometer tests within each basin below the engineered soil layer to confirm the infiltrative capacity of the subgrade soils. These tests shall be completed in accordance with ASTM D3385.
 - b. For infiltration basins < 50 SF: Complete a minimum of one (1) double ring infiltrometer tests within each basin below the engineered soil layer to confirm the infiltrative capacity of the subgrade soils. These tests shall be completed in accordance with ASTM D3385.
 - c. For lined bioretention basins: No double ring infiltrometer test is required at native subgrade
 - ii. Testing Requirements for Engineered Fill: All engineered fill shall be tested as outlined below. Test results shall be submitted to the Engineer at least one week prior to seeding/planting.
 - a. For basins > 50 SF: Complete a minimum of two (2) double ring infiltrometer tests within the basin at the finished grade of the engineered soil layer to confirm the infiltrative capacity of the engineered soils or the finished grade of infiltration basin if no engineered soil is being used. Or alternatively, visually inspect and record observations of the constructed infiltration system within 24 hours of a rain event of 0.5 inches or greater. These tests shall be completed in accordance with ASTM D3385.

- b. For basins < 50 SF: Complete a minimum of one (1) double ring infiltrometer test within each pond basin at the finished grade of the engineered soil layer to confirm the infiltrative capacity of the engineered soils or at the finished grade of the infiltration basin if no engineered soil is being used.
 - c. For lined basins: Complete one (1) double ring infiltrometer test within each basin at the finished grade of the engineered soil layer to confirm the infiltrative capacity of the engineered soils or at the finished grade of the infiltration basin if no engineered soil is being used.
 - iii. Approval of Subgrade: All approvals shall be obtained prior to placing engineered soils. Subgrade soils shall have the infiltrative capacity equal to or greater than the rates assumed in the stormwater management plan/report submitted to and approved by City Engineering.
 - a. If all double ring infiltrometer tests results meet/exceed design rates, the subgrade is approved.
 - b. If all double ring infiltrometer tests results do not meet/exceed design rates, the City Engineer has discretion over additional measures required for approval that may include, but are not limited to the following:
 - 1. The Developer shall complete additional double ring infiltrometer tests, or
 - 2. The Developer shall propose a method to improve the infiltration rates of the subgrade soils to meet the design expectations, or
 - 3. The Developer shall revise the approved stormwater management report that continues to meet the ordinance but reflects actual condition. The revised report must be stamped by a Professional Engineer and approved by the City Engineer.
 - iv. Approval of Engineered Soil. All approvals shall be obtained prior to seeding/planting. Subgrade soils shall have infiltrative capacity equal to or higher than the rates assumed in the stormwater management plan/report submitted to and approved by City Engineering. Alternatively, basins shall be visually inspected and recorded to show no standing water is present in the basin within 24 hours of a rain event of 0.5 inches or greater.
 - a. If all double ring infiltrometer test results meet/exceed design rates or meet the visual inspection, the subgrade is approved.
 - b. If all double ring infiltrometer test results do not meet/exceed design rates or visual inspection, the City Engineer has discretion over additional measures required for approval that may include, but are not limited to the following:
 - 1. The Developer shall complete additional double ring infiltrometer tests, or
 - 2. The Developer shall propose a method to improve the infiltration rates of the engineered soils layer to meet the design expectations.
 - v. Infiltration basins shall be offline until 75% of the contributing watershed is built out, OR five (5) years have passed since the start of construction of the

contributing areas that drain to the infiltration basin. At this milestone, the Developer shall compile and submit a report for approval to City Engineering including photos, historic double ring infiltrometer tests, a copy of the rain event data and observation log, and demonstrate the basin is infiltrating in less than 24 hours per the design.

