

RIVER SKIMMER TRANSFER AGREEMENT

This Agreement is made and effective as of the _____ day of _____, 2011, by and between the City of Milwaukee, Wisconsin, a municipal corporation, ("City"), acting through its Commissioner of Public Works, and the Milwaukee Metropolitan Sewerage District ("MMSD").

WITNESSETH:

WHEREAS, Pursuant to Common Council Resolution No. 960206, the City entered into a Cooperation Agreement for River Cleanup Services dated June 4, 1996, with the Board of Business Improvement District No. 15 ("BID #15"); and

WHEREAS, The City has entered into a series of subsequent agreements with BID #15 for purposes of removal of debris and related river clean-up services, the most recent of which is titled Cooperation Agreement for Milwaukee River Clean-Up Services (Revised), dated June 3, 2003 ("Revised Clean-Up Agreement"), which was authorized by Common Council Resolution No. 030206; and

WHEREAS, Pursuant to Common Council Resolution No. 971608, the City's Department of Public Works acquired a 1997 Aquatic Trash Hunter 46' by 12' Skimmer TH -12 (Serial No. _____) ("River Skimmer"), 50 percent of the purchase price being funded by a State of Wisconsin Waterways grant, to clean floating debris from the Milwaukee River in the downtown riverwalk area; and

WHEREAS, Pursuant to the Revised Clean-Up Agreement, the City provides an annual contribution toward the skimmer operation from the City's Sewer Maintenance Fund, owns and maintains the skimmer, disposes of the collected debris, and authorizes payment for all operating expenses; and

WHEREAS, BID #15 assigned its responsibilities under the Revised Clean-Up Agreement to the Milwaukee Riverwalk District, Inc. ("MRD"), which manages the day-to-day daily operations of the skimmer including receipt and disbursement of all funds involved in skimmer operation; and

WHEREAS, MRD contracts with the Milwaukee Community Services Corps ("MCSC") to staff the skimmer; and

WHEREAS, Since 1999, MMSD has also contributed an annual payment toward the cost of operating the River Skimmer; and

WHEREAS, The City, MMSD, BID #15, and other involved parties are negotiating the development of a revised river clean-up services program in which MMSD will increase its participation and contribution to the program; and

WHEREAS, MMSD is in the process of procuring a new river skimmer and has included funding for this purchase in its Fiscal Year 2011 budget; and

WHEREAS, The transfer of the River Skimmer to MMSD by April 1, 2011 will result in substantial savings to the skimmer operation during 2011 as a result of MMSD's ability to obtain insurance at lower cost to the program; and

WHEREAS, the City's Common Council has approved this Agreement by Common Council Resolution No. _____ adopted _____, 2011;

NOW, THEREFORE, the City, acting through its Commissioner of Public Works, and MMSD, in consideration of the mutual promises contained herein and for other good and valuable consideration, agree as follows:

1. By execution of this Agreement, the City conveys to MMSD the City's right, title, and interest in the River Skimmer.
2. The purchase price for the River Skimmer shall be one dollar (\$1.00) and other good and valuable consideration.
3. The transfer of the River Skimmer is expressly conditioned upon MMSD's agreement that the River Skimmer will be used solely for the purpose for which the City procured the vessel, namely debris removal and river cleanup services for the River Impact Area and adjacent areas on the Milwaukee River as set forth in the Cooperation Agreement for Milwaukee River Clean-Up Services (Revised), dated June 3, 2003 as well as the Menomonee and Kinnickinnic rivers in a similar fashion to the 2010 operation schedule of the skimmer.
4. The City is conveying the River Skimmer to MMSD on an "as is" basis. The City makes no warranties, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.
5. Upon execution of this Agreement, MMSD shall assume the risk of all damages, losses, costs, and expenses arising out of the transportation and use of the River Skimmer. MMSD agrees to indemnify and hold the City, its officers, agents, and employees harmless from any and all liability, damages, losses, costs, and expenses arising out of this Agreement or future use of the River Skimmer.
6. MMSD is solely responsible for the costs of transporting the River Skimmer from City property.
7. This Agreement shall not affect the terms and conditions of the Cooperation Agreement for Milwaukee River Clean-Up Services (Revised), dated June 3, 2003.

8. MMSD is responsible for procuring appropriate levels of insurance for the River Skimmer. MMSD shall include the River Skimmer under its fleet policy and shall include the City and MCSC as additional insureds.

9. In the event that MMSD, for any reason, does not procure a new river skimmer vessel by December 31, 2011, MMSD shall transfer its right, title, and interest in the River Skimmer to the City at no cost to the City.

10. In the event that MMSD elects to convey its right, title, and interest in the River Skimmer to a third party, including without limitation by sale or donation, MMSD shall provide the City prior written notice of its intent to convey its right, title, and interest in the River Skimmer and shall give the City (or its designee) a right of first refusal to purchase the River Skimmer for a purchase price of one dollar (\$1.00).

11. This Agreement shall be governed by the laws of the State of Wisconsin. If any term or provision of this Agreement or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

12. This Agreement is the complete agreement between the parties and may not be modified except in writing signed by the parties.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original, but each of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officers, as of the date of this Agreement.

CITY OF MILWAUKEE

JEFFREY J. MANTES, Commissioner of Public Works

Date: _____

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

Name: _____
Title: _____

Date: _____

Approved as to form and execution
this ____ day of _____, 2011.

Assistant City Attorney

1047-2011-575:166794