

THIS AGREEMENT, By and between Neumann Developments Inc. 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 is the owner of the 70-acre site located generally east of North Granville Road at West Donna Drive. This site is more particularly described by Exhibit "A"; and

WHEREAS, The City previously entered into an Out-of-Program Agreement with another developer regarding installation of various public improvements required to serve a single family residential development on a portion of the property shown on Exhibit "B", said residential development is known as River Ridge. River Ridge consists of 43 lots; and

WHEREAS, The Developer has now requested an agreement with the City to provide for installation of public improvements to serve Phase II of the project. Phase II will be known as River Ridge Addition No. 1; and

WHEREAS, River Ridge Addition No. 1 will encompass the remainder of the site and will consist of 104 lots for single family homes as well as two outlots; and

WHEREAS, The public improvements for Addition No. 1 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 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 necessary for design and construction of the public improvements, easement preparation as may be required, water fittings, materials inspections, construction inspections and any related City work necessitated by the project.

2. Design Option

Upon mutual concurrence of Developer and the Commissioner of Public Works, Developer may let and administer design contracts for the sewer, water, and paving infrastructure required to serve Phase II.

In the event Developer contracts for engineering design, plans shall be prepared to City specifications and approval by the Commissioner of all such plans shall be required prior to commencement of any improvement work. All City costs associated with review of plans prepared by others shall be the Developer's responsibility. To expedite the City's review, Developer shall provide plans for the public improvements as follows:

- a. Paving plans shall be submitted first.
- b. Sewer plans shall be submitted only after the paving plans have been approved by the Commissioner. Copies of the approved plans shall be submitted along with the sewer plans.
- c. Water plans shall be submitted only after paving and sewer

plans have been approved by the Commissioner. Copies of approved paving and sewer plans shall be submitted along with the water plans.

3. Construction Option

Upon mutual concurrence of Developer and the Commissioner of Public Works, Developer may let and administer construction contracts for one or more of the public improvements covered by this Agreement. In the event Developer manages one or more public improvement construction contracts, City shall perform its normal inspections during the course of construction. In addition, Developer agrees to use a good faith effort to comply with and administer on behalf of the City, all applicable City rules and requirements pertaining to EBE and local resident involvement in the construction contracts. Developer shall comply with the prevailing wage requirements set forth in Section 309-21 Milwaukee Ordinances.

Developer shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works. All payments to contractors must be pre-approved by the Commissioner.

4. Site Grading

Developer agrees to pre-grade the Phase II area including proposed public street rights-of-way. Grading plans shall be reviewed and approved by the Commissioner of Public Works. The grading plan must be approved prior to design engineering of the public improvements. Grading shall be to within three (3) inches of the roadway sub-grade as established in the paving plans. Grading shall match design grades at the right-of-way line. Material in any fill areas shall be placed in accord with Section 401.5 of the City of Milwaukee Department of Public Works Street Construction Specifications dated July 1, 1992. The Developer is responsible for obtaining any and all

permits required to undertake grading activities.

5. Subdivision

Developer agrees to submit a final subdivision map for the site and to develop the site in accord with the subdivision map as approved.

6. Water Improvements

Water main will be installed in street rights-of-way and in easement, as may be necessary, to serve Phase II. In addition, water main may be constructed in planned street rights-of-way outside the limits of Phase II in order to provide a closed loop system.

Per paragraph 2, plans for water main improvements shall be prepared by either the City's Department of Public Works (DPW) or by the Developer. If plans are prepared by the Developer, the estimated cost for the City's review is \$21,300. The estimated costs to construct and inspect the water improvements are as follows:

Construction (including fittings)	\$ 924,100
Inspection & related activities	\$ 90,700

The Developer shall provide all required water fittings. In addition, the Developer is responsible for obtaining the required State of Wisconsin Department of Natural Resources Water Main Installation permit. City will provide the flow test information required as part of the permit application.

7. Sewer Improvements

Storm and sanitary sewers will be installed in street rights-of-way to serve Phase II. Per paragraph 2, plans for storm and sanitary sewers shall be prepared by either the City's DPW or by the Developer. If prepared by the Developer, the estimated cost for the City's review is \$25,000. The estimated costs to construct and

inspect the sewer improvements are as follows:

Construction	\$ 1,603,000
Inspection	\$ 31,000

Regardless of who prepares the sewer plans, review and approval of the plans by the Milwaukee Metropolitan Sewerage District is required.

