

Contract Routing Form

ROUTING: Routine

printed on: 03/24/2015

Contract between: TRMcKenzie Inc
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: The Willows - Offsite Utilities Only

Contract No.: 2419

File No.: 36987

Enactment No.: RES-15-00166

Enactment Date: 02/26/2015

Dollar Amount: 0.00 *✓ no City funds required*

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	3-25-15	3-25-15
Director of Civil Rights	3-26-15	3/27/15 <i>mod</i>
Risk Manager	03-27-2015	3/30/15 <i>RTV</i>
Finance Director	3/30/15 <i>KLS</i>	4/1/15 <i>cf</i>
City Attorney	355 4-01-15	4-1-2015
Mayor	4-1-15	4-2-15

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

Original + 2 Copies

03/24/2015 15:39:24 enjls - Janet Schmidt 261-9688

Dis Rights: OK / ~~MA~~ / Problem - Hold
Prev Wage: AA / Agency / ~~NO~~
Contract Value: *No City Funds*
AA Plan: *30 DAYS*
Amendment / Addendum # *—*
Type: POS / *①* Sbdv / Gov't /
Grant / PW / Goal / Loan / Agrmt



City of Madison

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

Legislation Details (With Text)

File #: 36987 **Version:** 1 **Name:** Approving plans and specification a project known as The Willows - Offsite Utilities Only and authorizing construction to be undertaken by the Developer, Private Contract No. 2419

Type: Resolution **Status:** Passed

File created: 1/27/2015 **In control:** BOARD OF PUBLIC WORKS

On agenda: 2/24/2015 **Final action:** 2/24/2015

Enactment date: 2/26/2015 **Enactment #:** RES-15-00166

Title: Approving plans and specification a project known as The Willows - Offsite Utilities Only and authorizing construction to be undertaken by the Developer, Private Contract No. 2419. (9th AD)

Sponsors: BOARD OF PUBLIC WORKS

Indexes:

Code sections:

Attachments: 1. WILLOWS UTIL.pdf, 2. 2015-01-19 1414

Date	Ver.	Action By
2/24/2015	1	COMMON COUNCIL
2/4/2015	1	BOARD OF PUBLIC WORKS
1/27/2015	1	Engineering Division

No City Funds required. Private contract.

Approving plans and specification a project known as Th
construction to be undertaken by the Developer, Private Contract No. 2419. (9th AD)

WHEREAS, the developer, TRMcKenzie, Inc, has received the City of Madison's conditional approval for a preliminary plat known as The Willows; and,

WHEREAS, the developer has requested that the City allow for public sanitary sewer and storm sewer be installed at the developer's expense to the plat; and,

WHEREAS, the construction of the remaining infrastructure to serve the plat will be completed under a separate contract with the City; and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances allows the developer to install the improvements in construction phases provided that a Declaration of Conditions, Covenants, and Restrictions is executed for those lots included in future construction phases until such time as surety is provided to the City to guarantee the installation of the public improvements to serve said lots; and,

WHEREAS, the developer proposes to provide public improvements to serve the future build out of The Willows subdivision.

NOW, THEREFORE, BE IT RESOLVED:

Please
Route.

cert for TR
mckenzie is
in system
already.

Thanks. JS

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is
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1. That the Mayor and City Clerk are hereby authorized and directed to execute a Contract For the Construction of Public Improvements That Will be Accepted by the City of Madison For The Willows - Offsite Utilities Only, with TRMcKenzie, Inc. and a Release of the Declaration of Conditions, Covenants, and Restrictions on the lots for which public improvements are to be provided.
2. That the plans and specifications for the public improvements are hereby approved.
3. That the developer is authorized to construct the public improvements in accordance with the terms of the Contract For the Construction of Public Improvements That Will be Accepted by the City of Madison at the sole cost of the developer, except as follows: NONE
4. That the Mayor and City Clerk are hereby authorized to sign and grant easements or right-of-way release or procurement documents, maintenance agreements or encroachment agreements, as necessary and grant or accept dedication of lands and/or easements from/to the Developer/Owner for public improvements located outside of existing public fee title or easement right-of-ways.
5. The Common Council is approved to accept ownership of the improvements in the Maintenance Area if a maintenance agreement is executed and recorded as a condition of this contract.

