



Department of City Development

City Plan Commission
Historic Preservation Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

July 21, 2008

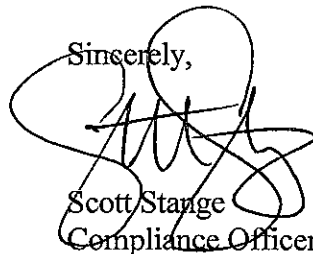
Mr. Ronald D. Leonhardt
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Leonhardt:

Enclosed is a fully executed duplicate original of Contract No. 07-059 (CM), dated July 17, 2008, between the City of Milwaukee and your firm, Kramer Lofts, LLC. This pertains to the right of way improvements on, along and adjacent to 100 East Seeboth Street.

Please insert this agreement into Common Council Resolution File No.060895, approved 12, 2006.

Sincerely,



Scott Stange
Compliance Officer

Enclosure

DUPLICATE

100 EAST SEEBOTH STREET

RIGHT OF WAY IMPROVEMENTS DEVELOPMENT AGREEMENT

This Agreement is made this 17 day of July, 2008, by and among the City of Milwaukee ("City"), and Kramer Lofts, LLC, a Wisconsin limited liability company ("Developer").

Witnesseth:

Whereas, the Developer is the owner of that certain property with a street address of 100 East Seeboth Street, located on the south side of Seeboth Street between South 1st Street and South Barclay Street ("100 East Seeboth Street"); and

Whereas, the City has determined that the public right of way on, along and adjacent to 100 East Seeboth Street (the "Right of Way") is in need of reconstruction, repair and improvement; and

Whereas, the City has approved preliminary plans for such reconstruction of the Right of Way, a copy of such plans is attached hereto as *Exhibit A* (the "Preliminary Plans"); and

Whereas, the Developer has offered to effect the reconstruction of the Right of Way consistent with the Preliminary Plans (the "Right of Way Improvements") by hiring contractors to perform such work; and

Whereas, the City, pursuant to Resolution No. 060895 approved December 12, 2006 by the Common Council, is willing to permit Developer to construct and install the Right of Way Improvements in accordance with the provisions of this Agreement.

Now, therefore, the City, and the Developer, in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

**I
DEVELOPER ACTIVITIES**

The Developer shall:

1. Obtain, and pay for, all governmental permits and approvals necessary to construct the Right of Way Improvements.
2. Prepare, or have prepared, final plans and specifications for the Right of Way Improvements, including without limitation the design, layout and materials (the "Plans") subject to the approval by the Commissioner of City Development (the "Commissioner") as provided in Section II.C.2.
3. Prepare, or have prepared, a final construction budget (the "Budget") for the Right of Way Improvements, but excluding therefrom any administration fees or other so-called "soft costs," for approval by the Commissioner as provided in Section II.C.3.

4. Prepare or have prepared all contracts and subcontracts for preparation and construction of the Right of Way Improvements for the Commissioner's approval.
5. Construct the Right of Way Improvements in accordance with the approved Plans, including without limitation the following:
 - a. repairing the street by repaving same with asphalt;
 - b. rebuilding with concrete the curb, gutter and sidewalk on the south side of the Right of Way;
 - c. placing pavement marks and striping on the Right of Way;
 - d. removing trees, laying sod and installing other landscaping;
 - e. installing storm water drainage facilities, including catch basins and new connections to storm sewers;
 - f. erecting and maintaining barricades, signage and other safety measures during the pendency of such construction.

The Right of Way Improvements shall not include installation of any street lighting, the planting of any trees or the placement of any street signs.

6. Submit a signed EBE Agreement in the form of *Exhibit B* (the "EBE Agreement") to the Commissioner for approval.
7. Submit Certificate of Insurance to the Commissioner for approval.
8. Substantially complete the Right of Way Improvements by October 31, 2007 (the "Completion Date").
9. On or before the Completion Date, dedicate the Right of Way and the Right of Way Improvements to the City.

II CITY ACTIVITIES

- A. Subject to the terms and conditions hereinafter set forth, the City shall reimburse the Developer for the actual cost of the Right of Way Improvements and consistent with the Budget, up to an aggregate maximum of \$54,663.00 (the "City Grant").
- B. The City Grant is to be disbursed to the Developer pursuant to the conditions set forth below in Section C and is to be used solely to reimburse Developer for actual costs incurred in connection with the construction of the Right of Way Improvements.
- C. No portion of the City Grant shall be disbursed to the Developer until:
 1. The Developer has received all federal, state and local agency approvals, and has complied with all applicable federal, state and local laws, including without limitation, the Americans with Disabilities Act, which are necessary to undertake construction of the Right of Way Improvements.

