

THIS AGREEMENT, By and between KJ Greentree 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, Direct Supply Inc., a medical equipment direct order company located at 6767 N. Industrial Road, has plans for substantial expansion of its business along with the physical plant that houses it; and

WHEREAS, Direct Supply is a tenant in several buildings that are owned by the Developer; and

WHEREAS, Direct Supply and the City have agreed upon a term sheet outlining the responsibilities of each in order to accomplish the company's growth plans (Common Council file number 060420 adopted July 12, 2006); and

WHEREAS, Direct Supply's expansion plans include the development of surface parking lots on the northeast side of N. Industrial Road; and

WHEREAS, To facilitate development of such off-street parking and to provide for short term aesthetic enhancement to the Industrial Road frontage, certain improvements will be required; and

WHEREAS, The terms and conditions governing the construction and funding of those improvements are outlined herein; and

WHEREAS, The Developer is the landlord for Direct Supply and will act on the company's behalf for purposes of carrying out the terms and conditions of this agreement.

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

The Developer agrees to provide all funds necessary for design and construction of the public improvements, materials' inspections, construction inspections and any related City work necessitated by the project.

2. City to Design Public Improvements

The City shall design the public improvements described herein. Plans shall be prepared to City specifications and the City shall be responsible for obtaining any approvals that may be required to undertake their construction. All City costs associated with plan preparation shall be the Developer's responsibility.

3. Construction Option

Upon mutual concurrence of the Developer and the Commissioner of Public Works, the Developer may let and administer construction contracts for one or more of the public improvements covered by this Agreement. In the event the Developer manages one or more public improvement construction contracts, City shall perform its normal inspections during the course of construction. In addition, the Developer agrees to implement, in accord with the approved

project term sheet, all applicable City rules and requirements pertaining to Emerging Business Enterprise, Resident Participation, and Prevailing Wages in any construction contracts it manages.

The 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. Crosswalk Improvements

Two handicap accessible pedestrian crosswalks will be installed across N. Industrial Road as illustrated by Exhibit 1. The City shall design the crosswalks. Upon the approval of the Commissioner of Public Works, the City may allow the Company or the Developer to install one or more components of the crosswalk improvements. Maintenance of the crosswalks shall be the responsibility of the City. Maintenance shall be in accord with the standards for maintenance the City uses for other public crosswalks under its jurisdiction. The estimated costs for the crosswalk improvements are as follows:

Design engineering	\$
Installation	\$
Inspection	\$

(Note: Inspection costs will only be incurred if crosswalk improvements are made by someone other than City staff.)

5. Access Alterations

The existing access points from N. Industrial Road to the City's Northwest Side Self Help Center and Transfer Station shall be

closed and a new access road developed at the site's far southeast corner. The City shall prepare the design plans for these improvements. The plans shall be subject to review and approval by the Developer, such approval not to be unreasonably withheld. Two alternative designs are under consideration. The first would require an access easement from the abutting private property to the immediate southeast. The second alternative would require relocation of an oil reclamation facility on the City site. Estimated costs for the two alternative access plans are as follows:

Alternative #1

Design engineering	\$ 45,000
Construction	\$220,000
Inspection	\$ 65,000
Easement acquisition	\$

Alternative #2

Design engineering	\$ 45,000
Construction	\$220,000
Inspection	\$ 65,000
Relocation of oil facility	\$200,000

6. Screening Fence

The Developer will install a new fence along the Industrial Road side of the City's self help / transfer station facility. The new fence will be located immediately adjacent to the existing fence and will be designed to screen the City facility from the street. Phase I of the fence improvements will reflect existing access points to the site. Design details including materials to be used shall be subject to review and approval by the Commissioner of Public Works.

Once installed, the fence shall become the property of the City and the City shall be responsible for its maintenance.

Upon completion of the access improvements described in paragraph 5 above, the Developer shall install fencing to fill the gaps in the new fence where old entrances to the site were eliminated (Phase II fence improvements).

