

CITY OF MILWAUKEE

Form CA-43

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July 1, 2002

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Via Electronic Mail

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Thomas P. Miller
Department of Public Works
841 North Broadway, 516
Milwaukee, WI 53202

Marcia Lindholm
Department of Public Works
841 North Broadway, 802
Milwaukee, WI 53202

RE: Common Council Resolution File No. 020477
Amendment and Supplement to Intergovernmental Cooperation
and Development Agreement - Indian Council of the Elderly Project

Dear Ms. Lindholm and Gentlemen:

Enclosed for your consideration is a draft Resolution, an Amendment and Supplement to Intergovernmental Cooperation and Development Agreement - Indian Council of the Elderly Project, and a preliminary draft Construction Contract. The intent of these documents is to provide for construction of the public improvements required in conjunction with the Indian Council of the Elderly Project by the Developer.

This Resolution is scheduled for consideration by the Public Improvements Committee on July 2, 2002. I plan to insert the documentation, in its present form, into the file to expedite the approval process. The Construction Contract, in particular, may require revisions.

Please forward any comments concerning these documents at your earliest convenience so that they may be placed into final form prior to the meeting of the Common Council. We

Robert Wilmot
Thomas Miller
Marcia Lindholm

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July 1, 2002

anticipate that the Department of Public Works will have numerous comments with respect to the form Construction Contract and we will also need to identify final versions of documentation setting forth the plans and costs of construction for attachment as exhibits.

In particular, we will probably need to deal expressly with matters such as the procedures to be followed by the City in the inspection of this work during the course of construction.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Gartner', with a large, stylized flourish at the end.

THOMAS O. GARTNER
Assistant City Attorney

TOG/kg
Enclosures
c: Robert Harvey
55202

**AMENDMENT AND
SUPPLEMENT TO**

**INTERGOVERNMENTAL
COOPERATION AND
DEVELOPMENT AGREEMENT**

**INDIAN COUNCIL OF THE
ELDERLY PROJECT**

**AMENDMENT AND SUPPLEMENT TO
INTERGOVERNMENTAL COOPERATION AND
DEVELOPMENT AGREEMENT**

INDIAN COUNCIL OF THE ELDERLY PROJECT

AGREEMENT made as of the ____ day of _____, 2002, by and among the CITY OF MILWAUKEE, a Wisconsin municipal corporation, ("MILWAUKEE"), the INDIAN COUNCIL OF THE ELDERLY, Inc., a Wisconsin not-for-profit corporation (sometimes referred to herein as "ICE"), the SISTERS OF ST. FRANCIS OF ASSISI, Inc. a Wisconsin not-for-profit corporation, and the SCHOOL SISTERS OF ST. FRANCIS, of St. Joseph's Convent of Milwaukee, Wisconsin, Inc., a Wisconsin not-for-profit corporation (collectively with "ICE" the "PRIVATE PARTIES") and THREE OAKS CIRCLE, INC., a Wisconsin not-for-profit corporation, ("DEVELOPER").

WITNESSETH:

WHEREAS, The parties hereto entered into that certain Intergovernmental Cooperation and Development Agreement - Indian Council of the Elderly Project dated as of the 30th day of April, 2001 (the "Development Agreement"); and

WHEREAS, The parties desire to amend section 3.1 (g) of the Development Agreement which provides for the construction of the Public Improvements by MILWAUKEE to authorize the execution of an agreement in substantially the form attached hereto as **EXHIBIT "A"** providing for the construction of the Public Improvements by DEVELOPER and ICE; and

WHEREAS, Notwithstanding the provisions set forth in Article XV of the Development Agreement providing for the execution of amendments to the Development Agreement by each party, the parties to this Amendment and Supplement have determined that inasmuch as its terms affect only the parties hereto and do not in any way modify or amend the additional provisions in the Development Agreement that this Amendment and Supplement shall be executed and approved only by the parties hereto.

