

THIS AGREEMENT, By and between Tucker Development Corporation, 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 intends to redevelop the property within the service ring road that bounds the former Northridge Shopping Center located generally west of North 76th Street and north of West Brown Deer Road. This property, to be known as the Granville Station commercial center, is illustrated by Exhibit "A"; and

WHEREAS, The Developer has requested an agreement providing for various alterations to and relocations of existing sewer and water improvements within the site; and

WHEREAS, The required underground utility improvements will facilitate development of the Granville Station commercial center; and

WHEREAS, The requested underground improvements could be completed under the terms of an Out-of-Program Agreement upon condition that title to certain of the improvements as described herein shall vest in the City of Milwaukee subject to conditions more fully hereinafter stated; and

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 required for (a) design, construction, and inspection of the underground public improvements described more fully herein; (b) materials and fittings (including water meters) to be furnished by City in conjunction with the water improvements; (c) remaining useful life values for sewer facilities as specified in applicable conveyance documents; (d) preparation of easement releases, modifications, or new easements as may be necessary, and (e) any related City work necessitated by the project.

2. Developer to Construct

Developer shall let and administer the construction contracts to complete the public improvement work described herein. City shall perform its normal inspections during the course of construction. City shall also provide all required water fittings and associated materials. For any public improvement construction contract let by the Developer, Developer agrees to comply with and administer, on behalf of the City, all applicable rules and requirements pertaining to City's Emerging Business Enterprise and Resident Preference Employment programs. Developer shall not authorize any changes in improvement plans prepared by the City without the prior approval of the Commissioner of Public Works. All payments to contractors for work on public improvements must be pre-approved by the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

3. Sanitary Sewer Construction

Approximately 650 feet of new sanitary sewer will be constructed to replace existing sewer located in easement within the footprint of a

planned building. City shall design the new sewer. Developer shall be responsible for managing its construction. City shall provide sewer construction inspection services. The estimated costs for the City's design and inspection services are:

| | |
|---------------------|---------------|
| Design Engineering | \$15,000 |
| Inspection Services | <u>10,000</u> |
| Total | \$25,000 |

The estimated construction cost is \$295,000.

Upon completion of the replacement sewer and upon approval of conveyance and easement release documents, City shall convey no longer publicly needed storm and sanitary sewer within the site to the Developer. Developer shall reimburse the City for the remaining useful life values of these sewers at the time of conveyance. The exact amount of the remaining useful life payments shall be specified in the conveyance document. The estimated remaining useful life values are as follows:

| | |
|----------------|---------------|
| Sanitary Sewer | \$42,350 |
| Storm Sewer | <u>51,900</u> |
| Total | \$94,250 |

Subject to approval of building plans and subject to approval of a Permit and Agreement, City shall allow Developer or its assigns to begin construction of a building within the easement area of the sanitary sewer to be replaced. The cost to prepare the Permit and Agreement is \$804.

4. Water Main Construction

Approximately 900 feet of new water main will be constructed to replace existing water main that will be conveyed to Developer. Replacement water main is required to continue public water service to a third party property owner located adjacent to the project site. City shall design the new water main. Developer shall be responsible for managing its construction. City shall provide water main construction inspection services as well as related materials and fittings. The City's estimated costs for its design and inspection services are:

| | |
|---|---------------|
| Design Engineering | \$ 7,000 |
| Inspection Services (including fittings and materials) | <u>15,000</u> |
| Total | \$22,000 |

The estimated construction cost for the new water main is \$85,000.

5. Water Main Conveyance

Developer and City agree that existing public water mains within the project site will be conveyed to the Developer or Developer's successors thereby creating a private water system. City and Developer further agree that conveyance cannot occur until new water service is provided to the third party property owner as detailed in paragraph 4 above and until Developer has obtained title to all parcels in the project site.

The project site is currently served by three water connections. Constructing meter pits and related meter piping at two of the connections and permanently disconnecting the public water main

from the private system at the third connection will effectively convert the water facilities to a private system.