7. Timing of Improvements

The City and the Developer agree that time is of the essence and that both parties must take reasonable steps to expedite the improvements encompassed by this agreement and to coordinate them with other improvements being undertaken to facilitate the company's expansion plans. The general timeframes anticipated are (1) completion of the crosswalk markings, non-energized pedestrian caution signing, and related curb improvements – fall 2006; (2) installation of energized pedestrian caution signs (if any) – winter of 2006/2007; (3) completion of plans for access improvements – winter 2006/2007 or 2007/2008; construction of access improvements – spring/summer of 2007 or 2008; (4) installation of screening fence (Phase I) – summer 2007 or 2008; installation of screening fence Phase II – summer 2007 or 2008. (The schedule outlined above is tentative and subject to change. The company and the Developer shall keep the City apprised of their development plans and shall allow adequate lead time for the City to complete its design and related activities related to any of the improvements covered by this agreement.)

8. Access Rights

The first alternative plan for providing new access to the City's self help / transfer facility would require obtaining access rights from an abutting property owner to the southeast. The City shall work with the Developer to explore the feasibility of this option. If access rights can be obtained, all costs associated therewith shall be the responsibility of the Developer. If Developer and City mutually concur that this option is not feasible, the City will pursue the second alternative access plan using its own property exclusively.

9. Design Engineering Deposit

The Developer shall deposit a total of \$ (plus the cost of obtaining access rights if that alternative is pursued) with the City to cover the estimated cost of preparing plans for the crosswalk and access improvements described in paragraphs 4 and 5. The deposit shall be in the form of a check made out to the City of Milwaukee. To expedite design work on the crosswalks, a separate check in the amount of \$ may be submitted for just that component. In any event, no design work for any of the project's components shall begin until funds for same have been provided.

10. 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 for the public improvements described herein prior to the award of any contracts, whether privately or publicly let. At the request of the Developer, the actual contract amount for the various improvements may be substituted for the estimated costs. In addition, the amount of the LOC may be reduced periodically to

reflect payments made to contractors. Any such reductions shall be approved by the Commissioner of Public Works.

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.

11. City Force Work Costs

The total estimated cost for City force work is \$. This estimate includes (1) construction engineering (field inspections, contract management, materials inspections, etc.) plus (2) materials purchases (pedestrian caution signing and related materials) plus (3) installation work (pedestrian caution signing). The Company shall deposit the amount noted above in the form of a check made out to the City of Milwaukee prior to the award of any construction contracts and prior to the City placing any orders for materials. Depending upon the timing of improvements, multiple force work deposits may be made reflecting the actual work to be performed at any one time.

12. Payments

In the event the City lets public improvement construction contracts, the contract costs for the public improvements will be billed to the Developer upon determination that such costs have been incurred by City. The 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 the 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 plan preparation 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 to the Developer.

13. 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.

14. 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.

15. 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 the 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.

16. Conflicts

In the event of conflicts between the terms and conditions of this Out-of-Program Agreement and the terms and conditions of a duly approved Development Agreement between the Developer and the City and/or between Direct Supply Inc. and the City, the terms and conditions of the Development Agreement shall prevail.

THIS AGREEMENT, drafted by the City of Milwaukee, shall be binding upon the Company, its lessees, successors and assigns, and upon the City, its successors and assigns.

DEVELOPER

IN WITNESS WHEREOF, the Company has caused this document to be signed and sealed this ____ day of _____, 2006.

For the Developer

In Presence Of:

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2006,
who executed the foregoing instrument, and acknowledged that they executed the
same.

Notary Public, State of Wisconsin

My Commission expires: _____

CITY OF MILWAUKEE

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 _____, 2006.

In Presence Of:

Tom Barrett, Mayor

City Clerk

COUNTERSIGNED

Comptroller

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2006, 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 _____, 2006.

Notary Public, State of Wisconsin

My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2006,
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
_____, 2006.

Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2006,
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
_____, 2006.

Notary Public, State of Wisconsin
My Commission expires: _____