

OUT OF PROGRAM AGREEMENT

THIS AGREEMENT, By and between Milwaukee River View Development, LLC, a Wisconsin limited liability company, 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 and the City wish to enter into an Out-of-Program Agreement providing for the installation of various public improvements required to serve a 57-lot single family home residential development; and

Whereas, The Site for the proposed development is located generally east of North Granville Road and south of West Bradley Road and is more particularly described by Exhibit "A"; and

WHEREAS, The Developer is the owner of a portion of the Site, that portion being Lot 3 in Block 13 of Calumet Farms Addition No. 5, Lot 3 in Block 7 of Calumet Farms Addition No. 2, and Lot 4 in Block 14 of Calumet Farms Addition No. 6; and

WHEREAS, Developer is in the process of negotiating a contract to purchase the remainder of the approximately 21 acre vacant Site from the City.

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. Public Improvements Design

The Developer and the Commissioner of Public Works have agreed that the Developer may let and administer design contracts for the sewer, water, and paving infrastructure required to serve this subdivision. All 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. Sanitary sewer, storm sewer, and water plans shall be prepared by the Developer and shall be initiated only after the paving plans have been approved by the Commissioner.

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 sewer, water, and paving improvements covered by this Agreement. In the event Developer manages one or more public improvement construction contract, 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 also agrees to incorporate the Department of Public Works' General Specifications for public improvements and standard warranty requirements into any private construction contract.

Developer shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works.

4. Site Grading

Developer agrees to pre-grade the site 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. Vacation of Existing Rights-of-Way

The site was previously subdivided. Street rights-of-way were previously platted. These streets must be vacated prior to recording the final subdivision map. Developer shall work with the City's Department of City Development to accomplish the necessary street vacations.

7. Water Improvements

Water main will be installed in street rights-of-way and in easement, as may be necessary, to serve the development.

Per paragraph 2, plans for water main improvements shall be prepared by the Developer. The estimated cost for the City's review is \$9,200. The estimated costs to construct and inspect the water improvements are as follows:

Construction	\$503,300
Inspection & related activities	\$ 63,300

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.

A 16" water main is presently located in vacated N. Granville Road south of W. Lolita Avenue. This water main will be abandoned. Developer may leave the abandoned main in place or may remove it.

8. Sewer Improvements

Storm and sanitary sewers will be installed in street rights-of-way to serve the development. Per paragraph 2, plans for storm and sanitary sewers to serve the subdivision shall be prepared by the Developer. The estimated cost for the City's plan review is \$10,000. The estimated costs to construct and inspect the sewer improvements are as follows:

Construction	\$942,000
Inspection	\$ 26,000

Review and approval of the sewer plans by the Milwaukee Metropolitan Sewerage District and the Department of Natural Resources are required. Once approvals have been received from the Commissioner, the DNR, and MMSD; once all funding guarantees have been provided; and once the

final plat has been presented for recording to the Milwaukee County Register of Deeds, construction of the sewer improvements may proceed. An existing sanitary sewer is located in a portion of W. Lolita Avenue that will be vacated. This sewer may be abandoned or left in service at the discretion of the Developer. If left in service, the Developer must provide a sewer easement to the City for each affected property. The cost to prepare the easement paperwork is \$600 per easement.

9. Paving Improvements

New two-stage asphalt streets shall be constructed to serve the subdivision. All streets within the 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 sidewalks.

The preliminary subdivision plan shows a new street being constructed across a stream that runs east/west through the property. This stream crossing must be approved by the Department of Natural Resources and the Southeastern Wisconsin Regional Plan Commission. Permitting costs associated with obtaining such permission shall be the responsibility of the Developer.

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

Construction	\$396,000
Inspection	\$ 80,000

Sidewalks for the subdivision shall be installed upon the first occurrence of one of the following: (1) houses on 80% of the lots have been completed and occupied, (2) the second lift of asphalt pavement is laid on the streets, or (3) two years have passed since the streets' base course was

laid.

10. Utility Laterals

Sanitary sewer and water laterals will be installed for each lot by the Developer under permit from the City's Department of Neighborhood Services. The Neighborhood Services Department will inspect the work. The cost of laterals is not included in the preceding sewer and water estimates.

11. Street Lights

Twenty five City-standard, aluminum pole street lights will be installed by City forces throughout the subdivision. The street lights will be illuminated with 100 watt high-pressure sodium luminaries. The estimated cost for these street lights is \$87,500. There will be no additional cost for design engineering and inspections.

12. Street Trees

Street trees will be planted by City forces along both sides of the subdivision's streets. An estimated 138 trees will be planted at an estimated cost of \$48,300. There will be no additional cost for design engineering or inspections.

As an alternative to the City planting street trees, the Developer may do so at his own expense. In such case, the homeowners' association shall be responsible for maintenance of the street trees including periodic pruning and replacement of dead or unsafe trees. Developer shall submit a copy of the recorded homeowners' association articles of incorporation or other relevant documentation to the Commissioner evidencing acceptance of this maintenance responsibility.

