

OUT OF PROGRAM AGREEMENT
Westlawn Gardens – West
CAO 244265 (10-24-17)

THIS OUT OF PROGRAM AGREEMENT (“**Agreement**”) is made as of _____, 2017 and is by and between the Housing Authority of the City of Milwaukee (“**HACM**”) and the City of Milwaukee (“**City**”).

RECITALS

- A. HACM (along with certain others) owns real estate and improvements in Milwaukee, Wisconsin known as Westlawn Gardens (“**Westlawn Gardens**”), generally situated to the south of West Silver Spring Drive between North 60th Street and North 68th Street.
- B. HACM previously redeveloped the eastern portion of Westlawn Gardens (“**Westlawn Gardens - East**”) (east of N. 64th Street). HACM now wants to redevelop the western portion of Westlawn Gardens (“**Westlawn Gardens - West**”) (west of N. 64th Street).
- C. In conjunction with HACM’s Westlawn Gardens – West redevelopment, HACM requested this Agreement to allow HACM, at its expense, to design, construct and install:
1. The following public improvements (“**Public Improvements**”) within current and proposed public street and alley rights-of-way (“**ROW**”) located, and serving the public, at Westlawn Gardens - West:
 - Paving
 - Grading
 - Sewer mains
 - Water mains
 - Street trees
 - Street lights
 2. The following public improvements (also “**Public Improvements**”) within mews (outlot) areas at Westlawn Gardens - West:
 - Street lights
 3. The following private improvements (“**Private Improvements**”) located partly in ROW and partly in private property at Westlawn Gardens - West:
 - Sewer laterals (service lines) and water laterals (service lines)
 - Storm water management facilities (“**SWM Facilities**”) (including C-SWM Facilities and A-SWM Facilities as per **EXHIBIT E**).
 - Mews areas for public use, including landscaping and pedestrian and bicycle walkways.

As used herein, the term “**Project**” includes the design, construction and installation of Public Improvements and Private Improvements required hereby.

- D. Title to the following shall vest in the City upon completion of construction, subject to the terms hereof:
- all Public Improvements within ROW
 - street lights within mews areas
 - SWM Facilities listed as being City-owned (“**C-SWM Facilities**”) on **EXHIBIT E** attached.

AGREEMENT

1. **Recitals.** The recitals above are acknowledged and accepted.
2. **Project Design; Approved Plans; Law Compliance.** HACM, at its expense, shall design and layout ROW, and design and construct the Project in accordance with:
 - Applicable federal, state and local law, rules and regulations, including HACM’s procurement and human resource requirements, and including the Americans with Disabilities Act
 - plans and specifications approved by the City’s Commissioner of Public Works (“**Commissioner**”) (including grading plans)
 - required governmental permits
 - the storm water management plans required by Milwaukee Code of Ordinances (“**MCO**”) 120-9 signed by the City on June 20, 2011 (the “**SWM-1 Plan**”) and on March 23, 2017 (the “**SWM-2 Plan**”)
 - the Westlawn Gardens – West subdivision plat and certified survey maps approved by City.
3. **Funding Obligation.** HACM will provide all funds necessary for the Project, including funding for:
 - design and construction of the Project
 - securing easements and easement preparation as may be required
 - purchase of water fittings
 - material and construction inspections
 - related City work necessitated by the Project.
4. **HACM Contract Letting.**
 - A. **Design Contracts; Plans.** HACM shall let and administer design contracts for the Project. Plans must be prepared to City specifications and be approved by the Commissioner prior to commencement of construction work. All City costs associated with review of plans shall be HACM’s responsibility.

- B. **Construction Contracts.** HACM shall let and administer construction contracts for the Project. City shall perform its normal inspections during the course of construction.
 - C. **Notice and Copies.** HACM shall provide City with copies of design and construction contracts let for work required hereby.
 - D. **Procurement Requirements.** HACM construction contracts shall meet HACM's procurement requirements.
5. **Site Grading.** HACM shall pre-grade Westlawn Gardens – West property including proposed ROW. All grading must be in accordance with grading plans approved by the Commissioner. Grading shall be within 3 inches of the roadway sub-grade as established in the paving plans. Grading shall match design grades at the ROW line. Material in any fill areas shall be placed in accordance with Section 401.5 of DPW's Street Construction Specifications dated July 1, 1992.