- a. In the event water is still ponding after 24 hours, the Developer shall perform maintenance/work to increase the infiltration potential. If the system fails visibly due to sustained sediment loading, the Developer shall replace the upper soil layer, complete two additional double ring infiltrometer tests for infiltration, and revegetate under the direction of the City Engineer.
 - b. Once the Developer has revegetated to the Engineer's approval, the City will maintain the vegetation immediately after seeding.
 - c. After replacing the upper soil layer and revegetation, the Developer shall demonstrate the basin is infiltrating in less than 24 hours per the design.
 - d. If the basin does not infiltrate within 24 hours per design, the Developer shall propose a course of action and schedule for complete basin repair and/or reconstruct for approval by the City Engineer.
- m. Prior to acceptance of all construction features called for on the issued plans, including but not limited to, inlets, outlets, and riprap/stabilization, restoration shall be inspected, reviewed and approved by City Engineering for compliance with the approved plans and the Standard Specifications for Public Works Construction.
- n. Professional Ecosystem Establishment on Public Stormwater Outlets and other Public Green Infrastructure
 - a. The Developer shall be required to hire a City of Madison prequalified ecological restoration contractor to seed and/or plant and perform professional ecosystem establishment for two consecutive growing seasons. Such a contractor is prequalified under Category 246 Ecological Restoration of the Prequalified Contractors Qualified for Approval to Bid on Public Works Contracts or Work on Public Works Contracts and/or Private Developments.
 - b. The Developer shall be responsible for removing existing vegetation as recommended by the City Engineer to prepare the site for native plant seeding and professional ecosystem establishment.
 - c. After seeding and/or planting, the Developer's ecological restoration contractor shall maintain the newly seeded/planted area with the goal of native seed establishment from the initial native plant seeding/planting for a minimum of two consecutive growing seasons. For all native seeding/planting done after October 14th, the first growing season begins in spring of the following year. For all native planting, planting should be performed at the dates directed by the City Engineer. Additional seeding may be required pending planting dates. The growing season is defined as from the last frost in spring to the first frost in fall.
 - d. The Developer shall be responsible for seeding/planting with a native species mix that shall be approved by the City of Madison. This mix shall be referenced on the plan sheet provided and sealed by the Developer's Engineer and approved by City Engineering and

included in the professional ecosystem establishment plan. Refer to City of Madison Standard Specifications Article 207.2(a) for lists of approved seed mixes by site. Seeding shall be performed as specified in Article 207 of the City of Madison Standard Specifications.

- e. Seeding shall be required under erosion control matting, except for overseeding and as required to supplement the non-stratified seed mix.
- f. Seeding that occurs between June 15th and October 14th shall require non stratified seed mix, and the entire seeded area shall be overseeded with native seed mix specified in the ecological restoration contract after October 14th.
- g. The Developer shall be responsible for submitting the seed mix labels for approval by the City of Madison prior to installation.
- h. The Developer shall notify the City Engineer a minimum of five (5) working days prior to seeding. The seeding date will determine the start of the first year growing season.
- i. The Developer shall be responsible for all repairs, erosion, etc. during professional ecosystem establishment.
- j. Requirements of Professional Ecosystem Establishment Plan:
 - i. The means and methods for removal and any types of vegetation shall be included in the professional ecosystem establishment plan.
 - ii. Overseeding as part of establishment and disturbance shall be included in the contract.
 - iii. All proposed native seed mixes.
 - iv. Acknowledgement that all pesticide applications shall be tracked and in compliance with the [City of Madison Policy Regarding Pest Management](https://www.cityofmadison.com/parks/about/documents/pesticidepolicy2004.pdf) and submitted annually to the City by December 31st.
<https://www.cityofmadison.com/parks/about/documents/pesticidepolicy2004.pdf>
 - v. A schedule of ecosystem establishment activities, including site preparation, seeding, and management.
 - vi. Management means and methods during the first and second growing season for obtaining ecological restoration.
 - vii. An inventory and assessment of existing trees and vegetation that will not be impacted by grading.
- k. Ecological Restoration Guarantee Deposit: The Developer shall provide the City with a deposit to guarantee the restoration and two-year maintenance of the ecosystem per plans approved by the City Engineer.
 - a. The deposit shall be a cash deposit in an amount determined by the City Engineer.

