



Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission

June 18, 2004

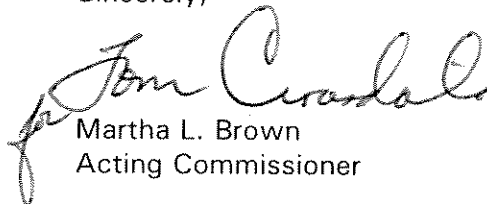
Mr. Ronald D. Leonhardt
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Enclosed is a fully executed original of a Development Agreement for Streetscape Enhancement identified as Contract No. 03-167 (CM), dated December 31, 2003, between the City of Milwaukee and The Cathedral of St. John the Evangelist.

Please insert this agreement into Common Council Resolution File No. 030072, adopted May 13, 2003.

Sincerely,



Martha L. Brown
Acting Commissioner

Enclosure

DEVELOPMENT AGREEMENT FOR STREETScape ENHANCEMENT

CATHEDRAL OF ST. JOHN THE EVANGELIST

THIS AGREEMENT is made this 31 day of December, 2003, by and between the City of Milwaukee ("City") and The Cathedral of St. John the Evangelist ("Church").

WITNESS:

WHEREAS, Church owns and operates the Cathedral of St. John the Evangelist (the "Cathedral") located at 802 North Jackson Street; and

WHEREAS, the Cathedral is a historically significant property the beginning of which goes back to Solomon Juneau and to the founding of the City; and

WHEREAS, thousands visit and worship at the Cathedral annually; and

WHEREAS, the Church has spent over \$10.6 million to restore the Cathedral complex – including adding significant works of art and quality green space; and

WHEREAS, the Church wishes to make certain improvements to right-of-way, including improving the street and sidewalk areas along North Jackson Street from East Kilbourn Avenue to East Wells Street (the "Project"); and

WHEREAS, the Church wants to split the costs of the Project with the City on a 50-50 basis subject, however, to a maximum City contribution of \$15,000 (the "City-Cap") (the City's 50% share, up to the City-Cap, is herein called the "City Share," and the Church's share (which is not subject to any cap) is herein called the "Church Share"); and

WHEREAS, the City's Common Council, having considered the matter, approved the same via Common Council Resolution File No. 030072, passed by the Council on May 13, 2003;

WHEREAS, on May 13, 2003 Resolution File No. 030072, the Common Council of the City of Milwaukee authorized the Commissioner of Public Works to proceed with the Project;

WHEREAS, on May 13, 2003, via Resolution File No. 030072, the Common Council of the City of Milwaukee approved this agreement and authorized the proper City officials to execute this Agreement on the City's behalf; and

WHEREAS, the Church has also duly approved this Agreement and authorized its signatories hereto to enter into it on the Church's behalf;

NOW, THEREFORE, City and Church, in consideration of the premises and the mutual promises and undertakings herein contained, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, mutually agree and covenant as follows:

1. **Plans and Specs.** Church shall, at its expense, prepare or have prepared final plans and specifications for the Project, and present them to the Commissioner of the City's Department of Public Works (the "DPW Chief") for the DPW Chief's review and approval (the plans and specifications that the DPW Chief approves are herein called the "Plans and Specs").

2. **Budget.** Church shall, at its expense, prepare or have prepared a final construction budget for the Project, and present it, in writing, to each of the DPW Chief and the Commissioner of the City's Department of City Development (the "DCD Chief"), for the DCD Chief's review and approval (the budget that the DPW Chief approves is herein called the "Budget").
3. **Permits and Approvals.** Church shall, at its expense, obtain and pay for all governmental permits and approvals necessary to construct and complete the Project.
4. **Contracts.** Church shall, at its expense, enter into appropriate written contracts for the construction and completion of the Project in accordance with the approved Plans and Specs. Church shall, at DCD Chief's request, provide copies of such contracts to City.
5. **Construct.** Church shall, at its expense, construct the Project in accordance with the approved Plans and Specs and the Budget, and in a good and workmanlike manner.
6. **Substantial Completion.** Church shall, at its expense, substantially complete the Project by December 31, 2003.
7. **Certification of Costs.** Upon completion of the Project, and also at such other times as the DCD Chief may request, Church shall certify, in writing, to the City all costs incurred for the Project, attesting to the correctness and propriety thereof.
8. **Certification of Completeness; City Payment of City Share.** Once the Project is completed and all costs associated therewith have been paid-in-full by Church, the Church shall present to each of the DCD Chief and DPW Chief: (a) a written and signed certification from Church as to the Project being complete, the Project being in conformance with the Plans and Specs, and payment-in-full of costs associated therewith;

and (b) Church's architect's signed written certification, on an appropriate AIA form (such as AIA form G702), to the City that the Project has been completed in accordance with the Plans and Specs and that the costs of constructing the Project have been fully substantiated and paid by Church. Church's certification required by subparagraph (a) hereof shall also contain the certification as to final costs upon completion that is required by para. 7 above. Upon DCD Chief's review and approval of the items required hereunder, and DPW Chief's determination that the Project has been completed in accordance with the Plans and Specs, the DCD Chief shall approve and authorize payment of the City Share – up to but not exceeding the City-Cap.