The SWM-1 Plan and SWM-2 Plan show site grades established for storm water management purposes.

6. **Subdivision; Vacation; Dedication.** HACM caused Westlawn Gardens – West to be legally subdivided per Wis. Stat. Ch. 236, MCO Ch. 119, and Council- approved plat (the "**Plat**"), with necessary dedications. The Plat was recorded with the Register of Deeds as Document No. _____. HACM also caused vacation of ROW's related to Westlawn Gardens – West redevelopment.
7. **Water Main Improvements.** HACM shall install water mains in the ROW to serve Westlawn Gardens – West per Commissioner-approved plans. City's estimated costs to inspect the water improvements and provide materials (the actual costs of which HACM must pay to City) are as follows:

Inspection & related activities, and water fittings & materials

TOTAL ESTIMATE \$335,000

HACM shall, at its expense, provide the required water fittings and obtain the required State of Wisconsin Department of Natural Resources ("**DNR**") Water Main Installation Permit. City will provide the flow test information required as part of the permit application. HACM shall pay City for City to perform the safe water test and pressure testing on the new mains.

8. **Sewer Main Improvements.** HACM shall install storm and sanitary sewers in the ROW to serve Westlawn Gardens – West per Commissioner-approved plans. City's estimated costs to inspect the sewer improvements (the actual costs of which HACM must pay to City) are included in para. 9 below. City's estimate for design review of sewer main improvements is as follows:

- Design review \$ 10,500

In addition to Commissioner approval (see sections 2 and 4.A. above), HACM must also obtain review and approval of sewer plans by the Milwaukee Metropolitan Sewerage District (“MMSD”) and review and approval of plans, where required, by the Wisconsin Department of Natural Resources (“DNR”).

9. **Paving Improvements.** HACM shall install modified urban cross-section streets and alleys in Westlawn Gardens – West per Commissioner–approved paving plans and the Plat. Modified Urban cross-section streets and alleys include a base course (and concrete), pavement, concrete curb and gutter, concrete sidewalk and bio-swales. City’s estimated costs to review the design and inspect the paving improvements and sewer main improvements (see para. 8 above) and SWM Facilities (see para. 13 below) (the actual costs of which HACM must pay to City) are as follows:

- Design review \$ 20,000
- Inspection \$105,000

TOTAL ESTIMATE \$125,000

10. **Laterals (Service Lines).** HACM shall install (or as the case may be, cause respective parcel owners to install) sanitary sewer and water laterals (service lines) for each lot/unit/structure in Westlawn Gardens – West per Commissioner–approved plans. These require permits from the City’s Department of Neighborhood Services (“DNS”). DNS shall inspect the work and HACM shall pay DNS’s actual costs of inspection.

11. **Street Lights.** HACM shall install street lights in Westlawn Gardens – West (including ROW and mews areas) and connect same to City circuitry per Commissioner–approved plans. The City’s estimated costs associated with those street light improvements (the actual costs of which HACM must pay to City) are as follows:

- Design review \$21,000
- Inspection, City final connection \$60,000

TOTAL ESTIMATE \$81,000

12. **Street Trees.** HACM shall install street trees in Westlawn Gardens – West per Commissioner-approved plans as part of HACM’s paving contracts.

13. **SWM Facilities.** HACM shall install and construct SWM Facilities in accordance with Commissioner-approved plans, and requisite permits, approvals, the SWM-1 Plan and SWM-2 Plan, and the “**Storm Water Management Facility and Mews Maintenance and Easement Agreement**” (the “**2017 Maintenance Easement**”) among HACM, City, the

Westlawn Gardens Property Owners' Association Inc. ("Association"), Westlawn Renaissance LLC ("WR"), WG Scattered Sites LLC ("SS"), and Victory Manor LLC ("VM"), dated as of _____, 2017.

