

Contract Routing Form

ROUTING: Routine

printed on: 10/15/2014

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

Project: Aspen Grove

Contract No.: 2390
Enactment No.: res 14-00594
Dollar Amount: 0.00

File No.: 34805
Enactment Date: 08/05/2014

No PO needed
KLSV

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	10-16-14	10-16-14
Director of Civil Rights	10-16-2014	10/30/14 MBB
Risk Manager	10-30-14	10/31/14 KRB
Finance Director	10-31-14 KLSV	11-3-14
City Attorney 1400	11-03-14	11-04-14
Mayor	11-04-14	11-05-14

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

Original + 1 Copies

10/15/2014 15:46:54 enjap - J Schmidt - 261-9688

Dis Rights: OK (N/A) Problem - Hold
Prev Wage: AA / Agency (N)
Contract Value: No. Funds Required
AA Plan: Pending Review 30 DAYS
Amendment / Addendum #
Type: POS / Dvlp / Sbdv / Gov't /
Grant / PW / Goal / Loan / Agrmt



City of Madison

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

Legislation Details (With Text)

File #: 34805 **Version:** 1 **Name:** Approving plans and specifications for public improvements required to serve the Subdivision known as Aspen Grove and authorizing construction to be undertaken by the Developer, Private Contract No. 2390.

Type: Resolution **Status:** Passed

File created: 7/9/2014 **In control:** BOARD OF PUBLIC WORKS

On agenda: 8/5/2014 **Final action:** 8/5/2014

Enactment date: 8/7/2014 **Enactment #:** RES-14-00594

Title: Approving plans and specifications for public improvements required to serve the Subdivision known as Aspen Grove and authorizing construction to be undertaken by the Developer, Private Contract No. 2390. (1st AD)

Sponsors: BOARD OF PUBLIC WORKS

Indexes:

Code sections:

Attachments: 1. Donofrio_14062711_22_09.pdf

Date	Ver.	Action By	Action	Result
8/5/2014	1	COMMON COUNCIL	Adopt Under Suspension of Rules 2.04, 2.05, 2.24, and 2.25	Pass
7/16/2014	1	BOARD OF PUBLIC WORKS		
7/9/2014	1	Engineering Division	Refer	

- No City Funds required. Private contract.

Approving plans and specifications for public improvements required to serve the Subdivision known as Aspen Grove and authorizing construction to be undertaken by the Developer, Private Contract No. 2390. (1st AD)
WHEREAS, the developer, B & H Madison, LLC, has received the City of Madison's approval to create the subdivision known as Aspen Grove; and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances requires the developer to install the public improvements necessary to serve the subdivision; 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 Lots 1-8 and OL 1.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a Contract For the Construction of Public Improvements That Will be Accepted by the City of Madison For Aspen Grove, with B & H Madison, LLC and a Release of the Declaration of Conditions, Covenants, and Restrictions on the lots for which public improvements are to be provided.

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

**ASPEN GROVE
CONTRACT NO. 2390
PROJECT NO. 53B2390**

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 B & H Madison, LLC, 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 approval from the City for subdivision plat entitled Aspen Grove, a copy of which is incorporated by reference.
2. WHEREAS, Section 16.23(9) of the Madison General Ordinances (MGO) requires that provisions be made for the installation of public sanitary sewer facilities, storm sewer and drainage system, water mains and water service laterals, the grading of public and private lands, erosion and stormwater runoff control, street improvements, street signs and pavement marking to serve the development. Section 16.23(9) also permits the installation of said public improvements by construction phases.
3. WHEREAS, the Developer intends to complete the installation of said public improvements with the Initial Construction Phase of said project and does not intend to complete any of said public improvements in subsequent construction phases.

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

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

SECTION I - GENERAL CONDITIONS

A. Prequalification of Contractors

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

B. Nondiscrimination and Affirmative Action

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

1. Nondiscrimination.

In the performance of 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 and Water Utility Manager's approval of starting date and schedule.

F. Notification of Work

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

G. Change Order to Work

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

H. Acceptance of Work

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

1. That all outstanding engineering and inspection charges indicated herein have been paid in full.
2. That affidavits and lien waivers are received by the City indicating that the Contractor has been paid in full for all work and materials furnished under this contract.
3. That a complete breakdown of costs incurred by the Developer is provided to the City for the following public improvement components in the public right of way and within public easements:
 - a. Sanitary sewer and sanitary sewer laterals. Acceptance of the work requires televising of all sewer mains at the Developer's expense.
 - b. Water main and laterals.
 - c. Streets including sidewalks, pavement marking, signage and street plantings.
 - d. Other items of work within the Public Right of Way.
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 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, 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.
- b. The Developer shall prepare a traffic control plan, which shall be submitted for approval to the Traffic Engineering Division. Work shall not begin until the traffic control plan is approved by the Traffic Engineering Division and a copy of the approved traffic control plan has been submitted to the Construction Engineer. The Developer shall furnish, install and maintain during construction, barricades, signs, pavement markings and other traffic control devices as specified on the approved traffic control plan or as directed by the City Traffic Engineer.
- c. The Developer shall obtain an Erosion Control and Stormwater Management Permit for the erosion and runoff control as required by Chapter 37, M.G.O. prior to the grading, utility installation or other land disturbance activity. A permit shall be obtained for each construction phase. The Developer shall adhere to conditions specified on the permit and grants the right-of-entry on the development to designated personnel of the City to inspect and monitor compliance with this Agreement.