9. **Changes.** No material changes in the type, placement or use of construction materials as indicated on the approved Plans and Specs, or in the Project, shall be made by Church (or by any of its contractors or subcontractors), without prior written consent of the DCD Chief. The parties intend that the Project be done in strict conformance with the Plans and Specs. The City's Share shall, in any event, remain subject to and limited by the City-Cap, regardless of any changes approved by the DCD Chief. Church shall provide DCD Chief and DPW Chief with copies of all change orders associated with the Project. And, Church shall not authorize any change order until and unless DCD Chief approves the same.

10. **Inspections.**

- A. Church shall be solely responsible for completion of the Project. Nothing contained herein shall create or affect any relationship between the City and any contractor or subcontractor employed by Church in construction of the Project.
- B. The City may make reasonable inspections, from time to time, including but not limited to inspection by DPW, the DPW Chief, DCD, the DCD Chief, and the City's Department of Neighborhood Services, of the Project during the period of construction thereof, provided that such inspections are conducted in a manner so as not to unreasonably interfere with the progress of work. In order to allow the City to undertake these inspections in a meaningful fashion, Church shall provide a complete set of plans and specifications as well as any change orders and shop drawings.
- C. If DCD or DPW determines, as a result of the inspections made by City, that Church (or its contractors or subcontractors) are not constructing the Project in accordance with the Plans and Specs, the DCD Chief or DPW Chief shall promptly inform Church of the noncompliance with the Plans and Specs; and Church shall, as soon as reasonably possible, remedy such noncompliance. The City has no duty to pay any portion of the City Share until the Project has been completed in accordance with the Plans and Specs and until the other conditions of this Agreement have been met.

11. **Records.** This Agreement and certain documents relating thereto are, or may be, subject to Wisconsin's Open Records Law (see Wis. Stat. Ch. 19, Subch. II, and, esp. Wis. Stat. §19.36(3) which includes records produced or collected under this Agreement). Church shall keep accurate, full and complete records, books and accounts with respect to the Project, including contracts relating thereto, and including the cost thereof consistent with the approved Budget; and Church shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same. Church's and Church's contractors such records, books and accounts shall be retained for seven years subsequent to the completion of the Project. And, Church's cost and account data shall be maintained in accordance with generally accepted accounting principles consistently applied. Church agrees to cooperate with City in the event City receives a request under Wisconsin's Open Records Law for this Agreement or for any record relating to, or produced or collected under, this Agreement.
12. **Audit Rights.** The City Comptroller shall have the right, upon reasonable notice to Church, its contractors or subcontractors as the case may be, to examine the books, records, and accounts of Church, its contractors or subcontractors during normal hours of business.
13. **As-Built Plans and Specs.** After completion of the Project, Church shall submit to the DCD Chief a complete set of "As Built" plans and specifications as well as a copy of all approved shop drawings.

14. **Default.** If Church has not substantially completed the Project by the time specified in Section 6, and the failure to substantially complete was either Church's fault (or the fault of Church's contractors or subcontractors or materialmen) and/or was for reasons within Church's (or its contractors' or subcontractors' control), the City shall have the right to terminate this Agreement if, within 60 days after receipt from the DCD Chief of a notice of intent to terminate because of failure to substantially complete, Church has not substantially completed the Project. If the City terminates this Agreement pursuant to this provision, the City shall have no obligation to provide Church with the City Share (or any part thereof), and the City shall have no further obligation to perform any other acts under this Agreement.
15. **Conflict of Interest.** No member, officer or employee of City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.
16. **Notices.** All notices herein required to be given or made to either party, shall be deemed to be served or given: **(a)** if personally delivered, or delivered for same-day delivery via a commercial courier, when personally delivered and received; **(b)** if sent via overnight delivery by an overnight commercial courier or by the U.S. Post Office, on the day that the courier or Post Office promises delivery to the recipient and the recipient receives same; **(c)** if mailed, three (3) days after deposit in the U.S. mail, postage prepaid; or, **(d)** if successfully sent by facsimile or email during the hours of 8:30 A.M. through 4:00 P.M., on any Monday through Friday when City's City Hall is open for general City business, then, on the day of the successful sending of the facsimile or email. Notices

and communications herein required to be given shall be addressed to the respective entity for whom it is intended, as applicable, at the respective address, facsimile, or email, as follows:

A. **For the City:**

Julie A. Penman
Commissioner
Department of City Development
809 N. Broadway
Milwaukee, Wisconsin 53202
E-mail: jpenma@mkedcd.org
Facsimile: 414-286-5467

and to

Mariano Schifalacqua
Commissioner
Department of Public Works
841 N. Broadway, Room 516
Milwaukee, Wisconsin 53202
Phone: 414-286-3301
Facsimile: 414-286-3953
E-mail: mschif@mpw.net

Copies of any notice sent to City must also be simultaneously sent or delivered, by the same manner of delivery, to:

Gregg C. Hagopian
Assistant City Attorney
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Telephone: 414-286-2620
Facsimile: 414-286-8550
Email: ghagop@ci.mil.wi.us

B. **For The Cathedral of St. John the Evangelist:**

Mary C. Bennett
831 North Van Buren Street
Milwaukee, Wisconsin 53202
Phone: 414-276-9841

Facsimile:414-276-8285
E-mail: www.stjohncathedral.org

17. **Successors and Assigns; Not Assignable.** This Agreement inures to the benefit of and is binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns. However, neither party may assign this Agreement, or any right, title, or interest herein, without the express written consent of the other.
18. **Headings.** The captions, headings, and section numbers in this Agreement are only for convenience and do not define, limit, construe or describe the scope or intent of such sections.
19. **Requisite Authority and Approvals.** The parties hereto each represent and warrant that requisite approvals were obtained prior to signing this Agreement, and that those signing have requisite approval and authority to do so and to bind the respective entities on behalf of which they sign.
20. **Executable in Counterparts; Facsimile Signatures.** This Agreement may be signed in counterparts, which when taken together, shall be deemed one and the same document. Facsimile signatures shall be acceptable as originals.
21. **Wisconsin Laws.** This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.
22. **Severability.** If any provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof, to any other persons or circumstance, shall not be affected thereby; and,

each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. **Amendment.** This Agreement may not be amended or modified except in writing signed by each of the parties hereto.
24. **Good Faith.** The parties hereto have the legal duty to use good faith and due diligence in completing the terms and conditions of this Agreement.
25. **Parties Represented.** The parties hereto have each been represented by legal counsel with respect to this Agreement. The rule of construction that documents be construed against the drafter shall not apply to this Agreement.
26. **Retained Rights.** City expressly reserves all rights available at law and in equity, including City's right to levy and collect property taxes, special taxes, and special assessments and special charges for any work City may take, in its discretion with respect to the Project or construction of the same in the event of breach by Church of its duties hereunder, it being understood, however, that City has no duty to undertake any Project or related construction work.
27. **Force Majeure.** If any party is prevented from performing an obligation hereunder and such delay is for reason beyond the party's control (despite that party's due diligence), including, acts of God, war, unusually severe weather conditions, strikes, civil disturbances, and delays in obtaining necessary supplies and/or equipment for construction, then the time within which the party was to perform shall be extended for a period equal to the delay.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

CHURCH:

Congregation of St John Cathedral

CITY:

CITY OF MILWAUKEE

By: Carl Last
Name Printed: VERY REV CARL A. LAST
Title: Rector + Pastor

By: Martin Morics
John O. Norquist, Mayor

Attest: Arnold Cialdini
Name Printed: ARNOLD CIALDINI
Title: Trustee/Treas.

Attest: Ronald D. Leonhardt
Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

John Eggen
W. Martin Morics, Comptroller
John Eggen, Atty

CITY ATTORNEY'S OFFICE
(Ord. §304-21)

Approved by: [Signature]
Gregg C. Hagepian, Assistant City Attorney

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1050-2003-1511
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EXHIBIT A

Maintenance and Repair.

Church shall, at its expense, maintain the Project (and completed improvements), including undertaking all necessary capital repairs and replacements during the term of this Agreement. Maintenance, repair, and replacement shall be in accordance with normally recognized standards for a first class commercial facility.

Term.

The term for this agreement shall be for 20 years but extended up to an additional 20 years upon mutual concurrence of both parties.