City's estimated costs to inspect the SWM Facilities during and immediately after installation (the actual costs of which HACM must pay to City) are included in para. 9 above.

14. **Design Engineering Deposit.** HACM shall deposit, by one certified check or by ACH wire transfer, with City \$51,500 to cover the estimated cost of reviewing the HACM plans prepared by or for HACM within 30 days of signing of this document and prior to obtaining City approvals for design.
15. **Deposits, Estimated Costs and Reconciliation; Actual Costs** Within 30 days prior to start of construction HACM shall pay to City, by one certified check or by ACH wire transfer, the balance to cover the deposits (and estimated City costs) required hereby:

<i>Reference</i>	<i>Deposit/Estimate</i>
Para. 7	\$335,000
Para. 8	\$ 10,500
Para. 9	\$125,000
Para. 11	\$81,000
TOTAL	\$551,500*

This amount includes the deposit referred to in para. 14 above.

*If HACM has already paid to City the \$51,500 (required under para. 14) when the amount required by this para. 15 is due, then HACM shall pay the remaining \$500,000 due as required by this para. 15.

After City knows actual expense/cost as opposed to estimates, and in any event within 120 days after completion of the Project (or Project components as the case may be if the City elects to bill for actuals for Project components), City shall provide written notice and billing to HACM of City actual expense/costs, and HACM shall promptly pay to City, by certified check or ACH wire transfer, the difference between the actual expense/costs and the estimated costs.

City shall respect MCO 200-32-4 where applicable.

16. **Funding Guarantee for Construction.** A letter of commitment dated _____, 2017, submitted by HACM has been approved by City, by the Commissioner, in an amount equal to the estimated construction contract cost of \$_____ for the Public Improvements and for the SWM Facilities and the mews area landscaping and improvements (the "LOC"). A copy of the LOC is available at DPW. At HACM's request, the actual contract amount for the Public Improvements and SWM Facilities 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.

17. **Other Improvements.** Any utility and access improvements necessary to serve Westlawn Gardens – West , in addition to those listed above, shall be HACM’s responsibility and be undertaken by HACM at HACM’s sole expense. City has the right to review and approve plans for any work to occur in ROW and in mews areas and regarding SWM Facilities. Permits necessary for any such work shall be obtained by HACM.
18. **Easements.** HACM shall (or shall cause respective parcel owners to) provide, where necessary and at no cost to City, all easements and property rights required to construct, operate and maintain the Public Improvements and Private Improvements (including mews landscaping and improvements).
19. **Private Utilities.** HACM shall coordinate installation of all private utility lines and facilities necessary to provide telephone, communications, electrical, and gas services to Westlawn Gardens – West.
20. **Inspections.** All materials furnished and work performed hereunder must conform to City regulations and specifications and are subject to City inspection. All engineering and inspection costs incidental to the installation of the Public Improvements and Private Improvements are subject to this Agreement and the cost of such service, when furnished by City, shall be established as the wages of the person or persons engaged in such work plus all costs of overhead.
21. **Ownership of Public Improvements; As-Builts.** Upon completion of the Public Improvements, title to all Public Improvements installed hereunder shall vest in City and City will accept the obligation of operation and maintenance of all such Public Improvements in accordance with City’s standard practice.

See the **2017 Maintenance Agreement** and the **Declaration¹** regarding SWM Facilities and common areas including mews areas and mews area improvements.

HACM shall provide City with as-built drawings and records regarding the Public Improvements, the SWM Facilities, sewer and water laterals (service lines), mews areas and mews area improvements.

22. **Building Permits.** Building permits for any housing units or structures to be constructed at Westlawn Gardens – West shall not be issued until:
 - A. The 2017 Maintenance Agreement, Declaration², Access Easement³ and Interim Easement⁴, have been approved by HACM, City, and Association, and HACM has begun circulating same for signature as required.

¹ Declaration of Restrictions and Covenants Regarding Westlawn Gardens, dated _____, 2017.