- b. The City Engineer shall perform an inspection after seeding/planting, at the end of growing season one, and at the end of growing season two.
- c. After growing season one, the Developer may request up to 50% of the deposit be released based on the City Engineer's review of completed maintenance and ecological restoration establishment. The amount of deposit returned shall be based upon the City Engineer's determination of maintenance and ecological restoration that was successfully completed in growing season one.
- d. The City Engineer may require additional measures to meet the contract requirements outlined below if the ecological restoration does not appear to be progressing towards contract requirements.
- e. After growing season two, the Developer may request the release of the remaining deposit upon delivery of a report of completed activities and based on the criteria below. The City Engineer will determine if the vegetation meets the criteria listed in Part xiii, Vegetation Acceptance below.
 - i. If the site meets the criteria, the City shall refund the remaining ecological restoration deposit.
 - ii. If the site does not meet the criteria, the Developer shall forfeit the deposit to compensate the City for its increased costs to maintain the vegetation.
- f. The City shall take over vegetation maintenance at the start of the third growing season.
- g. City management of vegetation shall not preclude the Developer from fulfilling all other requirements of this Contract.
- h. Vegetation Acceptance: Professional ecosystem establishment acceptance after year two shall meet the following conditions:
 - i. >50% cover of native herbaceous plants
 - ii. < 5% cover of native aggressive woody plants
 - iii. <20% combined absolute cover of:
 - i. WDNR NR 40 "Prohibited" and "Restricted" species
 - ii. Common burdock (*Arctium minus*)
 - iii. Yellow or white sweet clover (*Melilotus officinalis*, *M. alba*)
 - iv. Bird's foot trefoil (*Lotus corniculatus*)
 - v. Curly dock (*Rumex crispus*)
 - vi. Giant ragweed (*Ambrosia trifida*)
 - vii. Reed canary grass (*Phalaris arundinacea*)
 - viii. Poison ivy (*Toxicodendron radicans* and *T. rydbergii*)
 - ix. Stinging nettle (*Urtica dioica*)
- o. Prior to the issuance of building permits, the Developer shall submit a master storm water drainage plan to the City Engineering Division for review and approval, in accordance with the conditions of Plat approval.

The master storm water drainage plan shall be submitted to City Engineering in digital format. The digital plan shall contain, at a minimum, lot corner elevations on an overlay of the recorded plat map of the development. Other information, as needed, such as contours and cross sections shall be provided in both digital and pdf format. The digital record shall be provided using WISCRS – Dane NAD 83 (1991). Vertical Datum shall be referenced to NAVD 88 (91 adjustment)

No building permits shall be issued prior to City Engineering's approval of this plan

4. Water Mains and Water Service Laterals:

- a. The Developer shall furnish and install all water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the development and as required by the plans prepared or reviewed by Madison Water Utility and subsequently approved by the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. All water service laterals three (3) inches and larger shall be completed with a controlling valve and box. All materials used shall conform to City of Madison Standard Specifications For Public Works Construction, latest edition.
- b. Prior to acceptance of the water main by the City, the Developer shall grant to the City a public water main easement as shown on the approved water main plan, if required. The easement shall include, but not be limited to, the right of ingress and egress thereon and the right to excavate, operate, repair, replace, or maintain the City water system, including the water main, and to perform all work incidental thereto. In addition, the Developer shall also provide the City with a legal description and sketch of this public water main easement. No buildings or structures of any kind shall be built over said public water main easement without the written permission of the Madison Water Utility. The water main easement shall be graded to final grade prior to installation of the water main. After installation of the water main, there shall be no grade change in excess of one foot without written permission from the Madison Water Utility.

