

THIS AGREEMENT, By and between Hallie Rapids LLC, hereinafter known as "Developer", and the City of Milwaukee, a municipal corporation, hereinafter known as "City";

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00) to each party in hand paid by the other, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained.

WHEREAS, The Developer is the owner of, or has options to purchase, approximately 2.5 acres of vacant land located generally north of W. Good Hope Road between N. 107<sup>th</sup> Street and W. Park Place This site is more particularly described by Exhibit "A"; and

WHEREAS, The Developer has requested an agreement that provides for extension of a sanitary sewer line to serve a Comfort Suites Hotel planned for the site; and

WHEREAS, The sewer extension could be installed under the terms of an out-of-program agreement upon condition that title to such facilities shall vest in the City of Milwaukee subject to conditions more fully hereinafter stated.

NOW, THEREFORE, In consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations,

IT IS AGREED, By and between the parties hereto that:

1. Funding Obligation

Developer agrees to provide all funds necessary for design, construction, and inspection of the sanitary sewer as well as any easement modifications necessitated by the project.

2. Design Option

Upon the mutual concurrence of the Developer and the Commissioner of Public Works, the Developer may use its own consultants to prepare the sewer extension plans. Plans generated by the Developer's consultant shall be prepared to City specifications and approval by the Commissioner of all such plans shall be required prior to commencement of any improvement work.

All City costs associated with review of plans prepared by others shall be the Developer's responsibility.

3. Construction Option

The Developer and the Commissioner of Public Works have agreed that Developer may let and administer the construction contract for the sewer extension covered by this Agreement. If Developer intends to manage the sewer contract, Developer shall formally notify the Commissioner in writing of its intent. In the event Developer chooses to manage the sewer contract, City shall perform its normal inspections during the course of construction. In addition, Developer

agrees to make a good faith effort to comply with and administer on behalf of the City, all applicable City rules and requirements pertaining to Emerging Business Enterprise and local resident involvement in the construction contract.

Developer shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works. All payments to contractors must be pre-approved by the Commissioner.

4. Site Grading

Developer agrees to pre-grade the site to the grades specified in the approved Storm Water Management Plan. Grading plans shall be reviewed and approved by the Commissioner of Public Works. The grading plan must be approved prior to commencement of sewer design (if to be performed by the City) or prior to submission of the sewer plan to the City (if to be undertaken by the Developer). The Developer is responsible for obtaining any and all permits required to undertake grading activities.

5. Sewer Improvements

New sanitary sewer will be installed from the eastern terminus of an existing sanitary sewer line located in easement on the site. The new sewer will extend easterly for a distance of approximately 160 feet and will terminate at a new manhole. Per paragraph 2 above, plans for the sewer extension may be prepared by either the Developer or by City engineers. The estimated cost for the City's review of plans prepared by others is \$ . The estimated cost for plan preparation is \$ if prepared by City engineers.

The estimated costs to construct and inspect the sewer improvements are as follows:

Construction	\$
Inspection	\$

Review and approval of the sewer plans by both the Milwaukee Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources are required.

5. Utility Laterals

Sewer laterals to the proposed new hotel as well as to two commercial buildings affected by the new hotel will be installed as part of the project. These may be contracted out by the City or may be installed by Developer under permit from the City's Department of Neighborhood Services. Under the latter option, the Neighborhood Services Department would inspect the work. The cost of laterals is not included in the preceding sewer estimates. If installed by the City, Developer shall provide funding therefore.

6. Storm Water Management Plan

A Storm Water Management Plan for the project must be submitted for review and approval by the City Engineer. Any storm water management improvements required in conjunction with the project shall be constructed by Developer. To ensure completion of the storm water facilities, a bond must be submitted in the amount of the improvement cost as evidenced by a construction contract.

Ownership and maintenance of the storm water management improvements shall be the responsibility of the Developer or of any subsequent owner of the project.

7. Other Improvements

Developer agrees that any utility and access improvements necessary to serve the site in addition to those listed above shall be its responsibility and shall be undertaken by Developer at its sole expense. Developer further agrees that the City shall review and approve plans for any work to occur in the public right-of-way. Permits necessary for any such work shall be obtained by Developer or other responsible parties.

8. Easements

Developer agrees to provide, where necessary and at no cost to the City, all easements and other property rights required to construct, operate and maintain the public improvements described herein. All on-site easement areas are to be pre-graded by the Developer prior to the construction of public improvements therein. It shall be the Developer's responsibility to obtain any permits and/or easements or other property rights necessary for the operation and maintenance of the storm water management system and outlets, as approved.

9. Private Utilities

Developer agrees that all private utility lines necessary to provide telephone, communications, electrical, and gas services to the development shall be installed underground, except where the City Plan Commission finds that such underground installations are not feasible.