All costs for the meter pits and piping will be the responsibility of Developer. City will provide Developer with two 10" fire-rated water meters to be incorporated into the new meter pits. The total estimated cost of the two meters is \$30,650. Permits will be required from the Department of Neighborhood Services and Department of Public Works to construct the new meter pits and meter piping. The \$30,650 meter cost will be collected from Developer as part of the permit fee. Developer agrees to construct the meter pits in accord with the "Rules and Regulations Governing Water Service and Water Service Piping Specifications 2002".

City shall prepare plans and specifications for the required water main disconnection work. Developer shall be responsible for managing its construction. City shall provide water main disconnection inspection services as well as related materials and fittings. City's estimated costs for its design and inspection services are:

| | |
|---|--------------|
| Design Engineering | \$1,000 |
| Inspection Services (including fittings and materials) | <u>2,000</u> |
| Total | \$3,000 |

The estimated construction cost for the disconnection work is \$5,000.

Following conversion of the public water mains to a private system, City shall convey the water mains to Developer or Developer's successors by means of a Quit Claim Deed. The existing water

easements shall be removed by means of Release of Easement Documents. City's estimated cost for document preparation is \$2,000.

6. Other Improvements

Developer agrees that any other utility and access improvements necessary to serve the site 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.

7. Private Utilities

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

8. Funding Guarantee

Developer shall provide a funding guarantee (such as an irrevocable Letter-of-Credit) satisfactory in format to the City Attorney in an amount equal to the total estimated construction contract cost of the sanitary sewer and water main improvements prior to the award of any improvement contract. The total estimated construction cost is \$385,000.

The funding guarantee shall ensure that the Developer will provide the required funds to cover the estimated construction contract cost of installing the applicable public improvements and will, upon

simple request by the Commissioner of Public Works, release same to City as required, all such funds to be furnished interest free.

The Developer shall also provide a cash deposit to the City in the amount of the design, inspection services, and document preparation estimates prior to the City commencing any design or document preparation work. The required cash deposit is \$52,804.

9. Excess Costs

It is understood and agreed that any actual cost in excess of amounts estimated herein will be billed to Developer upon determination that such excess costs have or will be incurred by City.

The Construction Engineering estimates listed in paragraphs 3, 4, and 5 above are based upon an assumed period of construction. Should actual construction take longer than assumed, actual Construction Engineering costs are likely to exceed estimates.

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 engineering and plan preparation work commenced by the City at the Developer's request.

10. Inspections, Fittings & Materials

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 and approval of inspectors and engineers furnished by the Department of Public Works. All engineering, inspection, materials and fittings 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.

11. Easements

Developer shall provide, at no cost to the City, any and all easement rights required by City to accommodate the new sanitary sewer and water main. In the event Developer has sold its interest in the site or any part thereof, Developer shall be responsible for ensuring that successor owners provide any and all required easement rights.

City shall release its easement rights for those easement areas where sanitary sewer, storm sewer, and water main will be abandoned or conveyed to the Developer. City shall also modify existing easements where possible to reduce their size and/or their scope to reflect changes in the underground public utility system for the site. The establishment of new easements, easement releases and easement modifications shall be accomplished through separate actions as required by City rules and procedures.

12. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon completion of the sanitary sewer, water main, and associated improvements described in paragraphs 3 and 4 above, title to such improvements 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.

13. Building Permits

It is understood and agreed by both parties hereto that building permits for any planned structures to be served by the improvements covered by this Agreement shall not be issued until the Developer has provided the City with the funding guarantee and cash deposit referenced in paragraph 8.

14. Occupancy Permits

It is understood and agreed by both parties hereto that occupancy permits for any structure to be served by the public improvements covered by this Agreement shall not be issued until all planned public improvements have been sufficiently completed so essential public utility services are provided to the structure.

15. City Ordinances and Regulations

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 supercede 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.

IN WITNESS WHEREOF, the Developer has caused this document to be signed and sealed this ____ day of _____, 2003.

In Presence Of:

Tucker Development Corp. LLC

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 _____, 2003.

In Presence Of:

CITY OF MILWAUKEE

John O. Norquist, Mayor

City Clerk

COUNTERSIGNED:

Comptroller