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

- d. The Developer shall not disturb, grade, fill or store materials on public property or property required to be dedicated, unless specifically approved by the City's representative. The Developer shall clean up, topsoil, seed and mulch any public property, which is disturbed. The Developer shall grade, topsoil, seed and mulch 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 and laterals to serve all lots within the development. No construction shall commence until plans and specifications have been approved by the Madison Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.
- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each sanitary sewer lateral. The City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the

billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.

3. Water Mains and Water Service Laterals:

- a. The Developer shall install 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 and specifications prepared by the Water Utility and 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 box. All materials used shall conform to *City of Madison Standard Specifications For Public Works Construction*. The City Water Utility will furnish all pipes and fittings over ten (10) inches in diameter and the Developer will furnish all other required materials.

4. Streets and Sidewalks:

- a. The Developer shall install Madison Standard Concrete Curb and Gutter and other types of curb and gutter as specified, Madison Standard Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement on all streets within the development.
- b. The Developer shall comply with all provisions as outlined in Section 107 of the City of Madison Standards for Public Works Construction. The Developer or his agent shall contact City Forestry to review the trees prior to any trimming or removal. Prior to the closure of this contract City Forestry shall do a final inspection of the trees. A Tree Removal Permit shall be issued by City Forestry prior to removal of any City owned trees.

5. 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.

6. 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.

7. 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.

8. Pavement Markings:

The Developer shall pay all costs associated with the installation of all pavement markings as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection, and engineering.

N. Fees Payable Prior to Construction

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

1. All outstanding area charges levied against lots within the development by the City and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities.

O. Developer to Reimburse the City for Costs Sustained

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

- a. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
- b. The cost of City equipment employed, including all televising of sewer mains.
- c. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 29% of the cost of the materials.
- d. All consultant fees associated with the project at the invoiced amount plus 10% for administration.
- e. Damages to trees in accordance with the fee schedule outlined in section 107.14(i).

2. The Developer shall advance to the City the following payments/deposits:

- a. An amount equal to an estimate of the City's expenses, as prepared by the participating City Divisions/Departments, at the time the Developer files a Development Agreement. At the conclusion of the project, the respective agencies shall bill the actual cost to the Developer. In the event that the actual cost is calculated to be less than the advanced amount, the difference shall be refunded to the Developer. In the event the advance is less than the actual amount, the Developer shall be billed the difference and payment shall be a condition precedent to acceptance of any major components of construction. The estimated cost of services to be performed by the City is as follows:

City Engineering Division \$ 10,600.00 (Make check payable to City of Madison).

Madison Water Utility \$ 2,900.00 (Make check payable to Madison Water Utility).

P. Security

1. The Developer agrees to furnish the City with a bond, certified check, or irrevocable letter of credit in the amount of \$105,000.00 to secure performance of this contract.

2. 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.
3. 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.

Q. Developer's Designated Project Coordinator

The Developer hereby appoints Ron Klaas, D'Onofrio Kottke and Associates, RKlaas@donofrio.cc, 833-7530 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 security in Par. P until such time as the guarantee expires.

SECTION II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall construct public sanitary sewer main and laterals, water service laterals, and make any necessary storm sewer modifications to serve the Aspen Grove subdivision.
- B. All damage to the pavement or pavement patching required for the new sanitary sewer and water service laterals on Hawks Ridge Drive and Silverstone Lane adjacent to this development shall be restored in accordance with the City of Madison's Pavement Patching Criteria.
- C. The Developer shall reconstruct the temporary turn around as a cul-de-sac with curb, gutter, sidewalk and permanent pavement, which will allow for a more functional lot layout.
- D. The Developer shall release the existing 12ft private utility easement on Hawks Ridge Drive behind the sidewalk. The Developer shall dedicate a new 10ft wide public sanitary sewer easement with the proposed plat. If the private utility easement is to be relocated on Hawks Ridge Drive it shall not overlap the proposed public sanitary sewer easement.
- E. The Developer shall replace all sidewalks and curb and gutter which abuts the property which is damaged by the construction.
- F. 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.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
ASPEN GROVE
CONTRACT NO. 2390
PROJECT NO. 53B2390

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

B & H MADISON, LLC

BY: Mary Ann McKenzie 7/31/14
(signature) Date

Mary Ann McKenzie, Owner
(print name and title of person signing)