13. Storm Water Management Plan

A Storm Water Management Plan for the project must be submitted for

review and approval by the City Engineer. The preliminary subdivision plan includes 3 outlots for construction of storm water detention ponds and associated drainage facilities. Storm water management improvements identified in the approved Storm Water Management Plan shall be constructed by Developer. A bond must be submitted to the City in an amount established by the Storm Water Management Plan to ensure completion of the required improvements. Ownership and maintenance of these improvements shall be the responsibility of the Developer or of any subsequent Homeowner's Association.

14. 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.

15. 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.

16. 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.

17. Deposit for Review of Plans

The total estimated cost for the City's review of design engineering plans for the sewer, water and paving improvements is \$29,200. This figure does not include the cost of easement preparation, if necessary. The cost to prepare easements is \$600 per affected property and the Developer will pay such amount if Developer requests that the City prepare an easement or the City otherwise is required to prepare an easement. City will not begin plan review or easement preparation until the required deposit is provided.

Any public improvement design work started by the Developer prior to approval of the Storm Water Management Plan and approval of the final subdivision map is at the Developer's risk.

18. 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 infrastructure improvements described herein prior to the award of any public improvement contracts. If the contracts are to be publicly awarded, the funding guarantee shall be for the total estimated amount of the work as specified herein (\$1,841,300). If the contracts are to be privately awarded, the funding guarantee shall be in an amount equal to the total of the private contracts. In either event, the amount of the funding guarantee may be reduced from time to time in amounts equal to the value of improvements which have been installed and approved by the City's inspectors and engineers. The amount of any such reduction shall not exceed the amount actually paid to the contractors.

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 at least 10 days prior to commencement of any construction activity for the installation of public improvements.

19. Deposits for 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) installing street lights is \$305,100.

Developer shall deposit this amount in the form of a check made out to the City of Milwaukee prior to the City advertising for public improvement construction bids or prior to Developer letting any contracts for public improvements.

20. 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 18. 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 Design Review deposit to cover expenses incurred by the

City 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 Engineering Design Review Deposit and the City Force Work Deposit) to the Developer.

21. 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.

22. 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.

23. 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 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) any required permits for a road crossing of the on-site stream have been obtained from the appropriate agencies.

24. 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.

25. 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.

26. Refunds

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

27. 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 in 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 of 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.

28. Prevailing Wage

Developer shall comply with the prevailing wage requirements set forth on the Exhibit attached hereto.

EXHIBIT

Prevailing Wage Requirements

Hours of Labor and Overtime Pay

- a) In accordance with Section 309-21, Milwaukee Code Ordinances, the service of all laborers and mechanics who are now or may hereafter be employed by any contractor or subcontractor of the Developer upon any of the public works of this City is hereby limited to days other than Saturdays, Sundays, and legal holidays recognized by the City and restricted to 40 hours per week, of which no more than ten hours shall occur in any one calendar day, and except as the Commissioner may approve to conform with occupational practices or as specifications may require, it shall be unlawful for any officer of the City government or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the services of such laborers or mechanics, to require or permit any such laborer or mechanic to work on Saturdays, Sundays, and legal holidays or more than 40 hours per week and ten hours in any calendar day, except in cases where, in the opinion of the Commissioner, an emergency exists.

- b) In such instances where overtime work has been permitted and laborers or mechanic are required to work more than ten hours per day or 40 hours per week or at times other than the normal work day or work week, they shall be paid by the contractor in accordance with the prevailing overtime wage rates. When, and only when, an emergency has been declared to exist and the Commissioner, after the signing of a contract, has ordered in writing that work on a project be carried on in excess of ten hours per day or 40 hours per week, it shall be the duty of the City to reimburse the contractor over and above the price agreed upon for the performance of such work in the amount of the premium paid for overtime work or work performed at times other than the normal work day or work week in accordance with the prevailing overtime wage rates plus any premium paid for necessary materials because of delivery during times other than the normal work day or work week.

Minimum Wage Rate

- a) In accord with Section 309-25, Milwaukee Code, and Res. No. 68-1317, building and construction industry trade workers employed upon public works contracts by any contractor or subcontractor shall be paid no less than the wage rates and fringe benefits approved by the Common Council for their respective trades or occupations. Such wage rates shall be incorporated into the contract.

- b) Fringe benefits must be paid as follows: Welfare – within six weeks of the date work was performed; Vacation and Pension within 31 days of the date work was performed.

Unclassified Employees

- a) In case it becomes necessary for the Contractor or any subcontractor to employ on the work covered by the contract documents any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers) for whom no minimum wage rate is herein specified, the Contractor shall immediately notify the commissioner who shall promptly thereafter furnish the Contractor with the minimum wage rate for such person.
- b) Apprentices are considered unclassified employees and their rates are not furnished in the minimum wage scale. Contractors/subcontractors employing apprentices are required to furnish a copy of the signature page of their indenture papers and a copy of their rate sheet with the paid rate highlighted. The Commissioner shall determine whether or not a person so employed was properly paid or if an underpayment exists.

