

Document Number

**COOPERATION AND
DEVELOPMENT
AGREEMENT**

Document Title

**COOPERATION AND DEVELOPMENT
AGREEMENT**

(BMO Parking Project)

Recording Area

Name and Return Address

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SCHEDULE OF EXHIBITS

EXHIBIT A.....Bank Project Documents

EXHIBIT B..... Bank Project Plans

EXHIBIT C.....Completion Certificate

EXHIBIT D..... CSM

EXHIBIT E..... Parking Agreement

EXHIBIT F..... Insurance

EXHIBIT G....._____

EXIHIBIT H....._____

EXHIBIT I....._____

EXHIBIT J....._____

EXHIBIT K....._____

**COOPERATION AND
DEVELOPMENT AGREEMENT**

(BMO Parking Facility Project)

This COOPERATION AND DEVELOPMENT AGREEMENT ("Agreement") is made as of the 1st day of March, 2012, by and among BMO Harris Bank National Association, a _____, ("BANK"), the City of Milwaukee, a Wisconsin municipal corporation, ("CITY") and the Redevelopment Authority of the City of Milwaukee, a public body corporate and politic organized and existing under the laws of the State of Wisconsin, ("RACM").

WITNESSETH:

WHEREAS, CITY's Common Council adopted File No. 110478 on February 28, 2012, which authorized execution of this Agreement; and

WHEREAS, the Commissioners of RACM approved Resolution No. _____ on February 16, 2012, which authorized execution of this Agreement; and

WHEREAS, CITY's Common Council also adopted File No. 101260 approving the CSM on February 28, 2012, and File No. 101465 approving a Detailed Planned Development for the BANK Site on February 28, 2012; and

WHEREAS, BANK has authorized execution of this Agreement; and

WHEREAS, BANK is to acquire the BANK Site from Milwaukee County and CITY in order to undertake the BANK Project; and

WHEREAS, CITY is to undertake the construction of Market Street following notice from the Milwaukee School of Engineering, a Wisconsin nonstock nonprofit corporation, ("MSOE") pursuant to the terms of that certain Cooperation and Development Agreement (MSOE Parking Facility and Athletic Field Project) dated even herewith (the "MSOE Agreement"); and

WHEREAS, the parties hereto desire to enter into this Agreement in order to provide for implementation of the BANK Project.

NOW THEREFORE, BANK, CITY and RACM, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, mutually agree as follows:

I.

DEFINITIONS AND RULES OF CONSTRUCTION

1.1. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

“Affiliate” means a person, entity or entities directly or indirectly under the same control or management as USL or a person, entity or entities controlling or managing USL.

“BANK Project” means the project described in Article II.

“BANK Project Documents” means the instruments, agreements and documents listed on EXHIBIT “A.”

“BANK Project Plans” means plans and specifications for the BANK Project which are attached as **“EXHIBIT “B.”**

“BANK Site” means Lot 3 on the CSM.

“CITY Deed” means a Quit Claim Deed from CITY to BANK conveying the CITY Parcel to BANK.

“CITY Parcel” means a remnant parcel of real property approximately 197 feet square located at the north end of the BANK Site.

“Commissioner” means CITY’s Commissioner of City Development.

“Completion Certificate” means a certificate in substantially the form attached as **EXHIBIT “C.”**

“CSM” means Certified Survey Map No. 2851, a copy of which is attached as **EXHIBIT “D.”**

“DPW Commissioner” means CITY’s Commissioner of Public Works.

“Environmental Laws” means all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

“**Executive Director**” means RACM’s Executive Director.

“**Market Street**” means the segment of N. Market Street which is depicted on the CSM and which is to be improved by CITY in conjunction with completion of the MSOE Project.

“**Parking Agreement**” means an agreement between MSOE and BANK providing for the lease of approximately _____ parking spaces in the MSOE Parking Facility by BANK. A copy of the Parking Agreement is attached as **EXHIBIT “E.”**

“**Temporary Parking**” means [describe proposal for parking on the BANK Site during construction of the Project.]

“**TID-48**” means Tax Incremental District No. 48 (Park East).

“**Title Company**” means _____.

“**Tri-Party Agreement**” means an agreement dated as of _____, 2012 by and among Milwaukee County, MSOE and BANK. A copy of the Tri-Party Agreement is attached as **EXHIBIT “H.”**

- (a) Words importing the singular number shall include the plural number and vice versa.
- (b) The table of contents, captions, and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction, or effect.
- (c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

II.

PROJECT DESCRIPTION

The BANK Project consists of the construction of a reconfigured parking lot in accordance with the BANK Project Plans in three phases as described therein. The parties anticipate that initially the first and second phases of the BANK Project will be completed by the BANK and that the third and final phase will occur only at such time as BANK discontinues leasing structured spaces from MSOE pursuant to the terms of the Parking Agreement.