**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
THE WILLOWS – OFFSITE UTILITIES ONLY
CONTRACT NO. 2419
PROJECT NO. 10513**

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

RECITALS

1. WHEREAS, the Developer has received conditional approval from the City for preliminary plat known as The Willows, a copy of which is incorporated by reference.
2. WHEREAS, The Developer has requested that the city allow the installation of public sanitary sewer and storm sewer within easements outside the preliminary plat boundaries as necessary to provide adequate service to the plat.
3. WHEREAS, the Developer proposes to complete the installation of the required public improvements for The Willows subdivision by means of a separate Contract with the City.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS TO BE ACCEPTED BY THE CITY:

NOW, THEREFORE, the Developer and the City hereby agree as follows:

SECTION I - GENERAL CONDITIONS

A. Prequalification of Contractors and Prevailing Wage Rates

The Developer agrees to engage Contractors for all construction included in this agreement who shall be listed as qualified for such work by the Director of Public Works and who shall comply with every requirement of Section 66.0903, Wisconsin State Statutes (Prevailing Wage Rate). For the current Prevailing Wage Rate please go to:
<http://www.cityofmadison.com/business/pw/forms.cfm>

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

This Contract is subject to Section 66.0903 of the State Statutes regarding prevailing wage rates. By executing this Contract, the Developer agrees to ensure that its contractor and all subcontractors performing work under this Contract shall comply with the requirements of Section 66.0903. More specifically, the Developer shall ensure that the contractor and all subcontractors furnish certified payroll records to the Department of Workforce Development (DWD) and/or the City of Madison if requested to do so. If DWD finds a contractor has violated the prevailing wage law, DWD shall assess liquidated damages of 100% of the wages owed to employees.

B. Nondiscrimination and Affirmative Action

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

1. Nondiscrimination.

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

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

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

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

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the

candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

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

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

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

ARTICLES OF AGREEMENT

Article I

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

Article II

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

Article III

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

Article IV

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

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

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

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

Article V

(This article applies only to public works contracts).

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

Article VI

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

Article VII

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

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

Article VIII

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

Article IX

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

C. Preconstruction Meeting

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

D. Construction Plans

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

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above-mentioned improvements without the City Engineer's approval of starting date and schedule.

F. Notification of Work

The Developer further agrees to notify the City Construction Engineer two (2) working days prior to beginning work or resuming work in the right-of-way.

G. Change Order to Work

The Developer further agrees that the City shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed in this or other written agreements between the City and the Developer.

H. Acceptance of Work

The Developer further agrees that the acceptance of public improvements is conditioned on completion of the following:

1. That all outstanding engineering and inspection charges indicated herein have been paid in full.
2. That affidavits and lien waivers are received by the City indicating that the Contractor has been paid in full for all work and materials furnished under this contract.
3. That a complete breakdown of costs incurred by the Developer is provided to the City for the following public improvement components in the public right of way and within public easements:
 - a. Sanitary sewer and sanitary sewer laterals. Acceptance of the work requires televising of all sewer mains at the Developer's expense.
 - b. Storm sewer and storm water management facilities. Acceptance of the work requires televising of all sewer mains at the Developer's expense

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

I. Time of Completion

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

J. Indemnification and Insurance

To the fullest extent permitted by law, the Developer shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees, and consultants from and against all suits, claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease, death, personal injury, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and, (b) is caused in whole or in part by any negligent act or omission of the Developer, its Contractor, their agents, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law regardless of the negligence of any such party.

In any and all claims against the City, its officials, officers, agents, employees or consultants, by any employee of the Developer, its Contractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or other person or organization under workers' compensation, disability benefit, or other employee benefit acts, statutes or laws.

The obligations of the Developer under this paragraph J. shall not extend to the liability of the City's consultants or consultants' agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, and designs or specifications.

The Developer shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Developer's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Such insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Developer shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Developer shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is in effect, Developer shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

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

The Developer shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Developer and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

The Developer shall require all Contractors engaged in the construction of this project to maintain the insurance required by Section 107.4 of the *City of Madison Standard Specification for Public Works Construction*, and to submit a current Certificate of Insurance with the City Engineer prior to the commencement of any work under this contract.