2. The Commissioner has approved the final Plans for the Right of Way Improvements.
3. The Commissioner has approved the final Budget for the Right of Way Improvements.
4. The Commissioner has each approved all the contracts entered into by the Developer for the preparation of the Plans, and for the construction of the Right of Way Improvements.
5. The Commissioner has received and approved the Certificate of Insurance.
6. The Right of Way Improvements' architect or engineer has certified in writing to the Commissioner that the Right of Way Improvements have been completed in accordance with the Commissioner-approved Plans and the costs of the Right of Way Improvements have been fully substantiated by the Developer on appropriate AIA forms such as AIA Document G702.
7. The Commissioner has received and approved the EBE Agreement.

Notwithstanding the foregoing, progress payments may be disbursed by the City as follows: Payment requests shall be presented to the Commissioner by Developer, no more frequently than on a monthly basis, on AIA Document G702 and, upon receipt of the payment request, the Commissioner shall within ten (10) working days after receipt of the request, review it, and if he disapproves a request or any portion thereof, he shall promptly state his reasons in writing to Developer. Any payment request, or portion thereof, which the Commissioner approves, shall be paid within twenty (20) working days of receipt.

III CHANGES

No material changes in the type, placement or use of constructions materials or otherwise as indicated on the approved Plans, shall be made by the Developer without prior written consent of the Commissioner. Any changes approved by the Commissioner shall not increase the amount of the City Grant unless such increase has been approved by the City in writing.

IV INSPECTIONS

A. Developer and its contractor or subcontractor shall be solely responsible for the completion of the Right of Way Improvements. Nothing contained in this paragraph shall create or effect any relationship between the City and any contractor or subcontractor employed by Developer in construction of the Improvements.

B. The City may make reasonable inspections, including but not limited to inspection by the City's Department of Public Works, Department of City Development, and Department of Neighborhood Services, of the Right of Way Improvements during the period of construction

thereof, provided that such inspections do not interfere with the progress of the work. In order to allow the City, and City agencies, to undertake these inspections in a meaningful fashion, the Developer shall provide a complete set of plans and specifications in respect of the Right of Way Improvements, as well as any change orders and shop drawings related thereto.

C. In the event that the Commissioner determines, as a result of any such inspections, that the Developer's contractor or subcontractor is not constructing the Right of Way Improvements in accordance with the approved Plans, the Commissioner shall promptly inform the Developer of such noncompliance with the Plans and the Developer shall, as soon as reasonably possible, require its contractor or subcontractors to remedy such noncompliance. The Commissioner may withhold payments of any of the City Grant, until such corrective measures are completed in a satisfactory manner.

V RECORDS

A. The Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Right of Way Improvements, consistent with the approved budget, and shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years subsequent to the completion of the Improvements.

B. The City Comptroller shall have the right, upon reasonable notice to the Developer, its contractor or subcontractors as the case may be, to examine the books and accounts of the Developer, its contractor or subcontractors during normal hours of business.

C. After substantial completion of the Right of Way Improvements, the Developer shall submit to the Commissioner a complete set of "As Built" plans and specifications as well as a copy of all approved shop drawings.

VI HUMAN RESOURCE REQUIREMENTS

A. In contracting for the construction of the Right of Way Improvements, the Developer shall comply with an 18% participation rate for City Emerging Business Enterprises (pursuant to the terms of the EBE Agreement attached hereto as *Exhibit B*), as established by the Commissioner in accordance with Chapter 360, Milwaukee Code of Ordinances.

B. In contracting for the construction of the Right of Way Improvements, the Developer shall use reasonable and good faith efforts to see that all of Developer's contractors and subcontractors employ "Residents" of the "CDBG area" (as such terms are defined in Milwaukee Code of Ordinances 309-41) at a rate equal to or greater than 21% of the total workforce engaged in constructing the Right of Way Improvements. Developer shall maintain such records and files and shall prepare and file such reports as the Commissioner shall reasonably request to substantiate compliance with the requirement.

VII TERM

This Agreement shall terminate on completion of construction of the Right of Way Improvement, as approved and accepted by the Commissioner, and payment in full of the City Grant.

VIII DEFAULT

If the Developer has not substantially completed the Right of Way Improvement by the Completion Date, and the failure to substantially complete was either the Developer's fault or was for reasons within the Developer's control, the City shall have the right to terminate this Agreement if, within 60 days after receipt from the Commissioner of a notice of intent to terminate because of failure to substantially complete, Developer has not substantially completed the Right of Way Improvement. If the City terminates this Agreement pursuant to this provision, the City shall have no further obligation to provide the Developer with the City Grant and the City shall not be under any further obligation to perform any other acts under this Agreement.

IX CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure and for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

X WRITTEN NOTICES

Any written notice required to be sent under this Agreement shall be sent to the following individuals:

FOR THE CITY:

Department of City Development
Attention: Allison Rozek
809 North Broadway
Milwaukee, Wisconsin 53202

FOR THE DEVELOPER:

Kramer Lofts, LLC
Attn: Rich Arnesen
P.O. Box 1547
Madison, WI 53701

**XI
ASSIGNMENT**

No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party, except that the City may assign its rights hereunder to the Redevelopment Authority of the City of Milwaukee without the consent of the Developer.

