

City of Scottsbluff, Nebraska

Monday, May 15, 2017

Regular Meeting

Item Pub. Hear.3

Council to approve the Developer's Agreement for Hilltop Estates and authorize the Mayor to execute the agreement.

Staff Contact: Annie Folck, City Planner

CONTRACT FOR PUBLIC IMPROVEMENTS

This Contract is made this _____ day of _____, 2017, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called the "**City**," and Kosman, Inc., a Wyoming Corporation, hereafter called the "**Developer**" and Kosman Investments, LLC, a Nebraska Limited Liability Company, hereafter called the "**LLC**." The Developer and the LLC are hereafter referred to collectively as the "**Owners**."

RECITALS

A. The Owners together own the "**Real Estate**" described as:

A PARCEL OF LAND CONTAINING 1,409,935 SQ. FT. (32.37 ACRES), MORE OR LESS, IN THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 22 NORTH, RANGE 55 WEST, OF THE 6TH PRINCIPAL MERIDIAN, IN SCOTTS BLUFF COUNTY, NEBRASKA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 13, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH PRINCIPAL MERIDIAN, WHENCE NORTH QUARTER BEARS SOUTH 88°08'36" EAST, A DISTANCE OF 2661.46 FEET, THENCE SOUTH 88°08'36" EAST, A DISTANCE OF 1491.48 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 13 AND THE PROPERTY DESCRIBED AT INSTRUMENT NUMBER 2016-3789 OF THE SCOTTS BLUFF COUNTY RECORDS, THENCE SOUTH 02°16'11" WEST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE WEST LINE OF THE PROPERTY DESCRIBED AT SAID INSTRUMENT NUMBER 2016-3789, SOUTH 02°16'11" WEST, A DISTANCE OF 1066.20 FEET TO THE SOUTHWEST CORNER OF SAID PROPERTY DESCRIBED AT SAID INSTRUMENT NUMBER 2016-3789 AND TO A RECORD CORNER SHOWN ON RECORD OF SURVEY COMPLETED BY LS 476 ON APRIL 21, 1992 OF THE FAIRVIEW CEMETERY;

THENCE CONTINUING ALONG SAID RECORD OF SURVEY THE FOLLOWING COURSES (3) THREE COURSES:

1. SOUTH 02°16'11" WEST, A DISTANCE OF 3.00 FEET;
2. THENCE SOUTH 55°32'59" EAST, A DISTANCE OF 65.80 FEET;
3. THENCE SOUTH 40°29'00" EAST, A DISTANCE OF 242.48 FEET (MEASURED) TO A POINT ON THE NORTH LINE OF BLOCK 6 MCKINLEY FOURTH ADDITION RECORDED AT BOOK 120, PAGE 144 OF THE SCOTTS BLUFF COUNTY RECORDS;

THENCE ALONG SAID NORTH LINE OF SAID BLOCK 6, SOUTH 88°14'16" EAST, A DISTANCE OF 953.09 FEET TO A POINT AT THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED AT INSTRUMENT NUMBER 2006-1130 OF THE SCOTTS BLUFF COUNTY RECORDS AND BEING ON THE NORTH-SOUTH CENTERLINE OF SAID SECTION 13;

THENCE ALONG SAID NORTH-SOUTH CENTERLINE OF SECTION 13 NORTH 02°07'24" EAST, A DISTANCE OF 842.76 FEET TO A POINT A THE SOUTHEAST CORNER OF HILLTOP ESTATES BLOCK 2 RECORDED AT BOOK 125, PAGE 312 OF THE SCOTTS BLUFF COUNTY RECORDS;

THENCE ALONG THE SOUTH LINE OF SAID BLOCK 2, NORTH 88°16'38" WEST, A DISTANCE OF 200.00 FEET TO THE SOUTH WEST CORNER OF SAID BLOCK 2;

THENCE ALONG THE WEST LINE OF SAID BLOCK 2, NORTH 02°07'23" EAST, A DISTANCE OF 440.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF 42ND STREET AS PLATTED THE HILLTOP ESTATES SUBDIVISION RECORDED AT BOOK 125, PAGE 312 OF THE SCOTTS BLUFF COUNTY RECORDS;

THENCE NORTH 88°08'36" WEST, A DISTANCE OF 569.69 FEET;

THENCE NORTH 01°51'03" EAST, A DISTANCE OF 50.00 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 13;

THENCE ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 13, NORTH 88°08'36" WEST, A DISTANCE OF 400.05 FEET;

THENCE SOUTH 02°16'11" WEST, A DISTANCE OF 50.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1,409,935 SQ. FT. (32.37 ACRES), MORE OR LESS.

