

**AGREEMENT TO DEDICATE LANDS FOR PUBLIC RIGHT-OF-WAY**  
**Regarding Alleyways Between South Austin Street, East Dewey Place, South Howell**  
**Avenue, and East Schiller Street**

THIS AGREEMENT, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2006 (the “Effective Date”), is made and entered into by and between the CITY OF MILWAUKEE (“City”), and KAREL D. KOTNIK and ELIA C. KOTNIK, husband and wife, in their individual capacities and also as Trustees of the KOTNIK TRUST dated November 21, 1996 (the “KOTNIKS”).

**RECITALS**

- A. Karel and Elia Kotnik own an undivided ½ interest in each of 2905 South Howell Avenue (tax key 505-9989-000-6) (the “2905 Parcel”)<sup>1</sup> (the 2905 Parcel is also known as 2905-A South Howell Avenue) and 2904-Rear South Austin Street (tax key 505-9990-000-1) (the “2904-R Parcel”)<sup>2</sup>, Milwaukee. The 2905 Parcel and 2904-R Parcel are depicted on the map attached hereto as **Exhibit A** (the “Map”), and those parcels are legally described on **Exhibit B** attached hereto.
- B. The Kotniks are also trustees of the Kotnik Trust dated November 21, 1996 (the “Trust”), and the Trust owns the other undivided ½ interest in and to each of the 2905 Parcel and the 2904-R Parcel. (As used herein, “Kotniks” means each, and all, of Karel and Elia Kotnik, in their individual capacities and as trustees of the Trust, and the Trust).
- C. The 2905 Parcel is the Kotniks’ residence. The 2904-R Parcel is the large, backyard tract at the rear of the Kotniks’ residential parcel.
- D. As shown on the Map, there are currently gravel alleyways in the same block as the 2905 Parcel and 2904-R Parcel. **Alley 1** is the north-south alley on the western part of the block accessing East Dewey Place. **Alley 2** is the east-west alley running adjacent to, and along the south border of, the 2904-R Parcel. **Alley 3** is the north-south alley on the eastern part of the block also accessing East Dewey Place. Alley 1, 2, and 3 are herein collectively called the “Alleyways.” The Alleyways are already public right-of-way but they currently are not paved and are only gravel.
- E. Also as approximately shown on the Map, there is currently an easement (the “Garage-Access Easement”) affecting the 2905 Parcel and the 2904-R Parcel and benefiting the parcel at 2911 South Howell Avenue (tax key no. 505-9988-000-0) (the “2911 Parcel”) (the 2911 Parcel is also known as 2911-A South Howell Avenue). The Garage-Access Easement is contained in: Executrix’s Deed recorded in the Milwaukee County Register of Deeds Office as Document No. 3751081; Deed (or Indenture) recorded as Document No. 3961401; and Quit Claim Deed recorded as Document No. 7307028. Those documents indicate that the Garage-Access Easement “is for the purpose of ingress and egress to the garage located on ...” the 2911 Parcel.

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<sup>1</sup> CTIC Letter report 1211644 dated February 26, 2006.

<sup>2</sup> CTIC Letter report 1211651 dated February 28, 2006.

- F. Per City Council Resolution 060135, the City's Common Council: approved paving Alley 1, Alley 2 and Alley 3 (and related sidewalk and driveway approach work) (a.k.a. Alley S. Austin Street Project ST21290120); authorized the City's Commissioner of Public Works (the "Commissioner") to proceed with the work in accordance with the Commissioner's Report pursuant to Wis. Stat. § 66.0703 and Milwaukee Code of Ordinances ("MCO") § 115-42; and authorized assessing abutting or adjacent owners per MCO § 115-42, with the work *anticipated* to be completed in the 2006 season and billed after January 1, 2008.