K. Weapons Prohibition

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

L. Guarantee of the Work

The Developer agrees to guarantee all work performed under this contract, except tree and shrubbery planting, for a period of one year from the date of final acceptance by the City Common Council, against defects in workmanship or materials. If any defect should appear during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at his own expense. This expense includes total and complete restoration of any disturbed surface or component of the improvement to the standard provided in the plans and specifications, regardless of improvements on lands where the repairs or replacement is required.

The Developer agrees to guarantee all tree and shrubbery planting for a period of two years from the date of final acceptance by the City Common Council, in accordance with Section 209.6 of the *City of Madison Standard Specifications for Public Works Construction*.

M. Specifications for Improvement

The Developer agrees to install the improvements specified in this Agreement in accordance with the plans and specifications approved by the Common Council and in accordance with the *City of Madison Standard Specifications for Public Works Construction* and the following conditions:

1. Grading, Erosion Control:

- a. The Developer shall obtain an Erosion Control and Stormwater Management Permit for the erosion and runoff control as required by Chapter 37, M.G.O. prior to the grading, utility installation or other land disturbance activity. A permit shall be obtained for each construction phase. The Developer shall adhere to conditions specified on the permit and grants the right-of-entry on the development to designated personnel of the City to inspect and monitor compliance with this Agreement.

Prior to acceptance, the Developer shall submit a post construction erosion control plan to the City. This plan shall address erosion control in the interim between the completion of the public works improvements specified in this contract and ultimate development. The Developer shall install those facilities and structures required by the post development erosion control plan.

- b. The Developer shall not disturb, grade, fill or store materials on public property or property required to be dedicated, unless specifically approved by the City's representative. The Developer shall clean up, topsoil, seed and mulch any public property, which is disturbed. The Developer shall provide and install any erosion control measures required on public property or property to be dedicated due to the grading specified in this contract.

2. Sanitary Sewer Facilities:

- a. The Developer shall install sanitary sewer mains, sanitary sewer access structures in accordance with the plans approved by the City Engineer. No construction shall commence until plans and specifications have been approved by the Madison Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.

- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each sanitary sewer lateral. The City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.
- 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, greenways, culverts, and detention/retention basins in accordance with the plans approved by the City Engineer unless other arrangements have been approved by the City Engineer as detailed in the supplemental conditions. Any field changes by the City Engineer shall become part of the approved plan and shall be incorporated at the Developer's expense.
- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each storm sewer lateral. The Storm Sewer Electronic Markers shall be provided where non-metallic storm sewer pipe is installed in the public Right of Way, and where no access or inlet structures are available on the surface to allow the pipe to be visually located. City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.

N. Fees Payable Prior to Construction

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

NONE

O. Developer to Reimburse the City for Costs Sustained

- 1. The Developer shall reimburse the City for its actual cost of design, inspection, testing, construction, erosion control review and inspection, and associated legal and real estate expenses for the required public improvements for the project. The City's expenses shall

be determined as follows:

- a. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
 - b. The cost of City equipment employed, including all televising of sewer mains.
 - c. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 29% of the cost of the materials.
 - d. All consultant fees associated with the project at the invoiced amount plus 10% for administration.
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 \$21,600.00 (Make check payable to City of Madison).

P. Surety

1. The Developer agrees to furnish the City with corporate bond, certified check, official check or irrevocable letter of credit in the amount of \$400,000.00 to secure performance of this contract.
2. Upon acceptance by the City Common Council of the improvements constructed as part of this agreement, the City agrees to reduce the surety to an amount equal to an estimate of the City Engineer to secure performance of the guarantee described in this agreement.
3. If the Developer provides a certified or official check to secure performance of this contract, the Developer agrees that the City may deposit the check in an interest bearing account and retain all interest accruing to such a deposit.

Q. Developer's Designated Project Coordinator

The Developer hereby appoints Ron Guthrie, Mead and Hunt, 608-443-0484 or ron.guthrie@meadhunt.com as the Project Coordinator, said individual who shall act as the Developer's representative during the Construction Phase of the installation of these improvements.

R. Penalties

The Developer further agrees that failure to comply with the provisions of this agreement shall have the following results:

1. Forfeiture of all payments/deposits under Par. O, and
2. Extension of the guarantee in Par. L to two (2) years, and
3. The City holding the surety in Par. P until such time as the guarantee expires.