5. Streets and Sidewalks:

- a. The Developer shall install Madison Standard Concrete Curb and Gutter, Madison Standard Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement on all streets within the development.
- b. The Developer shall install Madison Standard Sidewalk with Madison Standard Crosswalks on all streets abutting the development (on the one side of the street abutting the development).
- c. The Developer shall comply with all provisions as outlined in 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 be responsible for the restoration of all existing pavement markings disturbed by the project, including City inspection and engineering costs.

The Developer shall be responsible for the installation of new pavement markings as required by the plans and specifications prepared by the City Traffic Engineering Division, including City inspection and engineering costs.

10. Street Lights:

<FOR INFIL>

The Developer shall pay all costs associated with the installation of permanent 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 pay all costs associated with the installation of temporary equipment necessary to maintain lighting circuits. The Developer shall install permanent and temporary street lighting facilities per the City-prepared plans and specifications.

The Developer shall contact and coordinate the installation or relocation of wiring and service for the street lights with the energy utility company providing power. The Developer shall pay all utility costs associated with the street light service directly to the utility.

<FOR PLATS>

The Developer shall pay all costs associated with the installation of street lighting, conduit and structures as required by the City Traffic Engineering Division including City furnished materials, labor, inspection and engineering. The Developer shall install street lighting facilities as required by the City Traffic Engineering Division.

The Developer shall contact and coordinate the installation or relocation of wiring and service for the street lights with the energy utility company providing power. The Developer shall pay all utility costs associated with the street light service directly to the utility.

11. Traffic Signals:

The Developer shall pay all costs associated with the installation of permanent traffic signals, conduit, structures and related equipment as required by the plans and specifications prepared by the City Traffic Engineering Division including City furnished materials, labor, inspection, and engineering. The Developer shall pay all costs associated with the installation of temporary traffic signals. The Developer shall install permanent traffic signal facilities and temporary structures for temporary signals per the City-prepared plans and specifications.

The Developer shall contact and coordinate the installation or relocation of wiring and service for the traffic signals with the energy utility company providing power. The Developer shall pay all utility costs associated with the traffic signal service directly to the utility.

12. Fiber Optic:

The Developer shall pay all costs associated with the installation of permanent fiber optic cable, conduit, splices, structures and related equipment as required by the plans and specifications prepared by the City Traffic Engineering Division and the City IT Department including City furnished materials, labor, inspection, and engineering. The Developer shall pay all costs associated with maintaining the fiber optic network which shall remain active during construction. The Developer shall install permanent and temporary fiber optic facilities per the City-prepared plans and specifications.

The Developer shall expect work related to maintaining an active fiber optic network to extend beyond the project construction limits.

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, Capitol Area Regional Plan Commission, and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities and Urban Service Area annexation review fees.
2. The Developer shall pay Dane County for all charges for converting agricultural land to a non-agricultural use as provided in Wisconsin Statutes 74.485. In the event that the City incurs any costs related to the conversion of agricultural land, the Developer shall promptly pay any costs incurred by the City related to the conversion of the agricultural land.

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: \$000,000.00

(\$00,000.00 admin/design/inspection costs)
(\$00,000.00 tree protection deposit per City Forestry)
(\$00,000.00 inspection guarantee deposit)
(\$00,000.00 ecological restoration deposit)
(\$00,000.00 as-built deposit for SWM ponds)

City Traffic Engineering Division: \$000,000.00

(\$000,000.00 signing & marking deposit)
(\$000,000.00 street lights deposit)
(\$000,000.00 traffic signals deposit)
(\$000,000.00 fiber optic deposit)

An initial deposit of \$0,000.00 was provided with the Authorization to Proceed for this plat phase. An additional deposit of \$000,000.00 will need to be submitted with this executed contract to cover the remainder of the City Engineering Division and Traffic Engineering Division deposit requirements listed above. (Make check payable to City of Madison Treasurer).

Madison Water Utility: \$000,000.00 (Make check payable to Madison Water Utility).

