

THIS AGREEMENT, By and between Backus Milwaukee 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 is the owner of, or has options to purchase, properties located generally between Dretzka Park and W. Brown Deer Road in the vicinity of N. 116th Street. This site is more particularly described by Exhibit "A"; and

WHEREAS, The Developer has requested an agreement that provides for installation of public improvements to serve a single-family residential subdivision planned for the site, said subdivision to be known as Tara Vista Estates; and

WHEREAS, The planned subdivision will consist of 41 developable lots and two outlots; and

WHEREAS, The public improvements for this subdivision 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 the subdivision. 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 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 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 subdivision 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 the subdivision. 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 DPW, the estimated cost is \$54,600. If plans are prepared by the Developer, the estimated cost for the City's review is \$11,000. The estimated costs to construct and inspect the water improvements are as follows:

Construction plus contingencies	\$ 644,000
Inspection & related activities	\$ 75,300
Water fittings	\$ 25,700

If the Developer lets the contract for the water improvements, the Developer shall provide the required water fittings. If the City lets the contract, the City shall provide the fittings. The Developer is responsible for obtaining the required State of Wisconsin Department of Natural Resources Water Main Installation permit. The 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 the subdivision. A sanitary sewer lift station will be required to convey waste water from the lowest section of the subdivision to a higher elevation. 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 DPW, the estimated cost is \$122,000. If prepared by the Developer, the estimated cost for the City's review is \$50,000. The estimated costs to construct and inspect the sewer improvements are as follows:

Construction (sewer mains)	\$727,500
Construction (lift station)	\$305,000
Construction (detention pond)	\$20,000
Inspection	\$26,000

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

8. Paving Improvements

W. Brittany Way between N. 116th Street and N. Lauer Street and N. 116th Street between W. Brittany Way and W. Brown Deer Road will be improved to an urban cross-section standard design. Urban cross-section streets typically include asphalt pavement and concrete curb and gutter. Per Common Council file number 041484, sidewalks will not be required along these streets.

All other streets in the subdivision will be constructed to a rural cross-section design standard. Rural cross-section streets typically include asphalt pavement, gravel shoulders, and drainage ditches on each side. No sidewalks will be constructed.

Per paragraph 2, plans for paving improvements shall be prepared either by the City's DPW or by the Developer. If prepared by DPW, the estimated cost is \$62,400. If prepared by the Developer, the

estimated cost for the City's review is \$20,000. The estimated costs to construct and inspect the paving improvements are as follows:

Construction	\$450,000
Inspection	\$93,600

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 therefore.

10. Street Lights

Standard City street lights will be installed along Brittany Street between N. Lauer Street and N. 115th Street and along N. 115th Street from Brittany to W. Brown Deer Road. City forces will install the lights. The estimated cost is \$

11. Street Trees

Street trees will be planted by the City along both sides of W. Brittany Way and both sides of N. 116th Street where those streets are improved with curb and gutter. The estimated cost for these street trees is \$20,650. There is no additional cost for design engineering or inspections.

12. Storm Water Management Plan

A Storm Water Management Plan for the project must be submitted for review and approval by the City Engineer. Any storm water management improvements required in conjunction

with the subdivision shall be constructed by Developer. The estimated cost to construct the project's detention pond is \$20,000. A bond must be submitted in this amount to ensure completion of the pond. Ownership and maintenance of the storm water management 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. 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 DPW designs the public improvements, Developer shall deposit a total \$239,000 with the City to cover the estimated cost of design engineering, easement preparation and other City costs anticipated prior to actual construction.

In the event Developer designs the public improvements, DPW shall review and approve them. The estimated cost of such review is \$81,000.

Design work, whether by DPW or by Developer, shall not begin until the final subdivision map has been approved and recorded, the required Storm Water Management Plan has 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 (\$2,126,500) for the public infrastructure improvements described herein prior to the award of any public improvement contracts, whether privately or publicly let.

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

If the City lets construction contracts, the force work cost estimate is \$241,250 (plus street light cost). This estimate includes (1) construction engineering (field inspections, contract management, materials inspections, clean water testing, etc.) plus (2) water fittings plus (3) planting street trees plus (4) preparing as-built drawings plus (5) installation of street lights. If the Developer lets construction contracts, the force work cost estimate is \$215,550 (plus street light cost). This estimate includes those items listed above except water fittings. Developer shall be responsible for purchasing his own water fittings subject to review and approval by the Commissioner. Depending upon the alternative selected, Developer shall deposit the appropriate amount with the City prior to the City advertising for public improvement construction bids or prior to Developer letting any contracts for public improvements.

19. Payments

In the event the City lets public improvement construction contracts, the contract costs for the public improvements will be

billed to Developer upon determination that such costs have been incurred by City. 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 17. 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 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 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 the standard practice.

22. Building Permits

It is understood and agreed by both parties hereto that building permits for any homes to be constructed in the subdivision shall not be issued until (1) the required Storm Water Management Plan has 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, (5) all easements required to construct and maintain underground improvements have been provided to the City, and (6) a mechanism is in place to guarantee funding for a future onetime complete rehabilitation of the lift station (see paragraph 26).

23. Occupancy Permits

It is understood and agreed by both parties hereto that occupancy permits for any structure in the subdivision 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.

25. Lift Station Rehabilitation

The City of Milwaukee tries to avoid the installation of waste water lift stations whenever possible. However, due to the topography of the site, this project will require one. The Developer shall create a funding mechanism to provide for a onetime rehabilitation of the lift station. The proposed funding mechanism shall be subject to review and approval by the Commissioner of Public Works. The estimated cost in current dollars for a onetime rehabilitation of the lift station is \$255,000. The Commissioner shall determine whether the funding mechanism proposed by the Developer provides adequate safeguards to protect the City from incurring costs associated with such onetime rehabilitation.

26. Refunds

City shall refund 50% of the street light installation cost to the Developer in the year following completing of the street light work.

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 _____, 2005.

Developer

In Presence Of:

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2005,
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 _____, 2005.

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 _____, 2005, 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 _____, 2005.

Notary Public, State of Wisconsin

My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005,
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
_____, 2005.

Notary Public, State of Wisconsin

My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005,
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
_____, 2005.

Notary Public, State of Wisconsin

My Commission expires: _____