In recognition of BANK’s need to maintain “vested rights” to proceed with construction of the third phase of the BANK Project at all times, this Agreement contemplates that BANK will apply for and maintain on an ongoing basis all necessary CITY permits for construction of the third and final phase of the BANK Project. Notwithstanding that fact, CITY and RACM strongly encourage BANK to actively market the BANK site for development of a project other than surface parking. While recognizing BANK’s need to maintain “vested rights” to complete

the proposed parking lot as depicted in the Project Plans, all parties hereto acknowledge that the unique location and configuration of the BANK Site make utilization of the BANK Site for more intensive development desirable.

III.

BANK OBLIGATIONS

During the term of this Agreement BANK shall undertake the following in accordance with the Project Timetable:

- A. Close on the acquisition of the BANK Site.
- B. Submit to the Commissioner, in a form reasonably satisfactory to the Commissioner, evidence that BANK has received all federal, state and local agency approvals which are necessary to undertake the construction of the BANK Project.
- C. Secure the written approval of the Commissioner of final plans and specifications for the BANK Project.
- D. Execute and deliver all Project Documents to which it is a party.

IV.

BANK COVENANTS

4.1 *Affiliates.* BANK shall direct the operations of each of its Affiliates involved in the BANK Project to assure performance of all substantive obligations of BANK under this Agreement notwithstanding the fact that title to portions of the Project may be held by BANK's Affiliates from time to time. In addition, upon the Commissioner's written request, BANK shall direct its Affiliates to join in and to execute and deliver Project Documents which relate to portions of the Project being undertaken by such Affiliates.

4.2 [Limit completion of Phase 3 of the BANK Project during the term of the Parking Agreement.]

4.3 The BANK Project shall, at all times, be used and operated in compliance with the redevelopment plan and the zoning applicable to the BANK Project Site and the Project Documents.

V.

CITY OBLIGATIONS

During the term of this Agreement CITY shall undertake the following:

A. [Funding through TID 48.]

B. [Implement TID 48.]

C. Assist BANK in obtaining as expeditiously as possible, all permits, approvals, licenses, certificates, inspections, and consents that may be necessary or desirable to enable BANK to commence and carry out all obligations and actions under this Agreement; provided that nothing contained herein shall be deemed to limit or waive CITY's independent right and authority to review and consider each request for such approvals.

D. Within fifteen (15) business days following submission of final plans and specifications for the BANK Project, either provide BANK with the Commissioner's written approval of said plans and specifications or a written explanation of the modifications necessary in order to secure such approval.

VI.

RACM OBLIGATIONS

During the term of this Agreement, RACM shall undertake the following:

A. Assist BANK in obtaining as expeditiously as possible, all permits, approvals, licenses, certificates, inspections, and consents that may be necessary or desirable to enable BANK to commence and carry out all obligations and actions under this Agreement.

B. Through the provision of staff assistance, aid BANK in the finalization of any actions required by this Agreement.

VII.

BOOKS AND ACCOUNTS

BANK shall each keep (and shall require its Affiliates, contractor(s) and subcontractor(s) to keep) accurate, full and complete books and accounts showing operations, transactions, and financial conditions of their business affairs relating to all aspects of the implementation of the BANK Project and this Agreement. All books, accounts, and financial statements kept or prepared by or for BANK shall be in accordance with generally accepted or tax basis accounting principles consistently applied. Said records and accounts shall be kept for a period of seven (7) years subsequent to substantial completion of the BANK Project. During such seven (7) year period, CITY and RACM or any authorized representative of CITY and RACM, including but not limited to the City Comptroller, shall, at the CITY's or RACM's sole expense, have the right, upon reasonable written notice to BANK, to examine and audit the foregoing books, accounts, and records during normal business hours.

VIII.

FORCE MAJEURE

If any party is delayed or prevented from the performance of any act required by this Agreement or the BANK Project Documents by reason of fire, earthquake, war, flood, riot, strikes, labor disputes, judicial orders, public emergency or regulations, or other causes beyond the reasonable control of the party obligated to perform, then performance of such act shall be excused for the period of such delay, and the time for the performance of any such act shall be extended for a period equivalent to such delay.

IX.

INSPECTIONS

A. CITY, RACM, and their designees, may make reasonable inspections of the BANK Project during construction thereof, provided that such inspections do not interfere with the progress of the work and are substantially consistent with the inspections typically performed by CITY in the course of other similar construction projects in CITY.