SECTION II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall construct public sanitary sewer main and public storm sewer within the publicly dedicated easements from the downstream connection point at the end of Bear Claw Way in the Sauk Heights Subdivision, northerly then westerly within public easements to the property at 9803 Old Sauk Road, also known as the preliminary plat of The Willows.
- B. The Developer shall install a sanitary sewer access road in accordance with the plans approved by the City Engineer.
- C. The Developer shall restore any damage to the public roadways caused by the installation of the sanitary sewer and storm sewer related to this agreement.
- D. The Developer shall assume all risks and responsibility for any construction under this agreement started prior to plat recordation. Any changes to The Willows Plat as necessary with the subdivision approval process causing changes to the sanitary sewer and storm sewer constructed under this agreement shall be a the owner's risk. Modifications to the design or installation to accommodate the subdivision as final platted shall be at the Developer's expense.
- E. 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.
- F. The Developer shall be responsible for notification to all adjacent property owners regarding the start of the infrastructure improvements a minimum of 2 weeks prior to the start of any work. 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 prior to the start of construction.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
THE WILLOWS – OFFSITE UTILITIES ONLY
CONTRACT NO. 2419
PROJECT NO. 10513

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

TRMCKENZIE, INC.

BY: Alex McKenzie 3/5/15

(signature)

Date

Alex McKenzie, member
(print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: Paul R. Soglin 4-2-15
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: Michael May 4/1/15
Michael May, City Attorney Date

BY: Emil A. Chmura FOR 3-25-15
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: Eric T. Veum 3/30/15
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY: David Schmiedicke 4/1/15
David Schmiedicke, Finance Director Date

STANDBY LETTER OF CREDIT		PAGE 1
DATE OF ISSUE : MARCH 20, 2015	IRREVOCABLE STANDBY LETTER OF CREDIT	NUMBER SB 151180004
	DATE AND PLACE OF EXPIRY SEPTEMBER 20, 2016 SEE BELOW	
APPLICANT TRMCKENZIE, INC. 1910 HAWKS RIDGE DRIVE VERONA, WI 53593	BENEFICIARY CITY OF MADISON 210 MARTIN LUTHER KING JR. BLVD. ROOM 115, ATTN; CITY ENGINEER MADISON, WI 53703	
ADVISING BANK NONE	AMOUNT USD400,000.00 U.S. DOLLARS FOUR HUNDRED THOUSAND ONLY	
<p>TO: MAYOR & COMMON COUNCIL, CITY OF MADISON, WISCONSIN (THE "CITY") ATTN: ROB PHILLIPS, CITY ENGINEER</p> <p>PROJECT NAME: THE WILLOWS - OFF SITE UTILITIES ONLY CONTRACT NO.: 2419 DEVELOPER NAME: TRMCKENZIE, INC.</p> <p>WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SB151180004 (THE "LETTER OF CREDIT") IN FAVOR OF CITY OF MADISON, A MUNICIPAL CORPORATION LOCATED AT MADISON, WISCONSIN AVAILABLE BY YOUR DRAFT(S) AT SIGHT DRAWN ON TOWN BANK (THE "BANK") FOR A SUM OR SUMS NOT TO EXCEED A TOTAL AGGREGATE AMOUNT OF FOUR HUNDRED THOUSAND AND 00/100 U.S. DOLLARS (USD400,000.00) FOR THE ACCOUNT OF TRMCKENZIE, INC. (THE "DEVELOPER").</p> <p>DRAFTS WILL BE HONORED BY THE BANK WITHIN FIVE (5) BUSINESS DAYS AFTER OUR RECEIPT OF THE FOLLOWING COMPLYING DOCUMENTS:</p> <p>1. BENEFICIARY'S SIGNED DRAFT AT SIGHT DRAWN ON TOWN BANK BEARING THE CLAUSE "DRAWN UNDER TOWN BANK LETTER OF CREDIT NO. SB151180004 DATED MARCH 20, 2015.";</p> <p>2. BENEFICIARY'S SIGNED AND DATED STATEMENT, DULY COMPLETED, CERTIFYING EITHER:</p> <p>A) "AN OFFICIAL DEMAND BY THE CITY OF MADISON HAS BEEN MADE TO HAVE DEVELOPER COMPLETE CERTAIN WORK AND/OR PAY CERTAIN COSTS TO CONTRACTORS, SUBCONTRACTORS, LABORERS OR SUPPLIERS FOR WORK AND/OR MATERIAL FURNISHED."; OR</p> <p>B) "THE DEVELOPER HAS FAILED, REFUSED OR IS UNABLE TO COMPLETE CERTAIN WORK AND/OR TO PAY CONTRACTORS, SUBCONTRACTORS, LABORERS OR SUPPLIERS."; OR</p>		