- B. The Developer owns all of the Real Estate described above except the real estate described below, which is owned by the LLC:

A part of the NW¼ of Section 13, Township 22 North, Range 55 West of the 6th P.M., in Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the North line of the said NW¼, which is N 89°35' E 1491.0 feet from the Northwest corner of said Section 13; thence N 89°35' E on said North line of the NW¼, for a distance of 355.0 feet; thence S 2°52' W for a distance of 899.23 feet, to a point 10.0 feet Northwesterly measured at right angles, from the approximate center line of a private lateral; thence S 54°34' W parallel with and 10.0 feet Northwesterly from the center line of said private irrigation lateral, for a distance of 380.45 feet, to a point on the Northerly bank of the Farmers Irrigation District Lateral; thence North 0°, parallel with the West

line of said NW¼ for a distance of 1116.1 feet to the point of beginning, subject to County Road right of way along the north line and right of way of the Farmers Irrigation District Lateral, a the SW corner; and

A part of the NW¼ of Section 13, Township 22 North, Range 55 West of the 6th P.M. in Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at a point on the North line of said Section 13, which is N 89°35' E, a distance of 1846.0 feet, thence S 02°52' W for a distance of 899.23 feet; thence S 54°34' W for a distance of 380.45 feet to a point on the Northerly bank of the Farmers Irrigation District Lateral; said point being located 1116.1 feet South of the North Line of said Section 13; thence S 00°00' E, parallel with the West line of said Section 13, for a distance of 3.0 feet; thence S 57°38 ½' E for a distance of 65.8 feet; thence S 42°43 ½' E for a distance of 241.8 feet; thence S 89°28' E for a distance of 115.1 feet; thence N 02°52' E for a distance of 1335.0 feet, to the North line of said Section 13, thence S 89°35' W, along the North line of said Section 13, for a distance of 47.0 feet to the point of beginning,

- C. The Developer, on behalf of both Owners, desires to subdivide and develop the Real Estate as substantially set forth in the preliminary plat (the "Plat") which is incorporated into this Contract by reference.
- D. Certain improvements which are required by the Scottsbluff Municipal Code to be constructed by the Owners have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements (collectively, the "Improvements"). For that purpose, the Owners desire to bind themselves and their successors in interest to construct the Improvements in accordance with the Scottsbluff Municipal Code as provided for in this Contract.

AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

- 1. The location, size, and layout of the Improvements shall generally be as provided for in the Plat, subject to changes determined by the Owners and consented to by the City, which consent will not be unreasonably withheld. The Improvements include those summarized as follows:
 - A. All on site streets with roll curb and gutter attached walks; Hilltop Drive, Fox Run Lane (shown as Kosman Lane on the Plat) and 12th Avenue: 52' R-O-W and 32' back of curb to back of curb width for the entire length.
 - B. Hydrants on public streets as required by City or State code or regulation.
 - C. An eight inch (8") water line, connecting to the existing twelve inch (12") located on the south side of 42nd street, said eight inch (8") line will run south between Lots 1 and 3 and between Lots 2 and 4 of Block 3. The eight inch (8") water line will tee at the south property lines of Lot 2 of Block 3 with one eight inch (8")

continuing south down the east side of Fox Run Lane to the south end. The other eight inch (8") runs west to Hilltop Drive and loops south and back east to connect to the eight inch (8") at the south end of Fox Run Lane. An eight inch (8") line will then connect to the previously described loop at the Fox Run Lane and Hilltop intersection and run east in Hilltop Drive to connect with the existing twelve inch (12") city water main at Hilltop Drive and 12th Avenue.