B. In the event that CITY or RACM determine, in their reasonable judgment, as a result of the inspections made by them or otherwise, that BANK's contractors or subcontractors are not constructing the BANK Project in substantial accordance with the terms of this Agreement and the final plans and specifications approved by the Commissioner, then RACM and/or CITY, acting through the Commissioner shall promptly inform BANK in writing of said noncompliance, and BANK shall, as soon as reasonably possible, require its contractors or subcontractors to remedy said noncompliance to the reasonable satisfaction of the Commissioner.

X.

CERTIFICATE OF COMPLETION

The BANK Project will be deemed substantially completed upon issuance by the architect, or other person acceptable to the Executive Director, of a certificate of substantial completion for the BANK Project (except for weather-related delays of landscaping and related exterior work). Upon submission of the foregoing and at the written request of BANK, the Executive Director shall execute and deliver to BANK a certificate in substantially the form attached as **EXHIBIT "C"** confirming Substantial Completion of the BANK Project.

XI.

ENVIRONMENTAL MATTERS

BANK covenants and agrees to comply with all Environmental Laws applicable to BANK's activities at the BANK Site. BANK also covenants and agrees to indemnify and hold

RACM and CITY harmless from and against any and all losses, liabilities, damages, costs, expenses (including reasonable legal, consulting, and engineering fees), and awards of every type and nature arising from any third party claims or causes of action for any violations or alleged violations of Environmental Laws by BANK. RACM, CITY and BANK shall provide to one another, immediately upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree, or other document from any source asserting or alleging a circumstance or condition which constitutes a violation of any Environmental Laws on the BANK Site or requires or may require a clean-up, removal, remedial action, or other response by or on the part of BANK or any other person under Environmental Laws or which seeks damages or civil, criminal, or punitive penalties from RACM, CITY or BANK, or any other person for an alleged violation of Environmental Law on the BANK Site.

XII.

INSURANCE

12.1 BANK shall provide, at its own expense, insurance in such types and amounts as set forth on **EXHIBIT “F”** during construction of the BANK Project, and BANK shall furnish CITY with Certificates of Insurance, in a form and substance reasonably satisfactory to the Commissioner, naming CITY and RACM as additional insureds with respect to the liability insurance provided pursuant to this Article. Such Certificates shall provide that the insurance company will furnish CITY and RACM with a 30-day written notice of cancellation, non-renewal, or material change. The above insurance requirements shall include CITY and RACM, to the extent CITY and RACM have an insurable interest.

XIII.

INDEMNITY

13.1 BANK shall indemnify and hold harmless CITY and RACM from and against any and all losses, liabilities, damages, costs, and expenses, including reasonable attorneys’ fees and costs, arising out of any third party claims, causes of action, or demands made against or suffered by CITY or RACM on account of this Agreement, unless such claims, causes of action, or demands (i) relate to CITY or RACM failing to perform their obligations to BANK, or (ii) arise out of any negligence or willful misconduct of CITY or RACM. At CITY’s request, BANK shall appear for and defend CITY or RACM at BANK’s expense, in any action or proceeding to which CITY or RACM may be made a party by reason of any of the foregoing.

XIV.

CITY AND RACM NOT JOINT VENTURERS

It is expressly understood and agreed by all parties that nothing in this Agreement shall be deemed to place CITY or RACM in the relationship of partner or joint venturer with BANK.

XV.

CONFLICT OF INTEREST

No council member, commissioner, officer, or employee of CITY or RACM, during such person's tenure or for one (1) year thereafter, shall have any financial interest, direct or indirect, in the BANK Project, this Agreement, or the proceeds hereof.

XVI.

ASSIGNMENT

No party to this Agreement may assign any of its interest herein or obligations hereunder, without the prior written consent of all other parties hereto

XVII.

NOTICES

Any written notice required to be sent to the parties shall be forwarded to the following:

If to CITY:

City of Milwaukee
809 North Broadway
Milwaukee, WI 53202
Attn: Commissioner of City Development

With a copy to:

City of Milwaukee
City Attorney's Office
200 East Well Street
Milwaukee, WI 53202
Attn: Thomas O. Gartner, Esq.

If to RACM:

Redevelopment Authority of the
City of Milwaukee
809 North Broadway
Milwaukee, WI 53202
Attn: Executive Director/Secretary

With a copy to:

City of Milwaukee
City Attorney's Office
200 East Wells Street, Suite 800
Milwaukee, WI 53202
Attn: Thomas O. Gartner, Esq.

If to BANK:

Thomas M. O'Connor
Corporate Real Estate
111 West Monroe
21st Floor West

Michael J. Dwyer, Esq.
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, WI 53202

XVIII.