Charges for services performed for the construction of improvements in subsequent construction phases shall be on the basis of charges for such services in effect at the time of construction of said Subsequent Construction Phases, the estimated cost being deposited with the participating City Divisions/Departments prior to construction.
<<delete paragraph if no future phases>>

P. Security

1. The Developer agrees to furnish the City with a bond, certified check, or irrevocable letter of credit in the amount of \$_____ to secure performance of this contract.
2. The Developer agrees that prior to any land surface disturbances or construction commencing within the development associated with subsequent construction phases, that *A Contract For The Construction Of Public Improvements To Be Accepted By The City* will be executed by the Developer and the City, and the Developer will furnish the City with a bond, certified check, or irrevocable letter of credit in the amount of the estimate of the City Engineer, sufficient to secure performance of said contract. <<delete paragraph if no future phases>>
3. Upon substantial completion of the public improvements, as defined by Sec. 236.13(2), Wis. Stats., the City agrees to reduce the security to an amount equal to an estimate of the City Engineer to secure performance of the remainder of the work to be completed plus ten percent of the total cost of the public improvements to secure performance of any guarantee described in this agreement. <<Use this #3 for Subdivision Plats>>
3. 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. <<Use this #3 for Infill Development & CSMs>>
4. If the Developer provides a certified 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.
5. Being that the Developer is a Governmental unit, they may file a letter from the officers authorized to act on its behalf with the City agreeing to comply with the provisions of the contract in lieu of the surety requirement given above. The letter shall also include a copy of their contractor's performance bond. <<Use this for school/county/CDA projects>>

Q. Developer's Designated Project Coordinator

The Developer hereby appoints _____ 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. Default and Penalties

In the event Developer shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Developer, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Developer, including expressly the specific enforcement hereof, forthwith have the cumulative right to impose the following penalties:

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 security in Par. P until such time as the guarantee expires.

S. Assignment

The Developer shall not assign any interest or obligation under this Agreement without the City Engineer's prior written approval and in a form to be approved by the City Attorney.

T. Counterparts, Electronic Signature and Delivery.

This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Contract may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

SECTION II - SUPPLEMENTAL CONDITIONS

<<EXAMPLE SPECIAL CONDITIONS – EDITED AS NEEDED FOR THE PROJECT>>

The Developer shall construct public sanitary sewer main and laterals, water main and service laterals, storm sewer and drainage system to serve <<PROJECT NAME>>.

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. INFILL

The Developer shall construct Madison Standard street improvements, including sidewalk on both sides, on the following streets:
<<LIST>>

The Developer shall execute a Declaration of Conditions, Covenants, and Restrictions restricting the sale or transfer of Lots <<?>>, inclusive of the <<PLAT NAME>>Subdivision, until such time as security is provided to the City to guarantee the installation of public improvements to serve said lots. <<PHASE 1 CONTRACTS ONLY>>

All damage to the pavement on <<STREET NAME>>, adjacent to this development shall be restored in accordance with the City of Madison's Pavement Patching Criteria.

The Developer shall close all abandoned driveways by replacing the curb in front of the driveways and restoring the terrace with grass.

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.

The approved stormwater management plan for the <<PLAT NAME>> requires runoff from public streets to be treated in private stormwater management facilities through the dedication of public drainage easements. Construction plans for these private stormwater management facilities shall be included in the public stormwater management plans (Project NUMBER) and approved by the City Engineer. Surety shall be required to guarantee the construction of the private stormwater management facilities, said surety shall be released upon acceptance of the private stormwater management facilities by the City Engineer. To obtain acceptance a Professional Engineer currently licensed in the State of Wisconsin shall certify the initial installation and implementation of the private stormwater management facilities per the conditions of approval included within City of Madison Stormwater Management Permit (<<Permit number>>). Documentation shall be submitted to the administrative authority using the standard forms available from City Engineering and found on the City's website at <https://www.cityofmadison.com/engineering/permits>. An as-built survey or as-built construction drawing (as applicable) shall be included with the submitted documentation for each private stormwater management facility. <<Private Stormwater Management Facilities Only>>