² See footnote above.

- B. HACM has provided City with the LOC and the total Deposit amount required hereunder.
- C. Fully-signed easements required to construct and maintain underground improvements to serve the units have been provided to City.
23. **Occupancy Permits.** Occupancy permits for any structure or units in Westlawn Gardens – West will not be issued until Public Improvements and Private Improvements have been sufficiently completed so essential public utility services and traffic access are provided to the respective structures or units.
24. **City Ordinances and Regulations.** This Agreement is subject to City ordinances and regulations. Nothing herein is deemed to waive or supersede such requirements.
25. **Binding Effect.** This Agreement is binding upon HACM and City. Neither HACM nor City may assign its rights or duties hereunder without each other’s prior written approval.
26. **Enforcement.** This Agreement may be enforced at law and in equity, with the non-breaching party entitled to injunctive relief and/or monetary damages. The parties retain any respective rights they have under Wis. Stat. 893.80 and under MCO Ch. 120.
27. **Governing Law; Amendment.** This Agreement is governed by Wisconsin law, and may only be amended by written instrument signed by the parties hereto.
28. **Drafter-Doctrine Not Applicable; Headings.** The contract-interpretation doctrine of “construing against the drafter” shall not apply to interpretation of this Agreement. Headings are for convenience only.
29. **Open Records.** This Agreement is, and records kept or maintained hereunder or as a result hereof may be, subject to Wisconsin Open Records Law, Wis. Stat. Chapter 19, and the parties hereto agree to cooperate regarding duties under such law, including providing copies of records required to comply with such law.
30. **Notice.** Notices required or desired to be given with respect to this Agreement shall be in writing, addressed to the respective party as per the contact information below, and shall be **(i)** delivered personally, **(ii)** sent by United States mail, postage prepaid, or **(iii)** sent by email provided no error or inability to send message is generated in response. Contact information may be changed by providing notice to all parties per this “notice” section.

³ Access Easement (Westlawn Gardens), dated _____, 2017, regarding access to certain lots in Blocks 3-5 in the Westlawn West Subdivision Plat.

⁴ Interim Easement (Westlawn Gardens - ROW), dated _____, 2017.

<p>If to CITY: Commissioner, Dept. of Public Works City of Milwaukee 841 N. Broadway, Room 501 Milwaukee, WI 53202 Phone: 4147-286-3301 Email: gkorba@milwaukee.gov</p> <p>With copy to: Gregg Hagopian City Attorney's Office 841 N. Broadway, 7th Floor Milwaukee, WI 53202 Phone: 414-286-2620 Email: ghagop@milwaukee.gov</p>	<p>If to HACM: Executive Director Housing Authority of the City of Milwaukee 809 N. Broadway, 3rd Floor Milwaukee, WI 53202 Phone: 414-286-5824 Email: tony.perez@hacm.org</p> <p>With copy to: Danielle Bergner Michael Best & Friedrich LLP 100 E. Wisconsin Ave., Suite 3300 Milwaukee, WI 53202 Phone: 414-270-2735 Email: dmbergner@michaelbest.com</p>
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31. **Counterparts.** This Agreement may be signed in counterparts. Facsimile or email signatures shall be accepted as originals.

IN WITNESS WHEREOF, the parties sign and enter this document as of the date first written above.

<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Ghassan Korban, Commissioner Dept. of Public Works</p> <p>Countersigned:</p> <p>By: _____ Martin Matson, Comptroller</p> <p>City Common Council Resolution File No. 171022, adopted on _____, 2017. See, also, File No.'s 170502 and 171000.</p> <p>CITY ATTORNEY APPROVAL MCO 304-21.</p> <p>By: _____ Gregg Hagopian, Asst. City Attorney</p>	<p>HACM: HOUSING AUTHORITY OF THE CITY OF MILWAUKEE</p> <p>By: _____ Antonio Perez, Sec./Exec. Director</p> <p>HACM Board Resolution _____, adopted on _____, 2017.</p>
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