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the parties hereto, MILWAUKEE, PRIVATE PARTIES, and DEVELOPER hereby covenant and agree as follows:

I. Amendments and Supplements.

Section 3.1(g) of the Development Agreement is hereby amended and supplemented through the addition of the following language:

"Notwithstanding the foregoing, MILWAUKEE, PRIVATE PARTIES, and DEVELOPER, and ICE may enter into an agreement and substantially the form attached hereto as **EXHIBIT "A"** providing for the construction of the Public Improvements by DEVELOPER and PRIVATE PARTIES and/or their agents and assigns."

II. Effect.

All terms and conditions of the Development Agreement are incorporated herein and hereby modified to conform to this Amendment and Supplement but, in all other respects, shall continue in full force and effect.

IN WITNESS WHEREOF, The parties hereto have caused this Amendment and Supplement to be executed on the day and year first set forth above.

CITY OF MILWAUKEE

JOHN O. NORQUIST, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN MORICS, Comptroller

Approved as to form and execution as of
this ____ day of _____, 2002.

Approved as to content this ____
day of _____, 2002.

Thomas O. Gartner, Assistant City Attorney

Thomas O. Gartner, Assistant City Attorney

THREE OAKS CIRCLE, INC.

By: _____
Sister Regina Pacis Meservey, SSSF
President

Attest: _____
Sister Anne Mary Rischar, OSF

Attest: _____
Jone Stromberg, Secretary

**THE INDIAN COUNCIL OF
THE ELDERLY, INC.**

By: _____
Hazel Shegonee, President

Attest: _____
Andrew C. Holman, Treasurer

**SCHOOL SISTERS OF ST. FRANCIS
OF ASSISI**

By: _____
Sister

Attest: _____
Sister

SCHOOL SISTERS OF ST. FRANCIS

By: _____
Sister

Attest: _____

This instrument was drafted by:
the Office of City Attorney
Thomas O. Gartner, Assistant City Attorney

TOG/kg
07-01-02:55104

Contract No. _____

EXHIBIT "A"

CITY OF MILWAUKEE, WISCONSIN

CONTRACT for:

CONSTRUCTION OF

LOCATION:

THIS CONTRACT, Made and entered into as of the ____ day of July, 2002, by and between the Indian Council of the Elderly, School Sisters of St. Francis of Assisi, School Sisters of St. Francis, and Three Oaks Circle, Inc., hereinafter called "CONTRACTOR" and the City of Milwaukee, a municipal corporation of the State of Wisconsin, hereinafter called "CITY."

The parties hereto agree as follows:

The CONTRACTOR has offered to the Commissioner of Public Works of the CITY, hereinafter called "Commissioner", to furnish the material, equipment, labor and everything necessary for the completion of the work herein mentioned for the CITY, for the price and within the time specified, and according to the contract documents therefore on file in the Department of Public Works;

The CONTRACTOR, in consideration of the payments hereinafter provided, for itself and its successors and assigns, as the case may be, hereby covenants and agrees to and with the CITY to well and truly execute and perform the work and furnish the material, for the price bid, within the time specified, and according to the contract documents, which include:

1. General Specifications Dated January 31, 1992
2. Detailed Specifications of Infrastructure Services Division
 Dated _____, 2002
3. Plans of this particular project construction and contract
4. Special Provisions
5. Special Conditions if any
6. Addenda

which contract documents are hereby made a part of this contract as though set forth in full herein.

CONTRACTOR ACKNOWLEDGES TO BE FULLY AWARE OF THE CITY'S DBE PROVISIONS, THE RESIDENCE PREFERENCE PROVISIONS, AND THE APPRENTICESHIP PROVISIONS AS SET FORTH IN THE BID PROPOSAL PACKET.

CONTRACTOR ACKNOWLEDGES TO BE FULLY AWARE OF THE REQUIREMENT TO MAINTAIN COMPLETE AND ACCURATE PERSONNEL RECORDS AS REQUIRED UNDER THE DBE, RESIDENCE PREFERENCE, AND APPRENTICESHIP PROVISIONS.