It is anticipated that the public improvements required to serve this proposed plat/csm will require additional right of way and/or easements located beyond the plat/csm boundary. The developer shall acquire the right of way and/or easements as required by the City at the developer's expense. In the event that the developer is unable to acquire the right of way and/or easements required, the City shall proceed to acquire the easements. The Developer shall reimburse the City for all costs associated with the acquisition, including attorney's fees and any and all costs associated with court ordered awards. The Developer shall provide a deposit at the time of contract execution to cover the estimated City staff expenses and easement cost for the acquisition. The Developer shall note that separate, additional surety in an amount estimated to cover any potential court ordered awards shall be retained by the City until such time as appeal rights have expired. The additional surety shall be provided prior to the City making an offer for the easement.

The Developer shall submit a LANDXML file as part of both the pond and greenway as-builts, and the master stormwater drainage plan. All data shall be submitted in US Survey Foot units. The units header in LandXML files must have linearunit = "USSurveyFoot". If units are not USSurveyFoot, the data submitted must be corrected and submitted.

The Developer shall submit an implementation plan for all stormwater features used to meet the stormwater management requirements for the plat/project to the City Engineer for review and approval regardless of the source of those requirements (CARPC, WDNR, Plan Commission, MGO 37, etc.). The implementation plan must document the extent of construction required and timing of said construction to allow the site to function in accord with the approval conditions at all times from beginning of construction through completion and final site stabilization. Failure to comply with the approved implementation plan or approved revisions shall constitute sufficient grounds for the City Engineer to issue a stop work order until the matter has been resolved.

The Developer shall purchase and install property boundary markers per City of Madison Standard Detail Drawings (SDD) along the boundary of lands dedicated for public stormwater purposes at the sole expense of the Developer.

SWM AND/OR PHASE CONTRACTS ADJACENT TO PUBLIC SW LANDS

The Developer shall execute a declaration of deed restriction as to minimum exterior opening elevations for structures constructed on lots # - #. ALSO DRAFT DOCUMENT

The Developer shall execute a declaration of conditions, covenants, and restrictions that restricts the sale of Lots <<?>>, inclusive outside of <<PHASE ?>> until such time that the required Madison Metropolitan Sewerage District Conveyance Facility Connection Charges and Treatment Plant Connections Charges have been paid.

The Developer shall construct out of phase sanitary sewer needed to serve <<PLAT NAME>> <<PHASE ?>>. A sanitary access road shall be installed to serve all out of phase sanitary sewer per the plans approved by the City Engineer.

The Developer shall obtain a Commercial Driveway Permit from Traffic Engineering for all driveway entrances serving the project. The Permit shall be obtained prior to the issuance of plans by the City.

The Developer shall submit a utility connection traffic control plan and schedule to City Traffic Engineering for review and approval for all utility connections required to serve the development. This plan is in addition to the contractor's site logistics traffic control plan and must be approved prior to any utility work taking place within the public right-of-way or on City owned property. City Traffic Engineering shall be invited to attend any pre-construction meeting involving utility connections as a condition of plan approval. Submit plans for review or questions regarding this condition to Jonathan Kollman, 608-266-6526, jkollman@cityofmadison.com and Scott Kerr, 608-266-6536, skerr@cityofmadison.com.
NOT NEEDED IN MOST CASES FOR PLATS

Temporary Streetlights

The Developer shall furnish, install, maintain, relocate and remove wood poles, guy wires, aerial cable, splice connectors luminaries and arms required to maintain 100% of the existing lighting system. The City will remove the existing street light poles after temporary lighting has been installed (and is operational) by the Developer. The Developer shall also maintain existing lighting circuits which power lighting poles outside of the construction limits. Maintenance includes but is not limited to replacement of burned out lamps, replacement of knocked down poles, relocation of poles in conflict with construction and maintaining continuous lighting.

Work for temporary wood poles and guy wires shall be according to State of Wisconsin Standard Spec 661.