## **AGREEMENT**

1. **Recitals.** The recitals above are hereby acknowledged and agreed to.
2. **Agreement to Dedicate.** Kotniks agree to dedicate as public right-of-way, the 10 foot wide by 46 foot long strip of land shown on the Map as **Strip 1**, and the 5 foot wide by 337 foot long strip of land shown on the Map as **Strip 2** (357 feet-20 feet = 337 feet). Those strips are, respectively, described on **Exhibit C** attached hereto, and are herein collectively called the "Strips." The Strips are a part of the 2904-R Parcel. The 20 foot by 33 foot parcel shown on the Map as being affected by the Garage-Access Easement (or ingress and egress easement) is not being dedicated.
3. **Quit-Claim Deed.** The Kotniks shall sign and deliver to City, simultaneously with the execution of this Agreement, a deed in form and substance of that attached hereto as **Exhibit D** to effectuate the dedication. City shall record the Deed (see Milwaukee Code of Ordinances § 304-49-13-b) at its expense in the Milwaukee County Register of Deeds Office.
4. **Paving.** City agrees to pave the Alleyways and the Strips. And, as public right-of-way, the paved Alleyways and Strips will be maintained by the City in accordance with, and subject to, applicable laws governing public right-of-way.
5. **Alley Signs.** The City shall erect in or near Alley 1, Alley 2 and Alley 3 "No Parking In Alley" signs at locations and in number determined by the Commissioner..
6. **Waiver of Special Assessments.** But for this Agreement, the Kotniks would have been specially assessed for the paving and public improvements associated with the widening and paving of the Alleyways and Strips. In light of this Agreement, the City agrees not to specially assess or charge the Kotniks (as owners of the 2905 Parcel and 2904-R Parcel) for the widening and paving. The Kotniks understand, however, that they shall continue to be subject to all applicable federal, state, and local laws, including property tax on the remaining parts of the 2905 Parcel and 2904-R Parcel that they will continue to own, and be responsible for future special assessments or special charges that may be levied as a result of future paving, repairs, or replacements of the Alleyways and Strips and public right-of-way thereover.

7. **Waiver of Chapter 32 Rights.** The Kotniks acknowledge that they and the City voluntarily entered into this Agreement, for good and valuable consideration (receipt and sufficiency of which are hereby acknowledged), and that the dedication and conveyance contemplated hereby or as a result hereof were pursuant to a negotiated transaction, and not by means of eminent domain. They understand that the City had the right to use eminent domain powers to acquire the necessary right-of-way in the Strips but did not have to use eminent domain as a result of this voluntary Agreement. The Kotniks waive all rights under Wis. Stat. Ch. 32, including, but not limited to, rights to challenge any “taking,” rights to challenge “just compensation,” and relocation-assistance rights. The parties hereto have had the opportunity to consult with advisors of their choice prior to entering into this Agreement (including attorneys), and the parties voluntarily and knowingly enter this transaction.
8. **Right of Entry.** The Kotniks hereby allow the City a temporary right of entry to enter upon the 2905 Parcel and 2904-R Parcel in order to excavate, grade, and pave the Alleyways and Strips. The City’s entry shall be at City’s own risk and shall be conducted in a manner so as to reasonably minimize interruption to the Kotniks’ use of the 2905 Parcel and 2904-R Parcel. Prior to entry, the City shall provide the Kotniks with at least 48-hours advance written notice of contemplated dates of entry needed to undertake and complete the work contemplated hereby.
9. **Trees and Bushes.** The Kotniks acknowledge that bushes and trees within 5 feet of the Strips will have to be removed. They shall be removed by City at its expense. They will not be replaced, and City shall have no duty to pay the Kotniks any compensation therefore.
10. **Assessor and Treasurer.** The City’s Assessor and Treasurer shall be furnished with a copy of this Agreement and the Deed to inform them of the same.
11. **AS IS.** The Kotniks are dedicating the Strips in their “AS-IS, WHERE-IS” condition, with all faults and defects, known or unknown, physical or otherwise.
12. **Title Insurance.** The Kotniks shall not be obligated to provide City with, or to pay for, a policy of title insurance concerning the Strips. Kotniks, however, represent that they own the Strips and that they have full right and authority to dedicate same to City for public right-of-way.
13. **No Tax Proration.** There shall be no proration of taxes regarding the deeding to the City of the dedicated public right-of-way in the Strips.
14. **No Transfer Fee or Return.** There shall be no real-estate-transfer fee due, or transfer return required, as the Deed represents a conveyance to the City for public right-of-way and in lieu of condemnation. See Wis. Stat. § 77.25(2r) and (12) and § 77.255.