CONTRACTOR ACKNOWLEDGES RESPONSIBILITY FOR ASSURING SUBCONTRACTOR COMPLIANCE WITH CITY INSURANCE REQUIREMENTS ON THIS CONTRACT AND AGREES TO PERMIT RANDOM CHECKS OF OFFICE RECORDS BY CITY STAFF TO SUBSTANTIATE SUCH COMPLIANCE. WHERE A DETERMINATION IS MADE THAT A SUBCONTRACTOR DOES NOT HAVE THE REQUIRED INSURANCE COVERAGE, THE CONTRACTOR MAY BE CONSIDERED IN BREACH.

THE CONTRACTOR AGREES TO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. 12101, et seq.

SEE ATTACHED PAGES FOR BREAKDOWN.

TOTAL CONTRACT PRICE: _____ (\$ _____)

And the CONTRACTOR agrees to be liable for all damages occasioned by the digging up, use, or occupancy of the street, alley, highway, or public ground which may result from the carelessness of such CONTRACTOR, its assigns, agents, employees, or workers.

Pursuant to the provisions of Section 7.25 of the Milwaukee City Charter, the Commissioner of Public Works reserves the right to determine whether the work has been improperly or imperfectly performed. The Commissioner of Public Works further reserves the right to adjust and determine all questions as to the amount earned under the contract, including deducting from the final payment any costs related to the repair of public facilities damages by the CONTRACTOR on the contract.

And the CONTRACTOR hereby agreed to and with the CITY: (1) to complete the work in the manner and form specified within EIGHTEEN (18)* working days from the date specified in

the notice to proceed with the work, which notice is to be given within a reasonable time after the date of this contract.

* ALL CONCRETE WORK ON THIS SHALL BE COMPLETED BY _____, 2002. ALL REMAINING WORK BY _____, 2002.

SPECIAL PROVISIONS:

1. The work on this contract is governed by the City of Milwaukee Street Construction Specifications date July 1, 1992.
2. All concrete work on this contract shall be completed by _____, 2002. All of the remaining work shall be completed by _____, 2002.
3. The contractor shall furnish and install frame to chimney seals on all sanitary manholes within the limits of this contract. The seals shall be as specified in the "Standards Specification for Sewer and Water Construction in Wisconsin" (fifth edition with addendum) Chapter 6.42.0.

A sanitary manhole that contains an existing frame to chimney seal that is not altered or disturbed shall be deleted from the contract.

A sanitary manhole that contains an existing frame to chimney seal that is disturbed due to Contractor's negligence shall be resealed or be replaced with a new internal seal as directed by the engineer. This corrective work shall be at Contractor's expense.

4. The estimated quantities of work on this contract include ten (10) "Type P" erosion control units (Bid Item No. 978816). The construction engineer may approve an acceptable substitution or "Type P" erosion control units for the "Type P" units designated. Any substitutions installed at the direction of the construction engineer shall be paid for at two (2) times the price bid for "Type P" erosion control units.
5. The filter fabric for control of surface water, specified in Section 905.18.1 shall be a filtration geotextile meeting the following properties in lieu of the properties specified in the above-noted section:

Grab Tensile Strength 200lb (ASTM D-4632)
Mullen Burst Strength 200lb (ASTM D-3786)
Equivalent Sieve Size U.S. No. 30 Max (ASTM-D-4751)
Water Flow Rate 140 gpm/ft² (ASTM D-4491)
Permittivity 1.9 sec⁻¹ (ASTM D-4491)
Permeability 0.14 cm/sec (ASTM D-4491)

6. The City has retained a consultant for doing line and grade staking on paving contracts. The City needs the project staked 5 working days before construction starts. As a result, the contractor must contact the City eight (8) working days in advance so that

the City can give the consultant 3 working days to stake the project. The City will make the initial consultant contact at the time the contractor calls for a start. If the contractor wants the stake-out done in a special way to accommodate a special piece of equipment or a new procedure, it is up to the contractor to communicate this to the consultant.

The consultant is required to stake each stage of work one (1) time. The contractor is required to check that the stakes/grades are acceptable to use before construction starts. Any staking required because the contractor failed to protect the stakes or failed to transfer the grades would be at the contractor's expense. If there are design changes, the consultant will be paid an extra for stake-out. Stakes needing replacement due to alleged third party actions will require Construction Supervisor approval if a cost is involved.