The Developer shall keep streetlights in operation throughout construction until new lights are installed and operational.

The Developer shall furnish and install Type 4 wood poles, 35' long and 8' arm. Luminaries shall be 150 watt LED or equivalent lumen output, full cutoff. Protect any cable that extends from grade to 10 feet above grade by a plastic cable guard. Furnish aerial cable consisting of an assembly of three No. 4 XLP insulated power conductors with an ACSR messenger (grounding) wire and mounting hardware. Provide the quantity of parallel cable assemblies necessary to maintain lighting circuits within the project area.

The Developer shall provide off-hours contact name(s) and phone number(s) for the city and police department for repair purposes and be able to respond within 2 hours to the project site for knockdowns or other work that must be completed in a timely manner. All other maintenance needs shall be completed within 24 hours of notification. It is also the Developer's responsibility to continuously monitor the lighting systems operation.

Temporary Signals

The Developer shall furnish, install, maintain, relocate and remove wood poles and guy wires required to maintain 100% of the temporary traffic signal system. The City will remove the existing traffic signal poles after temporary structures have been installed by the developer and the temporary traffic signal installed by City TE is operational. Maintenance includes but is not limited to replacement of knocked down poles, relocation of poles in conflict with construction and maintaining the temporary traffic signal.

Work for temporary wood poles and guy wires shall be according to State of Wisconsin Standard Spec 661.

The Developer shall furnish and install Type 4 wood poles, 35' long and 8' arm.

The Developer shall keep the temporary signal in operation throughout construction until new traffic signal equipment is installed and operational.

The Developer shall provide off-hours contact name(s) and phone number(s) for the city and police department for repair purposes and be able to respond within 2 hours to the project site for knockdowns or other work that must be completed in a timely manner. All other maintenance needs shall be completed within 24 hours of notification. It is also the Developer's responsibility to continuously monitor the traffic signal systems operation.

ADD GENERAL NOTE TO PLANS REGARDING TREE PROTECTION/REMOVAL APPROVALS (?)

City owned street trees within or adjacent to the project area shall be protected per City Forestry requirements and as approved by the Board of Public Works. Damages to trees as a result of project construction activities will be assessed charges and those fee amounts deducted from the tree protection deposit required with this contract. The Developer will not be held responsible for damages to trees as a result of weather damage or other parties not associated with the project.

City owned street tree removals have been reviewed and approved by City Forestry and the Board of Public Works for this project. Tree removal permits will only be issued for those trees that have been approved for removal. Street trees that are requested for removal that were not included in the tree removal approvals for this project must be reviewed and approved by City Forestry and the Board of Public Works prior to issuance of the required tree removal permit and completion of an addendum to this contract.

The following City owned street trees have been approved for removal with this project: LIST OUT TREES APPROVED FOR REMOVAL.

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 final project site plan approval.

As defined by Section 107.13 of the City of Madison Standard Specifications for Public Works Construction: No excavation is permitted within 5 feet of the trunk of the street tree or when cutting roots over 3 inches in diameter. If excavation is necessary, the contractor shall contact City Forestry (266-4816) prior to excavation. City of Madison Forestry staff shall assess the impact to the tree and the root system prior to work commencing.

The Contractor shall take precautions during construction to not disfigure, scar, or impair the health of any street tree. The Contractor shall operate equipment in a manner as to not damage the branches of the street tree(s). This may require using smaller equipment and loading and unloading materials in a designated space away from trees on the construction site. Any damage or injury to existing street trees

(either above or below ground) shall be reported immediately to City Forestry at 266-4816. Penalties and remediation shall be required.

Upon receipt of this contract, fully executed by the Developer, together with the required security and deposits, the City Engineer will draft and record a Release of the Declaration of Conditions, Covenants that restrict the sale or transfer of Lots <<?>>, inclusive, of <<PLAT NAME>>. <<PHASE 2 OR MORE>>

The Developer shall assume all risks and responsibility for any construction under this agreement started prior to plat recordation. Security shall be required for staking of the lots and shall be maintained with this contract until all lots in <<PLAT NAME>> are staked. The City Engineer shall authorize the start of construction only after the <<PLAT NAME>> Subdivision requirements are satisfactorily completed.