15. **Successors and Assigns.** This Agreement binds and inures to the benefit of the parties hereto and their successors and assigns.
16. **Facsimile and Counterparts.** This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. And, facsimile signatures shall be accepted as originals.
17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and all prior statements, written or oral, are terminated and of no effect. This Agreement may only be amended by a written agreement signed by all the parties hereto.
18. **Severable.** The terms and provisions of this Agreement are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.
19. **Authority to Sign/Common Council Approval.**
  - A. Kotniks represent that they have full authority to sign this Agreement.
  - B. City's Common Council approved entry into and execution of this Agreement on behalf of the City by City Council Resolution No. \_\_\_\_\_.
20. **Survival.** The terms, provisions, and agreements herein shall survive Closing and delivery and recording of the Deed.
21. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, and (ii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:
  - A. **If to City:**

Mary Dziejwiontkoski  
City of Milwaukee - Dept. of Public Works  
841 North Broadway, Room 908  
Milwaukee, WI 53202  
Phone: 414-286-2460

With a further copy to:  
Gregg Hagopian  
City Attorney's Office  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
Phone: 414-286-2620

**B. If to Kotniks:**

Kotniks  
2905 South Howell Avenue  
Milwaukee, WI 53207  
Phone: 414-744-6656

25. **Headings.** The headings used herein are for convenience only.
26. **Remedies.** Except as otherwise provided herein, in the event of breach of this Agreement, the nonbreaching party shall have all rights and remedies available at law and in equity against the breaching party (including the right to seek specific performance). Nothing contained herein shall be deemed a waiver or dilution of any right or protection City has at law or in equity – including rights under Wis. Stat. § 893.80.

IN WITNESS WHEREOF, the parties caused this Agreement to be entered into and executed as of the Effective Date first written above.

**CITY:** City of Milwaukee

By: \_\_\_\_\_  
Jeff Mantes, DPW Commissioner  
(per Council Resolution No. \_\_\_\_\_)

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

CITY ATTORNEY'S OFFICE  
(Milwaukee Code of Ordinances § 304-21)

Approved by: \_\_\_\_\_  
Gregg C. Hagopian  
Assistant City Attorney

**KOTNIKS**

\_\_\_\_\_  
Karel Kotnik

\_\_\_\_\_  
Elia Kotnik

**EXHIBIT A – MAP**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF PARCELS**

**2905 Parcel**

Tax Key No. 505-9989-000-6

Address: 2905 South Howell Avenue, Milwaukee

A piece of land in the Southwest  $\frac{1}{4}$  of Section 9, Town 6 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point in the West line of South Howell Avenue which is 72 rods South of the North line of said  $\frac{1}{4}$  Section and running thence West parallel with the North line of said  $\frac{1}{4}$  Section 120 feet to a point, running thence South and parallel with South Howell Avenue, 33 feet to a point; running thence East and parallel with the North line of said  $\frac{1}{4}$  Section, 120 feet to the West line of South Howell Avenue; thence running North along the West line of South Howell Avenue, 33 feet to the place of beginning.

**2904-R Parcel**

Tax Key No. 505-9990-000-1

Address: 2904-Rear South Austin Street, Milwaukee

A piece of land in the Southwest  $\frac{1}{4}$  of Section 9, Town 6 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows: Commencing at a point which is 72 rods South of the North line of said  $\frac{1}{4}$  Section and 120 feet West of the West line of South Howell Avenue and running thence West parallel to the North line of said  $\frac{1}{4}$  Section, 347 feet to a point; thence South and parallel with South Howell Avenue, 20 feet to a point; thence West parallel with the North line of said  $\frac{1}{4}$  Section, 10 feet to a point; thence South parallel with South Howell 46 feet to a point; thence East and parallel with the North line of said  $\frac{1}{4}$  Section, 357 feet to a point; thence North parallel with South Howell Avenue, 66 feet to the place of beginning.

**EXHIBIT C**  
**LEGAL DESCRIPTION OF STRIPS**

The following are descriptions of property to be acquired for opening and widening public alley in the block bounded by South Austin Street, East Dewey Place, South Howell Avenue and East Schiller Street, in the 14<sup>th</sup> Aldermanic District of the City of Milwaukee.

**STRIP 1**

The West 10.00 feet of that part of lands in the Southwest  $\frac{1}{4}$  of Section 9, Township 6 North, Range 22 East, described as follows: The South 66 feet excluding the East 120 feet, the South 46 feet of the West 120 feet and the North 20 feet of the West 130 feet of lands bounded by South Austin Street, South Howell Avenue, the South line of Koenen's Subdivision and the North line of Koenen's Addition to South Milwaukee, recorded subdivisions, in said  $\frac{1}{4}$  Section.