BY: _____
(signature) Date

(print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: Paul R. Soglin 11-05-14
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: [Signature]
Michael May, City Attorney Date

BY: Maribeth Witzel-Behl 10-16-14
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: [Signature] 10/31/14
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY: [Signature] 11/3/14
David Schmiedicke, Finance Director Date

CITY OF MADISON

**APPLICATION FOR THE APPROVAL OF CONTRACTORS
AND SUBCONTRACTORS FOR PRIVATE CONTRACTS**

In accordance with the *Contract for the Construction of Public Improvements That Will be Accepted by the City of Madison*, I hereby furnish the City of Madison City Engineer the names of all contractors and their subcontractors who shall be employed by me on the following development:

Project Name: ASPEN GROVE

Contract No.: 2390

FOR CITY USE ONLY			
<u>Approved</u>	<u>Disapproved</u>	<u>Name of Contractor/Subcontractor</u>	<u>Type of Work</u>
1. <input type="checkbox"/>	<input type="checkbox"/>		
2. <input type="checkbox"/>	<input type="checkbox"/>		
3. <input type="checkbox"/>	<input type="checkbox"/>		
4. <input type="checkbox"/>	<input type="checkbox"/>		
5. <input type="checkbox"/>	<input type="checkbox"/>		

PLEASE ATTACH COMPLETE MAILING ADDRESS FOR SUBCONTRACTORS

I agree that I am fully responsible to the City for the acts and omissions of my contractors and their subcontractors and I understand that the City's approval of any or all of the contractors and their subcontractors listed above shall not create any contractual relation between any contractor or their subcontractor and the City. I also agree that these contractors and their subcontractors must be prequalified by the Board of Public Works for the classification of work performed.

I further agree that, if during the life of the project it is necessary to amend this list of Contractors/Subcontractors, I shall request approval of the City Engineer in writing before any work is undertaken by Contractors/Subcontractors which have not been approved by the City Engineer.

B & H MADISON, LLC

Signed Mary Ann McKenzie

Date _____

Determination
by the City Engineer _____ Date _____

Please complete this form in duplicate and return both copies to the City Engineer. After determination by the City Engineer has been made, one copy shall be returned for your file.



A WINTRUST COMMUNITY BANK

Irrevocable Standby Letter of Credit number: WT14SLC11802007

Date of Issuance: August 18, 2014

Beneficiary:

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

Applicant:

B & H Madison, LLC
1910 Hawks Ridge Dr. Ste. 322
Verona, WI 53593-9801

Aggregate Amount: USD105,000.00

Expiration Date: February 18, 2016

Project: Aspen Grove

Contract No.: 2390

Developer: B & H Madison, LLC

We hereby issue this Irrevocable Standby Letter of Credit no. WT14SLC11802007 (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 up to an aggregate amount of One Hundred Five Thousand and 00/100 U.S. Dollars (USD105,000.00) for the account of B & H Madison, LLC (the "Developer").

Drafts will be honored by the Bank within five (5) Business Days after our receipt of the following complying documents:

1. Beneficiary's signed draft at sight in the form attached hereto as Exhibit A, duly completed. ;
2. Beneficiary's signed and dated statement, duly completed, certifying either:
 - 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
 - b) The Developer has failed, refused or is unable to complete certain work and/or to pay Contractors, Subcontractors, Laborers or Suppliers; or
 - 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 _____.
3. The original of this Letter of Credit, and all amendments, if any.



A WINTRUST COMMUNITY BANK

Irrevocable Standby Letter of Credit number: WT14SLC11802007

As used herein, "Business Day" means any day on which commercial banks are not authorized or required to close in the city at which presentation to us is made.

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 Expiration Date.

We hereby agree that this Letter of Credit shall expire on the Expiration Date, as stated hereinabove; provided, however, that we shall send notice 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 to the Expiration Date, that this Letter of Credit is about to expire. 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 Expiration Date shall be extended as required to comply with this notice provision.

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 on or before the Expiration Date.

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 documents, 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 documents, instrument or agreement.

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 of Wisconsin. In the event of inconsistency, the latter shall take precedence.

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.

Town Bank

Authorized Signature

Authorized Signature



A WINTRUST COMMUNITY BANK

Irrevocable Standby Letter of Credit number: WT14SLC11802007

**EXHIBIT A
SIGHT DRAFT**

Drawn On:
Town Bank
c/o its service provider
Wintrust Financial Corporation
Attn: International Services Group
1946 W. Irving Park Road
Chicago, IL 60613

DATE: _____

Pay at SIGHT to the order of: City of Madison

The sum of _____
[amount in words]
(USD _____)
[amount in numbers]

Drawn under Letter of Credit Number: WT14SLC11802007 dated August 18, 2014

City of Madison

By: _____
(Signature)

Print Name: _____

Title: _____