This plat is subject to Impact Fees that are due and payable at the time of application for building permits. Building permit holds shall be placed on all lots with outstanding fees. The Developer shall execute a Declaration of Conditions, Covenants and Restrictions for recording at the Dane County Register of Deeds along with an Impact Fee Schedule.

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 street improvements on STREET NAME, adjacent to LOT NUMBER. After approval by the City Engineer, the City shall reimburse the developer, up to the statutory limit, in accordance with Section 16.23(9)(d)6.d. of the Madison General 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.

The Developer may be required to enter into a maintenance agreement for the non-standard terrace improvements that are being proposed.

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.

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.

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.

As required by Ordinance, provide private Easements or private Outlots to accommodate the current USPS required centralized delivery of mail using Cluster Box Units (CBUs). Coordinate the locations of the CBUs with the USPS Development Coordinator, City Engineering and City Traffic Engineering Staff and in accordance with the Policies for Cluster Box Units as adopted by the City of Madison Board of Public Works. CBUs serving this land division will not be permitted within any publicly owned or dedicated lands.

If the Developer is not able to determine the final locations of the CBUs prior to recording the final plat, the final placement of CBUs for each phase of development within this land division shall be determined prior to construction. The locations for each phase shall be as required by Ordinance, in accordance with the Policies for Cluster Box Units as adopted by the City of Madison Board of Public Works, and in compliance with United States Postal Service requirements.

The required CBU documents shall be recorded prior to the start of construction of the public improvements serving any Lot or Outlot. In the instance of land divisions that do not require the construction of public improvements or a contract with the developer, the required approved CBU documents shall be recorded simultaneously with the final approved land division.

Construct the CBUs in accordance with the specifications approved by the Board of Public Works.

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 that crane(s) will not be left hanging over City right-of-way or structures in a loaded condition overnight or while crane(s) are not in active use. The crane operation contractor must be pre-qualified to work in the public right-of-way. Cranes may be allowed to weather vane (swing freely with wind conditions) for safety reasons while they are not in use. The specific insurance requirements for the crane operator are as follows:

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.

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.

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.

Subcontractor's Insurance. The crane operator shall insure the activities of his/her subcontractors in his own policy.

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.

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.

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.

Upon project completion any crane foundation pad located partially or fully in the public right-of-way shall be removed to a minimum of 6.5 feet below the finished surface elevation. If any portion of the crane foundation pad will remain after the top removal is completed a detailed as built map exhibit tied to the adjacent property lines and also labeled with the Dane County Coordinates shall be provided to the City Engineer with the measured horizontal and vertical locations of the top and the approximate depth of the remaining crane foundation pad.

**VERIFY THAT IMPACT FEE HOLDS ARE PLACED ON ANY LOTS
THAT HAVE BEEN PLATTED PRIOR TO 2008.**

**APPLY HOLDS TO LOTS IN ACCELLA – IMPACT FEES / PENDING
EASEMENTS / MINIMUM OPENING ELEVATIONS**

Reimbursements – send new vendor form

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
<<PROJECT NAME>>
CONTRACT NO. <<CONTRACT NO>>
PROJECT NO. <<PROJECT NUMBER>>
MADISON, WISCONSIN**

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

<<DEVELOPER>>

BY: _____
(signature) Date

(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: _____
Michael Haas, City Attorney Date

APPROVED:

BY: _____
Satya Rhodes-Conway, Mayor Date

BY: _____
Lydia A. McComas, City Clerk Date

COUNTERSIGNED:

BY: _____
Eric T. Veum, Risk Manager Date

BY: _____
David Schmiedicke, Finance Director Date

Execution of this Agreement by City was authorized by Resolution Enactment No. RES - _____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20____.