**STRIP 2**

The South 5.00 feet excluding the West 10.00 feet and the East 20.00 feet of that part of lands in the Southwest  $\frac{1}{4}$  of Section 9, Township 6 North, Range 22 East, described as follows: The South 66 feet excluding the East 120 feet, the South 46 feet of the West 120 feet and the North 20 feet of the West 130 feet of lands bounded by South Austin Street, South Howell Avenue, the South line of Koenen's Subdivision and the North line of Koenen's Addition to South Milwaukee, recorded subdivisions, in said  $\frac{1}{4}$  Section.



**EXHIBIT D**

QUIT CLAIM DEED

Document Name

Document No.

**THIS INSTRUMENT**, by Karel D. Kotnik and Elia C. Kotnik, husband and wife, on behalf of themselves individually and also as Trustees of the Kotnik Trust dated November 21, 1996 (the "Kotniks"), as Grantors, to the CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter called "CITY," as the Grantee.

**WITNESSETH:**

**1. Conveyance and Dedication of Strips as Right-of-Way.** The Kotniks, on behalf of themselves and as Trustees of the Kotnik Trust, hereby convey and quit-claim to City a dedicated-public-right-of-way interest in and to the real estate in the City and County of Milwaukee, State of Wisconsin, depicted as Strip 1 and Strip 2 (the "Strips") on the Map attached hereto as **EXHIBIT A**, and described on **EXHIBIT B** attached hereto, and they subject their respective rights and privileges in and appurtenant to the Strips to such dedication.

The Strips are part of 505-9990-000-1, also known as 2904-R S. Austin Street, Milwaukee (the "2904 Parcel").

The Strips are hereby dedicated for public right-of-way purposes.

The City Common Council, per Resolution File No. 060135, authorized City paving of public alleys over the Strips (and other lands), and per Resolution File No. \_\_\_\_\_, authorized acceptance of this deed.

**2. Conveyance Exempt from Fee and from Return.** Per Wis. Stat. § 77.25 (2r) and (12), this conveyance is exempt from the real estate transfer fee as it represents a conveyance to the City of dedicated public right-of-way so the City can construct public right-of-way alleyways, and it is a deed in lieu of condemnation. Per Wis. Stat. § 77.255, which provides that no return is required for conveyances exempt under § 77.25 (2r), no transfer return is required with respect to this conveyance.

Recording Area

RETURN TO:

Gregg Hagopian  
City Hall, Rm. 800  
City Attorney's Office  
200 E. Wells St.  
Milwaukee, WI 53202

Tax Key No.:  
Part of 505-9990-000-1.

**IN WITNESS WHEREOF**, the Kotniks caused this Deed to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**KOTNIKS (on behalf of themselves and as Trustees of the Kotnik Trust)**

\_\_\_\_\_  
Karel D. Kotnik

\_\_\_\_\_  
Elia C. Kotnik

**Drafted by:** Gregg Hagopian, Asst. City Attorney.

**SIGNATURE AUTHENTICATION**

Gregg C. Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of each of the persons above in accordance with Wis. Stat. § 706.06 in order that this instrument may be recorded per Wis. Stat. § 706.05 (2)(b).

\_\_\_\_\_  
Gregg C. Hagopian, Assistant City Attorney  
State Bar No. 1007373  
Date of Authentication:\_\_\_\_\_

**EXHIBIT A – MAP**

**EXHIBIT B – LEGAL DESCRIPTION**

The Strips conveyed hereby are part of 505-9990-000-1.

**STRIP 1**

The West 10.00 feet of that part of lands in the Southwest  $\frac{1}{4}$  of Section 9, Township 6 North, Range 22 East, described as follows: The South 66 feet excluding the East 120 feet, the South 46 feet of the West 120 feet and the North 20 feet of the West 130 feet of lands bounded by South Austin Street, South Howell Avenue, the South line of Koenen's Subdivision and the North line of Koenen's Addition to South Milwaukee, recorded subdivisions, in said  $\frac{1}{4}$  Section.

**STRIP 2**

The South 5.00 feet excluding the West 10.00 feet and the East 20.00 feet of that part of lands in the Southwest  $\frac{1}{4}$  of Section 9, Township 6 North, Range 22 East, described as follows: The South 66 feet excluding the East 120 feet, the South 46 feet of the West 120 feet and the North 20 feet of the West 130 feet of lands bounded by South Austin Street, South Howell Avenue, the South line of Koenen's Subdivision and the North line of Koenen's Addition to South Milwaukee, recorded subdivisions, in said  $\frac{1}{4}$  Section.

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