Regardless of whether the Developer or the City contracts for construction of the on-site sewer improvements, it is anticipated that the sanitary sewer extension to be located in easement beyond the limits of the subdivision will be constructed via contract let and administered by the Developer. Once approvals have been received from the Commissioner, the DNR, and MMSD for the sanitary sewer plans, all funding guarantees provided, and the final plat recorded, construction of the on-site portion of the sanitary sewer may commence at the River Ridge Drive cul-de-sac and proceed into the site without regard to the status of the bid, award, and construction of the off-site sanitary sewer. Developer shall have the right to access the necessary area for installation of said offsite sanitary sewer on City property and when complete shall restore the area utilized for access to the preexisting condition.

8. Paving Improvements

New two-stage asphalt streets shall be constructed to serve the subdivision. The southernmost 120 feet of North 97th Street between West Dean Road and West Darnell Street lies outside the limits of the subdivision. When and whether this section of North 97th Street will be constructed shall be at the discretion of the City. If and when it is improved, it will be designed, constructed, and funded by the City as an in-program street.

All streets within the Phase II subdivision will be improved to an urban cross-section design standard. Urban cross-section streets typically include asphalt pavement, concrete curb and gutter, and concrete sidewalk. Developer may subsequently request that certain sections of sidewalk be deleted from the project. Separate action of the Milwaukee Common Council will be required to delete any sidewalk areas. Developer shall have the right to require home builders to install sidewalks per the approved plans prior to home occupancy. Also, once 90% of the lots are occupied by homeowners, Developer shall install all remaining sidewalks to complete the sidewalk network.

Per paragraph 2, plans for paving improvements within the subdivision shall be prepared either by the City's DPW or by the Developer. If prepared by the Developer, the estimated cost for the City's review is \$10,000. The estimated costs to construct and inspect the paving improvements are as follows:

Construction	\$ 910,450
Inspection	\$ 245,000

(Note: The City may reconsider the amount of the required inspection fee deposit based upon actual expected construction costs as demonstrated by a contract for the paving work.)

9. Utility Laterals

Sanitary sewer and water laterals will be installed for each lot. These may be contracted out by the City or may be installed by Developer under permit from the City's Department of Neighborhood Services. Under the latter option, the Neighborhood Services Department would inspect the work. The cost of laterals is not included in the preceding sewer and water estimates. If installed by the City, Developer shall provide funding therefor.

10. Street Lights

No public streetlights will be installed in the Phase II area.

11. Street Trees

Street trees will be planted by the City along both sides of the Phase II streets. An estimated 68 trees would be planted at a cost of \$30,000. There is no additional cost for design engineering or inspections.

12. Storm Water Management Plan

A Storm Water Management Plan for the entire site has been previously approved by the City Engineer. If any modifications to this plan are required because of the revised Phase II subdivision layout, those modifications must be submitted to the City Engineer for review and approval prior to the commencement of any on-site improvement work including grading. Any storm water management improvements required in conjunction with Phase II shall be constructed by Developer. Ownership and maintenance of these improvements shall be the responsibility of the Developer or of any subsequent Homeowner's Association.

13. Other Improvements

Developer agrees that any utility and access improvements necessary to serve the site 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. Permits necessary for any such work shall be obtained by Developer or other responsible parties.

14. Easements

Developer agrees to provide, where necessary and at no cost to the City, all easements and other property rights required to construct, operate and maintain the public improvements described herein except the Developer will not be required to provide an easement across any City owned property. All on-site easement areas are to be pre-graded by the Developer prior to the construction of public improvements therein. It shall be the Developer's responsibility to obtain any permits and/or easements or other property rights necessary for the operation and maintenance of the storm water management system and outlets, as approved.

15. Private Utilities

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

16. Design Engineering Deposit

In the event Developer designs the public improvements, DPW shall review and approve them. The estimated cost of such review is \$46,300, which depicts a reduction of \$10,000 for paving plan review given that these plans were previously approved by the City.

Design work, whether by DPW or by Developer, shall not begin until the final subdivision map has been approved and recorded, any required revisions to the Storm Water Management Plan have been approved, and the site grading plan has been approved.