10. Design Engineering Deposit

If the public improvements described in paragraph 5 will be designed by a private engineering consultant, Developer shall deposit a total \$ \_\_\_\_\_ with the City to cover the estimated cost of reviewing the plans. Such private design work must reflect, and be consistent with, the approved Storm Water Management Plan and associated grading plan.

If the improvements described in paragraph 5 will be designed by City staff, Developer shall deposit a total of \$ \_\_\_\_\_ to cover the cost of the City's design work.

11. Funding Guarantee for Construction

The Developer shall submit an irrevocable Letter of Credit or other funding guarantee, satisfactory in format to the City Attorney, in an amount equal to the estimated construction contract cost (\$ \_\_\_\_\_ ) for the public infrastructure improvements that will be constructed by third party contractors prior to the award of any contracts, whether privately or publicly let. At the request of the Developer, the actual contract amount for the various improvements may be substituted for the estimated costs. In addition, the amount of the LOC may be reduced periodically to reflect payments made to contractors. Any such reductions shall be approved by the Commissioner of Public Works.

Any and all irrevocable Letters of Credit shall guarantee that the Developer's bank or savings and loan will provide the required funds to cover the contract cost of installing the applicable infrastructure improvements and will, upon simple request by the Commissioner of Public Works and the City Treasurer, release same to City as required, all such funds to be furnished interest free. The Letter of Credit or other funding guarantee shall be submitted to the City prior to the City or the Developer entering into any contracts for installation of public improvements.

12. City Force Work Costs

The estimated cost for City inspection during construction of the sanitary sewer extension and related services is \$ . This amount must be deposited prior to commencement of construction work on the sewer extension.

13. Payments

In the event the City lets the public improvement construction contract, the contract costs for the public improvements will be billed to Developer upon determination that such costs have been incurred by City. Developer shall provide the City with funds to make contract payments. If such funds are not provided within 30 days of being requested, City may draw against the funding guarantee referenced in paragraph 11. It shall be further understood and agreed that where Developer funded work covered under the terms of this Agreement does not proceed to the bid or contract stage, the City shall still retain a sufficient amount of the Developer's engineering

fund deposit to cover expenses incurred by the City for plan review work commenced by the City at the Developer's request.

Upon completion of the public improvements and all associated City work, City shall return any unspent portions of the Developer's cash deposits (i.e. the Plan Review or Engineering Design Deposit and the Construction Engineering Deposit) to the Developer.

14. Inspections

Both parties agree that all materials furnished and all work performed hereunder shall conform to all regulations and specifications of the City of Milwaukee and its Commissioner of Public Works and shall be subject to inspection by the Department of Public Works. All engineering and inspection costs incidental to the installation of the public improvements covered by this Agreement shall be subject to the terms of this Agreement, the cost of such service when furnished by City being established as the wages of the person or persons engaged in such work plus all costs of overhead.

15. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon satisfactory completion to the sewer extension installed under the terms of this Agreement, title to it shall vest in the City of Milwaukee and that the City will accept the obligation of operation and maintenance in accordance with its standard practice.

16. Building Permits



It is understood and agreed by both parties hereto that building permits for hotel shall not be issued until (1) the required Storm Water Management Plan has been approved, (2) the Developer has provided the City with design or design review funds, a funding guarantee, and a deposit for City Force Work, (3) all required approvals for any sewer improvements have been granted by the appropriate agencies, and (5) easements, if any, required to construct and maintain underground improvements have been provided to the City.

17. Occupancy Permit

It is understood and agreed by both parties hereto that an occupancy permit for the new hotel will not be issued until the public improvements as outlined herein have been sufficiently completed so essential public utility services and traffic access are provided to the structure. Note: The Commissioner of Neighborhood Services for the City will base issuance of an occupancy permit on a variety of issues and code requirements in addition to the completion status of the required public improvements.

18. City Ordinances and Regulations

City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedures unless such work is to be undertaken by City Forces or by Developer per paragraph 3. It is further understood and agreed that this Agreement is subject to all City ordinances and regulations and nothing herein shall be deemed to waive or supersede such requirements.



THIS AGREEMENT, drafted by the City of Milwaukee, shall be binding upon the Developer, its lessees, successors and assigns, and upon the City, its successors and assigns.

DEVELOPER

IN WITNESS WHEREOF, the Developer has caused this document to be signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Developer

In Presence Of: \_\_\_\_\_

STATE OF WISCONSIN     )  
  ) SS.  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2007,  
who executed the foregoing instrument, and acknowledged that they executed the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the proper City Officers have caused this document to be signed and the City's seal to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF MILWAUKEE

In Presence Of:

\_\_\_\_\_

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

COUNTERSIGNED

\_\_\_\_\_  
Comptroller

STATE OF WISCONSIN     )  
  ) SS.  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, Tom Barrett, Mayor of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. \_\_\_\_\_ adopted \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_