Minimum Wage – Time Reports

The Contractor hereby agrees to make a sworn report or affidavit within ten days following the Contractor's completion of a contract, or every three months, whichever occurs first, and shall procure and submit a like sworn report or affidavit from every subcontractor employed in the work to the Commissioner, listing every employee employed on or under this contract, and shall include for the specified period but not be limited to the employee's name, address, type of work performed, total hours worked, hourly rate, gross earnings, and employer's contribution to vacation, welfare, and pension trust funds. Said reports or affidavits from the Contractor or subcontractor shall include a statement that each and every employee has been paid in full the amount prescribed by the Common Council and that there has not been, nor is to be, any rebate or refund of any part of said wages by employee to employer.

The Commissioner or other officers are hereby ordered not to pass any estimate for payment on any contract in which the Contractor or subcontractor has failed to comply with all the provisions of the foregoing sections, and no estimate shall be processed for payment until the Commissioner is satisfied that the provisions of the foregoing specifications have been fully complied with.

Provision of Wisconsin Statutes and Administrative Code Pertaining to Municipal Wage Rates

Pursuant to Section 66.0903 Wisconsin Statutes and Section DWD 290.13 and 290.14 of the Wisconsin Administrative Code, each contractor and subcontractor is subject to the following requirements.

Each contractor, subcontractor, or agent thereof participating in a project shall keep full and accurate records clearly indicating the name and trade or occupation of every laborer,

worker, or mechanic employed in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefore.

Upon completion of the project and prior to final payment therefor, each contractor shall file with the municipality an affidavit stating compliance with the provisions and requirements of the Wisconsin Statutes and Administrative Code and that said contractor has received evidence of compliance from each subcontractor. No municipality may authorize final payment until such an affidavit is filed in proper form and order.

Upon completion of the subcontractor's portion of the work and prior to final payment, each subcontractor shall file with the contractor an affidavit stating that said subcontractor has fully complied with the provision and requirements of Section 66.0903 Wisconsin Statutes and the Wisconsin Administrative Code Chapter DWD 290.

In accordance with Section 66.0903 each contractor shall file with the City copies of the subcontractor's affidavit prescribed under DWD 290.13 Wisconsin Administrative Code.

Enforcement of "Hours and Wages" Provision

Every person, firm, or corporation who shall violate the provision of §309-21, 309-25, 309-27, and 309-31 Milwaukee Code, shall upon conviction thereof, be punished by a fine not to exceed \$25 and in default of payment thereof by imprisonment in the House of Correction of Milwaukee County for a period not to exceed 90 days. The employment of each person contrary to the provisions of said sections shall be deemed a separate and distinct violation of the provisions thereof for each day so employed.

Attention is called to Section 66.0903 Wisconsin Statutes, which provides that a contractor who violates the provision of this law, to-wit, fails to comply with the municipal wage scale set forth in the contract may be fined not to exceed \$200 for each offense. The failure to pay the required wage to an employee for only one day or part thereof constitutes a separate offense.

Wage and Hours Limitation

The provisions of Sections 309-21 to 309-37 inclusive of the Milwaukee Code shall apply, and the Contractor or any subcontractor is not to pay less than the minimum wage scale adopted by the Common Council of the City of Milwaukee pursuant to said provisions.

Days of Work and Shift Regulations

No work shall be performed under the contract on Saturdays, Sundays, or legal holidays, except with the approval of the Commissioner.

The commissioner reserves the right to name the number of shifts per day, the hours per shift, and the starting time of each shift.

Wage and Hours Disputes

Whenever a dispute arises between the Contractor or Surety and the Developer as to the determination whether there is compliance with the provisions of the contract documents as to the hours of labor, wages, character, and classification of workers employed, the determination of the Commissioner shall be final, and in case of violations of said provisions, the Commissioner may declare the contractor in default and order the Surety to perform or relet upon advertisement, the remaining portion of the contract as provided by Section 66.0903 Wisconsin Statutes.

Disqualification of Contractor

As provided by Section 309-33, Milwaukee Code, whenever any contractor or subcontractor engaged in any public work of the City has been found by the Commissioner, officer, or employee of the City or by a court of competent jurisdiction to have infringed any of the provisions of the minimum wage ordinance or any ordinance or any resolution or scale of wages adopted pursuant thereto, in that event any such contractor or subcontractor shall not be deemed to be a competent and reliable bidder in the sense of Section 7-14 of the Milwaukee City Charter, 1984 compilation, and such contractor or subcontractor shall not be allowed to compete in securing future contracts with the Developer by such individual, or partner, or agent, or by any corporation of which such individual is a member, for a period of two years. A second violation by such individual, or partner, or agent, or by any corporation of which such individual is a member, shall disqualify such individual, or such partner, agent or corporation from competing or doing any future City work for a period of three years.

Lien Law

All provisions of Section 7-32, Milwaukee City Charter, shall be binding upon the Contractor.

As used herein, "Commissioner" shall mean the Commissioner of the Department of Public Works for the City of Milwaukee.

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 SIGNATURES

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

_____ Developer

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 SIGNATURES

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.

Tom Barrett, Mayor
CITY OF MILWAUKEE

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:_____.

City Clerk
CITY OF MILWAUKEE

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

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

Comptroller
CITY OF MILWAUKEE

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

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

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