

THIS AGREEMENT, By and between Irgens Development hereinafter known as ADeveloper≅, and the City of Milwaukee, a municipal corporation, hereinafter known as ACity≅,

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 the property known as 827 East Wisconsin Avenue hereinafter referred to as the “site”, more particularly described by Exhibit “A” attached here to; and

Whereas, Developer has requested an agreement providing for the installation of public improvements to serve a proposed office building; and

Whereas, The office building complies with the City of Milwaukee’s zoning standards and is consistent with the City’s Downtown Plan; and

Whereas, The Developer has requested that the provisions of Common Council File No. 73-1849 relative to entering into out-of-program agreements for public works to serve industrial or commercial developments be waived; and, whereas, the City has agreed to do so; and

Whereas, The requested public improvements for the office building 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 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 initially necessary for design and construction of the public improvements, easement releases as may be required, water fittings, materials inspections, construction inspections and related City work necessitated by the project. It is understood that Developer will be entitled to a partial refund of the improvement costs as stipulated in paragraph 17 below.

2. Storm Water Analysis

Expected storm water runoff from the site after development must be evaluated and the evaluation submitted to the City Engineer for review and approval consistent with the storm water management requirements of Chapter 120 of City Code. Approval by the City Engineer is required

before contracts for the public improvements will be let and/or permits for the public improvements issued.

3. Combined Sewer Improvements

Two existing combined sewers located in easement cross the Site.

These sewers are 24" and 15" in diameter respectively. The 15" sewer need not remain in service and can be conveyed to the Developer. The 24" sewer must remain in service and, therefore, must be relocated.

To expedite construction of the office building, a temporary sewer will be installed by Developer along the eastern edge of the Site. Said temporary sewer will belong to Developer who shall be responsible for all costs associated with its construction, maintenance, and eventual removal. In addition, Developer shall hold City harmless for any liability that may arise as a result of Developer's construction and operation of the temporary sewer. City shall review and approve plans for the temporary sewer and shall perform construction inspections during installation. Developer shall fund all of the City's costs associated with the temporary sewer.

The temporary sewer shall stay in service while the City constructs permanent replacement 24" sewers in East Wisconsin Avenue and in North Cass Street. Approximately 650 feet of new 24" sewer will be

constructed. Estimated costs for sewer work (including the estimated City costs associated with the temporary sewer) are:

A.	Soft Costs	
	a.	Design Engineering: \$ 20,000
	b.	Construction Inspections: <u>14,000</u>
		Total Soft Costs: \$ 34,300
B.	Hard Costs	
	a.	Construction: <u>\$245,700</u>
C.	Total Estimated Sewer Costs:	\$280,000.

4. Water Improvements

A 12" diameter water main crosses the Site in easement. This main can be capped and taken out of service immediately. However, a permanent replacement water main will be required. The 12" replacement main will be approximately 650 feet in length and will be constructed in East Wisconsin Avenue and in North Cass Street. The estimated cost to cap the existing water main and construct its replacement are:

A.	Cap Existing Water Main	
	a.	Design Engineering: \$ 600
	b.	Construction: <u>13,400</u>
		Total: \$14,000
B.	New Water Main – Soft Costs	
	a.	Design Engineering: \$ 6,000

b.	Construction Inspections:	6,000
c.	MWW Materials, Fittings, and Labor:	<u>\$ 21,000</u>
	Total Soft Costs:	\$ 33,000
C.	New Water Main – Hard Costs	
a.	Construction:	<u>\$ 70,000</u>
	Total Costs – New Water Main:	<u>\$103,000</u>
	Total Water Improvements Costs:	
		<u>\$117,000</u>

5. Utility Laterals

Sewer and water laterals for the office building are the responsibility of Developer and can be installed upon issuance of the appropriate permit by City’s Department of Neighborhood Services.

6. Other Improvements

Developer agrees that any utility and access improvements necessary to serve the project 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. Developer or other responsible parties shall obtain permits necessary for any such work.

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. Design Engineering and Water Main Abandonment Deposit

Developer shall deposit a total of (\$40,000) with the City's Department of Public Works to cover the cost of design engineering and other City costs anticipated prior to construction of the new sewer and water mains.

Design work shall not begin until the deposit has been submitted.

9. Funding Guarantee

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 cost for the new sewer and water mains identified above (i.e. prior to the award of any public improvement contracts.)

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.

10. City Force Work Costs

The total estimated cost for construction engineering (field inspections, contract management, materials and fittings etc.) is (\$41,300.)

Developer shall deposit this amount with the City prior to the City advertising for public improvement construction bids.

11. Contract costs for the public improvements will be billed to Developer upon determination that City has incurred such costs. 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 10. 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 initial fund deposit to cover expenses incurred by the City for engineering, plan preparation, and other 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 for

Design Engineering and Construction Engineering to the Developer.

12. 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 and approval of inspectors and engineers furnished 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.

13. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon completion of the public improvements, described herein, title to all permanent public facilities installed under the terms of this agreement 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.

14. Building Permits

It is understood and agreed by both parties hereto that a building permit for the office building shall not be issued until the Developer has provided



the City with both a funding guarantee and the cash deposits as specified above.

15. Occupancy Permits

It is understood and agreed by both parties hereto that an occupancy permit for the office building shall not be issued until all planned public improvements have been sufficiently completed so essential public utility services are provided to the Site.

16. City Ordinances and Regulations

City warrants that for all work to be performed by City it will follow its standard and customary public works contracting procedures unless such is to be undertaken by City Forces. 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.

17. Developer refunds

Developer refunds will be made subject to the terms and conditions outlined below.

In the year following completion of the sewer work covered hereunder, the City shall refund an amount equal to the net additional cost of relocating the 24" sewer in public right-of-way. The amount of the refund shall be

as follows:

Estimated Cost of Replacement Sewer in Street: \$280,000

Minus Estimated Cost of Replacement Sewer in Easement: \$

Minus Estimated Remaining Value of Existing Sewer: \$\_\_\_\_\_

Refund: \$\_\_\_\_\_

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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 \_\_\_\_\_, 2001.

In Presence Of:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ Developer

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF WISCONSIN    )  
                                  ) SS.  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2001, 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 \_\_\_\_\_, 2001.

In Presence Of:

CITY OF MILWAUKEE

\_\_\_\_\_

\_\_\_\_\_

John O. Norquist, Mayor

\_\_\_\_\_

\_\_\_\_\_

City Clerk

COUNTERSIGNED:

\_\_\_\_\_

Comptroller

STATE OF WISCONSIN    )  
                                  ) SS.  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001,

John O. Norquist, 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. 001391 adopted \_\_\_\_\_, 2001.

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

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

STATE OF WISCONSIN     )  
  ) SS.  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
\_\_\_\_\_, City Clerk of the above-named municipal corporation, to me known  
to be the person who executed the foregoing instrument and to me known to be such  
City Clerk 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. 001391 adopted \_\_\_\_\_,  
2001.

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

STATE OF WISCONSIN     )  
  ) SS.  
MILWAUKEE COUNTY     )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
\_\_\_\_\_, City Comptroller 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 City Comptroller 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. 001391 adopted  
\_\_\_\_\_, 2001.

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

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