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APPLICANT TRMCKENZIE, INC. 1910 HAWKS RIDGE DRIVE VERONA, WI 53593	BENEFICIARY CITY OF MADISON 210 MARTIN LUTHER KING JR. BLVD. ROOM 115, ATTN; CITY ENGINEER MADISON, WI 53703	
<p>C) "DEVELOPER HAS FAILED, REFUSED OR IS UNABLE TO PAY FOR ENGINEERING, INSPECTION, AND TESTING SERVICES IN ACCORDANCE WITH THE CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS ACCEPTED BY THE CITY OF MADISON DATED _____ * _____."; AND</p> <p>3. THE ORIGINAL OF THIS LETTER OF CREDIT, AND ALL AMENDMENTS, IF ANY.</p> <p>DRAWINGS UNDER THIS LETTER OF CREDIT MUST BE RECEIVED AT TOWN BANK, C/O ITS SERVICE PROVIDER, WINTRUST FINANCIAL CORPORATION, ATTENTION: INTERNATIONAL SERVICES GROUP, 1946 N. IRVING PARK ROAD, CHICAGO, IL 60613, NO LATER THAN THE EXPIRY DATE, PROVIDED HOWEVER, THAT LETTER OF CREDIT SHALL NOT EXPIRE UNLESS THE BANK SENDS NOTICE THAT THIS LETTER OF CREDIT IS ABOUT TO EXPIRE TO THE CITY OF MADISON, ATTN: CITY ENGINEER, 210 MARTIN LUTHER KING JR. BOULEVARD, ROOM 115, MADISON, WI 53703-3340 AS AGENT FOR THE CITY, BY OVERNIGHT COURIER AT LEAST SIXTY (60) DAYS PRIOR THE EXPIRY DATE. IN NO EVENT SHALL THIS LETTER OF CREDIT OR THE OBLIGATIONS CONTAINED HEREIN EXPIRE EXCEPT UPON PRIOR WRITTEN NOTICE, IT BEING EXPRESSLY AGREED THAT THE ABOVE EXPIRY DATE SHALL BE EXTENDED AS REQUIRED TO COMPLY WITH THIS NOTICE PROVISION.</p> <p>WE HEREBY AGREE WITH YOU THAT ALL DRAWINGS MADE UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO US AT THE ADDRESS INDICATED ABOVE ON OR BEFORE THE EXPIRY DATE.</p> <p>THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO IN THIS STANDBY LETTER OF CREDIT, EXCEPT ONLY INTERNATIONAL STANDBY PRACTICES REFERRED TO HEREIN, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN ANY SUCH DOCUMENT, INSTRUMENT OR AGREEMENT.</p> <p>EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 590, AND AS TO MATTERS NOT GOVERNED BY ISP98 SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE</p>		

1946 W. IRVING PARK ROAD, CHICAGO IL. 60613

Email: internationalservices@wintrust.com Fax: 877-501-9556 SWIFT: WTCUS44

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<p>OF WISCONSIN. IN THE EVENT OF INCONSISTENCY, THE LATTER SHALL TAKE PRECEDENCE.</p> <p>PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO TOWN BANK, C/O OUR SERVICE PROVIDER, WINTRUST FINANCIAL CORPORATION, ATTN: INTERNATIONAL SERVICES GROUP AT THE ADDRESS INDICATED HEREIN REFERENCING THE LETTER OF CREDIT NUMBER MENTIONED ABOVE. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT THE STANDBY UNIT AT 1-312-291-2934 OR 1-312-291-2944 OR BY EMAIL TO OUR INTERNATIONAL SERVICES GROUP AT INTERNATIONALSERVICES@WINTRUST.COM.</p> <p>***** END OF CREDIT *****</p> <p>THIS AREA INTENTIONALLY BLANK</p>		
THIS DOCUMENT CONSISTS OF 3 PAGES YOURS FAITHFULLY, FOR AND ON BEHALF OF TOWN BANK		 AUTHORIZED SIGNATURE(S)
		 AUTHORIZED SIGNATURE(S)

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