- D. Eight inch (8") sewer will run from the intersection of Hilltop Drive and 42nd Street south in Hilltop Drive to a sewer lift station located in Tract C. Another eight inch (8") sewer will run from the intersection of 12th Avenue and 42nd Street, south down 12th Avenue, turning West at Fox Run Lane, following Fox Run Lane as it turns south, running south to Hilltop Drive and turning again run west down Hilltop Drive where it will connect to the sewer lift station located in Tract C. A third eight inch (8") sewer line will start in 12th Avenue at approximately the extension of the property line between Lots 1 and 2 of Block 5, the eight inch (8") sewer line will run south down 12th Avenue to Hilltop Drive where it will turn west and connect to the previous described sewer line at the Fox Run Lane and Hilltop Drive intersection.
- E. Sanitary and storm sewer storm drain manholes will be placed as necessary to convey the sewer and storm drain lines and shall be located no further than 400' apart.
- F. A sewer lift station will be located within Tract C of development and will discharge to a 4" sewer force main which will run south around the east side of Tract C and east down the alley on the south side of the development where it will connect to the existing sewer manhole located in the alley south of Lot 8 of Block.
- G. Three storm drain catch basins will be placed within the curb and gutter, at the intersection of Fox Run Lane and 12th avenue. One will be located on the south side of the intersection, one at the northwest corner and one at the north east corner. Twelve inch (12") storm drain lines will connect the three catchbasins to a manhole near the northeast corner of said intersection. An eighteen inch (18") storm drain line will connect to manhole and run north down 12th Avenue and across 42nd street where it will discharge into the city retention basin. Catchbasins will also be placed on within the curb and gutter on the east and west side of Hilltop Dr. approximately 525' south of the intersection of Hilltop Dr. and 42nd Street. Twelve inch (12") storm drain lines will connect the catchbasins to a storm sewer manhole within the Hilltop drive. An eighteen inch (18") storm drain line will then connect to said manhole and run north down Hilltop Drive and across 42nd street where it will discharge into the city retention basin.

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved.

2. The actual construction of the Improvements shall be according to (i) plans and specifications approved by the City, which approval will not be unreasonably withheld, and (ii) all ordinances and codes adopted by the City, as in effect at the time that the Improvements are constructed. The Improvements shall become the property of the City immediately upon acceptance of the Improvements by the City Council. If constructed by the Owners, or either of them (and not by the City), the Improvements shall be warranted for a period of one year from the date of the acceptance of the Improvements.

3. The Owners agree that the Improvements shall either be paid for by the Owners or either of them, at the time of completion of each of the Improvements. As an alternative, the Owners may, at their option, request that the City construct all or certain portions of the Improvements and that a special improvement district be created to construct each of the types of Improvements, where the Improvements may be included in such a district, subject to the City agreeing to create such a district.

4. Notwithstanding anything in this Contract to the contrary, the City shall reimburse the Owners for the actual cost of extending the sewer line on Hilltop Drive from the north boundary line (extended) of Lot 1, Block 3 to across 42nd Street (from manhole C-4 to manhole C-5 as shown on the Plat). The cost to be reimbursed by the City to the Owner shall include: (i) the actual cost of additional piping for the extension; plus (ii) any other actual additional costs to the Owners resulting from the extension.

5. Should the Owners fail to construct the Improvements within 2 years after the date of this Contract, the City may do so, provided that the Owners may rescind their obligations under this Contract prior to commencing the construction of the Improvements. If the Owners have commenced construction of the Improvements, the Owners shall reimburse the City for all costs expended by the City in constructing the Improvements as necessary for completion (except the sewer extension as specified in section 4 of this Contract). If so constructed by the City, the City may at its option, assess all or any part of the unreimbursed cost of the Improvements against the properties benefitted by the Improvements. When any installment of special assessments is unpaid for a period of 6 months after the same is delinquent, the City may mail written notice to the Owners of that fact and demand that the Owners pay such installment. If the Owners fail to do so within 30 days after such notice is mailed, the City may proceed by appropriate action to enforce the Owners' liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the Improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this Contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to the Owners at the following addresses:

Kosman, Inc.
PO Box 350
Torrington, WY82240

Kosman Investment, LLC
PO Box 2308
Scottsbluff, NE 69361

6. To secure the Owners' obligations, the Owners, or either of them, agree to establish an escrow account at a bank of the Owners' choice, in the amount sufficient to cover the costs of the Improvements. Prior to final acceptance of the Improvements by the City, the Owners, or either of them, may only draw from the escrow account to pay costs of the Improvements, so that the escrow account will at all times have a balance sufficient to construct the remaining Improvements. The City shall have the right to draw on the funds deposited in the escrow account in the event the Improvements which are the obligation of the Owners must be constructed by the City. The Owners also have the option to provide, in lieu of the escrow account, any other type of security consistent with the policies of the City. Either the Developer or the LLC may provide the security as long as it covers the obligations of both Owners under this Contract. The security must be established prior to the Owners commencing construction of the Improvements. Prior to commencing the construction of the Improvements, the Developer shall present an estimate of the cost of the Improvements to the City. The parties understand that this will be an estimate only and that the actual cost of the Improvements may differ from the estimate. The security furnished by the Owners, or either of them, will be in the amount of the actual cost of the Improvements. It is contemplated that the Owners, or either of them, will enter into one or more contracts for the construction of the Improvements. The actual cost of the Improvements will be determined by the provisions of such contracts. If the sums collected by the City from the escrow account or other security provided are not sufficient to satisfy the Owners' liability to the City, the Owners will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the Improvements and not covered by the security or paid for by Owners.

7. The Owners, for themselves and on behalf of all future grantees and owners, covenant and agree to participate in and not object to the creation of any special improvement districts that may be subsequently created, as provided for in this Contract, to construct and improve the Improvements in the event the Owners default under this Contract. It is the intent of the Owners that this paragraph bind all future grantees, heirs and owners and that this covenant and contract runs with the land as it touches and concerns the Real Estate. This paragraph and the covenants in it will not be deemed a waiver of the Owners', grantee's or parcel owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owners', grantee's or parcel owner's property.

8. **Stormwater Management.** The Owners and the City agree that post-construction stormwater management will be handled in a storm water retention pond on Tract C of the Plat (the "Onsite Pond") and at a City owned regional facility off-site of the Real Estate (north of 42nd Street) the "Offsite Facility"). The parties agree as follows:

- A. The Onsite Pond shall be constructed by the Owners and be considered an "Improvement" subject to the other terms of this Contract. The Offsite Facility shall be constructed by the City, at the City's expense, and shall not be considered an "Improvement" under the terms of this Contract.

B. The Owners acknowledge that all lots on the Real Estate may be subject to an impact fee set by City Ordinance which will require the lot owner, at the time a building permit is issued on the lot, to pay the impact fee based on the square footage of impervious surface on the lot. If there is no City Ordinance setting an impact fee at the time a building permit is issued on a lot, then such lot owner shall pay at the time of the building permit issuance an impact fee of \$1.50 per square foot of impervious surface to be constructed on the lot. As used herein, "impervious surface" shall mean any surface or ground cover that has very limited or no capacity to absorb or infiltrate water.

C. The impact fee will be used by the City to pay the costs of constructing the Offsite Facility and maintaining the Onsite Pond and Offsite Facility. The Owners shall have no other obligation for the costs of maintaining the Onsite Pond once it becomes the property of the City or for constructing or maintaining the Offsite Facility.

9. This Contract shall run with the Real Estate and shall bind, in addition to the parties, the successors and assigns of the respective parties.

10. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Contract has been executed. The Owners shall reimburse the City for the costs of filing this Memorandum of Contract.

IN WITNESS WHEREOF, the parties have executed this Contract to be effective on the date set forth above.

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Mayor

Attest:

City Clerk

Kosman, Inc., a Wyoming Corporation

Kosman Investments, LLC, a Nebraska Limited Liability Company

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____