7. When tree roots are encountered, the following provisions shall apply:

1. Curb and gutter construction.

- A. The root system on the curb side shall be cut not more than 2 inches behind the back edge of the new curb, and not more than 18 inches in depth when constructing the new curb and gutter.
- B. When constructing or replacing driveways or driveway approaches, roots shall not be cut by means of mechanical root cutting machines. If root removal is essential to driveway replacement, roots shall be manually cut with hand implements.
- C. Exposed tree roots shall be covered with mulch and watered from a period immediately following curb and gutter removal, until the area is backfilled following construction.

2. General requirements.

- A. All cutting for the removal of sod and soil in order to establish a finished grade within 4 feet of existing trees must be done manually if necessary.
- B. No construction equipment, cars, trucks, materials shall be parked or stored on any median or tree border on this project or adjacent roadways.
- C. Root foundations must remain adequate to withstand heavy windstorms.
- D. Root systems of street trees shall not be cut for the installation of any type of cable by the Contractor or City department. Contact the Forestry Division at 286-8282 for directional boring specifications.

- E. Caution should be used during the construction process to avoid damage to the roots, trunks, and branches of all street trees. Damage caused to any street tree will be repaired by the Forestry Division and the costs of repair, rejuvenation, and/or value lost will be billed to the Contractor or credited against the contract at the option of the City.
 - F. At locations where the Contractor has not complied with the Forestry Special Requirements stated in the special provisions above, and the maximum clearance was exceeded or a thin form was not used, a minimum credit to the City of \$50.00 per location will be taken. The credit will increase in proportion to the excess distance beyond clearance allowed. The credit will be \$50.00 for each 2-inch increment or part thereof in excess of the initial clearance allowed. If, in the opinion of the Forestry Division, the tree has been damaged to the point that it warrants removal, the credit that will be taken will be equal to \$100.00 per inch diameter of the tree. A field measurement will be taken to determine the tree size.
3. Contractor shall strictly adhere to all requirements, terms and conditions of the Wisconsin Electric Power Company easement attached as EXHIBIT "_____".

And the CONTRACTOR hereby guarantees and agrees to and with CITY that, in case the CONTRACTOR shall fail to fully and completely perform this Contract within the time herein limited for the performance thereof, they will pay to CITY, as liquidated damages for such default, the sum of _____ (\$_____) dollars per day for each and every day's delay in completing this contract, after the expiration of time wherein limited for its completion.

In connection with the performance of work under this Contract, the CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, color, age, national origin, ancestry, handicap, physical condition, or developmental disability as defined in sec. 51.01(5), Stats. The said provision shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay off or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available for employees and applicants for employment notices setting forth the provisions of the non-discrimination clause.

It shall be the duty of the EQUAL RIGHTS COMMISSION to initiate or receive and investigate complaints charging violations; to make a prompt and full investigation of each such complaint; to attempt to eliminate any unlawful practice through conciliation and persuasion, and, should conciliation and persuasion fail, to request the City Attorney to commence proceedings in the appropriate Court in the name of the City.

This agreement constitutes the entire agreement between the parties relating to the subject matter contained herein. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in quadruplicate under their several seals, the day and year first above written, the name and corporate seals of each corporate party hereto affixed and this instrument duly signed by its duly authorized representative.

CITY OF MILWAUKEE

By: _____

By: _____

COUNTERSIGNED:

By: _____

**THIS CONTRACT WAS
DRAFTED BY THE OFFICE
OF THE CITY ATTORNEY**

DEPARTMENT OF PUBLIC WORKS

By: _____

By: _____

Fund Number

Reserve

\$ _____
\$ _____
\$ _____
\$ _____

Contract No. _____
_____, 2002

Assessable

Total

\$ _____
\$ _____

For _____

Examined and Approved as to form and execution
this _____ day of _____, 2002.

Assistant City Attorney
55100