17. Funding Guarantee For Construction

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 contract cost (\$3,437,550) for the public infrastructure improvements described herein prior to the award of any public improvement contracts, whether privately or publicly let. If the Developer manages contracts for construction of the public improvements, the actual amount of the LOC may be adjusted to reflect the actual value of such 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. The Letter-of-Credit or other funding guarantee shall be submitted to the City prior to the City or the Developer entering into any contracts for installation of public improvements.

18. City Force Work Costs

The total estimated cost for (1) construction engineering (field inspections, contract management, materials inspections, clean water testing, etc.) plus (2) planting street trees plus (3) preparing utility as-built drawings is \$226,200 (see Note in paragraph 8). Developer shall deposit \$100,000 of this amount up front and the remainder shall be in the form of a letter of credit with the City prior to the City advertising for public improvement construction bids or prior to Developer letting any contracts for public improvements. The City may at the discretion of the Commissioner of Public Works draw from the LOC at any time.

19. Payments

It shall be 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 or for plan review 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 (i.e. the Design Engineering Deposit or the Plan Review Deposit and the Construction Engineering Deposit) to the Developer.

20. 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.

21. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon completion of the public improvements, title to all 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.

22. Building Permits

It is understood and agreed by both parties hereto that building permits for any homes to be constructed in Phase II of the project shall not be issued until (1) any required revisions to the Storm Water Management Plan have been approved, (2) the Developer has provided the City with both a funding guarantee and a deposit for City Force Work, (3) all required approvals for any sewer improvements have been granted by the appropriate agencies, (4) the subdivision for the project has been approved and recorded, and (5) all easements required to construct and maintain underground improvements have been provided to the City.

23. Occupancy Permits

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

24. City Ordinances and Regulations

City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedures unless such work is to be undertaken by City Forces or by Developer per paragraph 3. 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 supersede such requirements. In accord with Section 307 of the City of Milwaukee Department of Public Works Street Construction Specifications dated July 1, 1992 that shall be a 2-year warranty for the

underground work and a 3-year warranty for the pavement work to

commence from the first lift of asphalt.

25. Refunds

If the City undertakes the design work for the public improvements and awards the contracts for their construction, Developer shall be entitled to a refund equal to the portion of the cost of public improvements that would be assessable to other benefiting property owners. Such refund shall be made in the year following completion of the public improvements.

If Developer lets contracts for design of the public improvements and/or their construction, no assessments shall be levied against other parties and no refunds shall be due Developer.

26. Indemnification

In case any action in court, claim or proceeding before an administrative agency is brought against the City, or against any of its officers, agents, or employees, for the failure, omission or neglect of the Developer or of any contractor retained by it, in whole or part, to perform any of the covenants, acts, matters or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Developer, its officers, agents, and employees, or the officers, agents, and employees or any contractor retained by it, the Developer shall defend, indemnify and save harmless the City and its officers, agents, and employees from all losses, damages, costs, expenses, judgments or decrees arising out of such action. The City shall tender the defense of any claim or action at law or in equity to the Developer or the Developer's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. Further, Developer expressly agrees as a condition of this contract that

neither the City nor its officers, agents, or employees will be responsible for any loss or injury resulting from defects in the design of sewer, water, and paving infrastructure required to serve the subdivision when such designs are let and administered by the Developer as described in Paragraph 2. Developer expressly agrees that it will defend, indemnify and hold the City harmless from any and all claims that may hereafter at any time be asserted by any party arising from any purported defect in the design of sewer, water and paving infrastructure. The City shall tender the defense of any such claim to the Developer or the Developer's insurer to defend such claim or action without cost or expense to the City.

SIGNATURE PAGES

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.

DEVELOPER

IN WITNESS WHEREOF, the Developer has caused this document to be signed and sealed this ____ day of _____, 2007.

Developer

In Presence Of: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2007,
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 _____, 2007.

CITY OF MILWAUKEE

In Presence Of:

Tom Barrett, Mayor

City Clerk

COUNTERSIGNED

Comptroller

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2007, Tom Barrett, 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. _____ adopted _____, 2007.

Notary Public, State of Wisconsin

My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2007,
Ronald Leonhardt, 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. _____, adopted _____, 2007.

Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2007,
W. Martin Morics, 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. _____, adopted _____, 2007.

Notary Public, State of Wisconsin
My Commission expires: _____