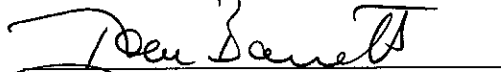
**XII
PREVAILING WAGES**

Developer shall insure that all contractors pay prevailing wages to their workers when such contractors are constructing the Right of Way Improvements and shall retain such records and file such forms and reports as may be reasonably requested by the Commissioner to evidence compliance with such prevailing wage requirements.

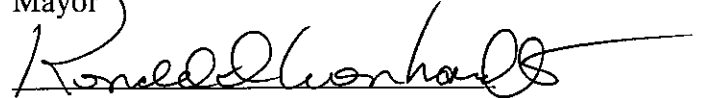
[SIGNATURE PAGE TO FOLLOW]

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

CITY OF MILWAUKEE

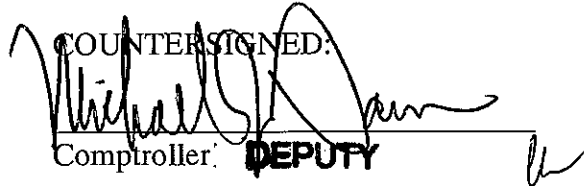


Mayor



City Clerk

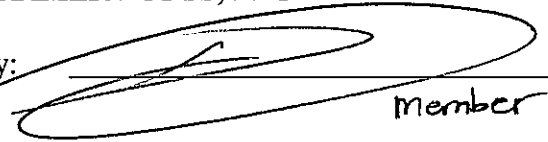
COUNTERSIGNED:




Comptroller: **DEPUTY**

DEVELOPER
KRAMER LOFTS, LLC

By:


member

Approved as to form and content this
17th day of July, 2008

Assistant City Attorney

1050-2006-2308:118849

EXHIBIT A
PRELIMINARY PLANS

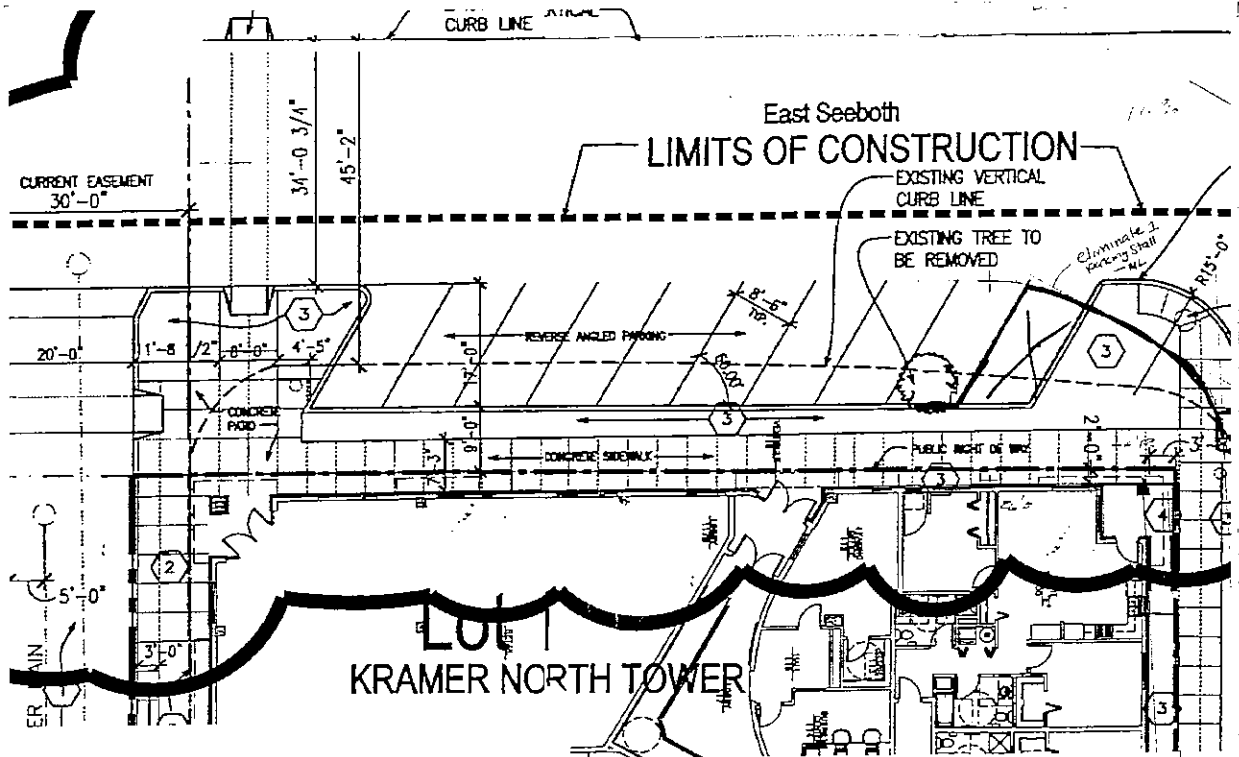


EXHIBIT B
EBE AGREEMENT