DEFAULT

If any party hereto defaults in the performance of any of its obligations under this Agreement and such default continues for thirty (30) days following receipt and written notice from another party specifying such default and requesting that it be corrected without the defaulting party diligently pursuing such a cure within 30 days of receiving such notice; then the other parties hereto shall have all rights and remedies available at law or in equity in connection therewith.

In addition, if any one or more of the following events occur, it is hereby defined as and declared to be and to constitute an event of default under and for purposes of this Agreement:

Any party shall:

- (a) Make a general assignment for the benefit of creditors or to an agent authorized to dissolve a substantial amount of its property; or
- (d) Become subject (either voluntarily or involuntarily) to an order for relief within the meaning of the bankruptcy code, and in the case of an involuntary action, such order is not vacated within sixty (60) days after entry; or
- (e) File a petition to effect a plan or other arrangement with creditors; or
- (f) File an answer to a creditor's petition, admitting the material allegations thereof, for dissolution, reorganization, or to effect a plan or other arrangements with creditors; or
- (g) Apply to a court for the appointment of a receiver for any of its assets; or
- (h) Have a receiver appoint for any of its assets (with or without consent) and such receiver shall not be discharged within sixty (60) days after appointment.

XIX.

RESTRICTIONS ON USE

BANK agrees for itself, and its successors and assigns, and every successor in interest to the BANK Site or any part thereof, to:

- (a) Devote the BANK Site only to and in accordance with the uses specified in this Agreement; and

(b) Not discriminate upon the basis of race, color, creed, sex, national origin, or sexual orientation in the sale, lease, rental, use, or occupancy of the BANK Site, the BANK Project, or any improvements located or to be erected thereon or any part thereof.

XX.

APPROVALS

Whenever in this Agreement the consent or approval of any party is required or the discretion of any party may be exercised, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, and any such discretion shall be exercised in good faith and in a commercially reasonable manner. Whenever in this Agreement the consent or approval of RACM is required or the discretion of RACM may be exercised, the Executive Director shall have the authority to provide such consent or approval or to exercise such discretion. Whenever in this Agreement the consent or approval of CITY is required or the discretion of CITY may be exercised, the DPW Commissioner shall have the authority to provide such consent or approval or to exercise such discretion.

XXI.

BINDING EFFECT; AMENDMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be amended or modified only as expressly provided in a writing signed by all parties.

XXII.

EXHIBITS AND RECITALS

The various exhibits appended to this Agreement and the opening recitals herein are incorporated herein and for all purposes are a part of this Agreement.

XXIII.

CAPTIONS

The captions or headings placed upon Articles or sections of this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect in any way the interpretation or construction of this Agreement.

XXIV.

SEVERABILITY

If any part of this Agreement shall be found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provisions hereof which can be given effect in the absence of the parts determined to be invalid or unenforceable.

XXV.

GOVERNING LAW

All matters relating to the making, enforcement, and performance of this Agreement shall be governed by the internal laws of the State of Wisconsin.

XXVI.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

XXVII.

TERM

The term of this Agreement shall commence on the date hereof and expire upon the termination of TID-48.

XXVIII.

NO PERSONAL LIABILITY

Under no circumstances shall any officer, official, director, commissioner, member, agent, or employee of CITY, RACM, or BANK have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

**[SIGNATURE PAGES FOR COOPERATION AND
DEVELOPMENT AGREEMENT (BMO PARKING PROJECT)
FOLLOW THIS PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

CITY OF MILWAUKEE

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

Michael J. Daun, Deputy Comptroller

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: _____
Lois A. Smith, Chair

By: _____
David P. Misky, Assistant Executive Director

Signatures of Lois A. Smith, Chair and David P. Misky,
Assistant Executive Director-Secretary of the Redevelopment
Authority of the City of Milwaukee authenticated this _____
day of _____, 2012.

THOMAS O. GARTNER
Assistant City Attorney
State Bar No. 1003072

BMO HARRIS BANK NATIONAL
ASSOCIATION, as successor-in-interest
by merger to BANK MARSHALL &
ILSLEY BANK by: _____
Name: _____
Its: _____

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2012 by
_____ as _____ of BMO HARRIS
BANK NATIONAL ASSOCIATION.

Notary Public, State of Wisconsin
My Commission _____

BANK

By: _____
Its: _____

Approved as to form, execution
and content this _____ day
of _____, 2012.

Assistant City Attorney

1050-2009-607:177867

EXHIBIT “A”

BANK Project Documents

The BANK Project Documents consist of the following:

- 1) This Agreement
- 2) The Cooperation and Development Agreement (MSOE Parking Facility and Athletic Field Project)
- 3) The Tri-Party Agreement
- 4) The CITY Deed
- 5) The Parking Agreement
- 6) **[Escrow Agreement for Closing?]**

EXHIBIT "B"