

- 1st Amendment to Riverwalk Development Agreement for MIAD Contract #99-014(cm)
- 4th Amendment to Cooperation Agreement for 511 E. Menomonee St. and 151 N. Jackson St. Blight Designation Project Contract #90-180(RA)

**FIRST AMENDMENT TO RIVERWALK DEVELOPMENT AGREEMENT
FOR MILWAUKEE INSTITUTE OF ART AND DESIGN AND
FOURTH AMENDMENT TO COOPERATION AGREEMENT FOR 511 EAST
MENOMONEE STREET AND 151 NORTH JACKSON STREET BLIGHT
DESIGNATION PROJECT**

This Amended Agreement (the “Amendment”) is made this ____ day of _____, 2001, by and among the City of Milwaukee (“City”), the Redevelopment Authority of the City of Milwaukee (“Authority”) and the Milwaukee Institute of Art and Design (“MIAD”).

RECITALS

A. The City and MIAD entered into a February 24, 1999 Riverwalk Development Agreement for Milwaukee Institute of Art and Design (the “Initial Agreement”) for the construction of a Riverwalk Project Segment (the “MIAD Riverwalk”) adjacent to the MIAD property located at 273 E. Erie Street, Milwaukee, Wisconsin, Tax Key No. 392-0964-000-0, (the “MIAD Premises”).

B. The Initial Agreement recited that pursuant to a Riverwalk Development Agreement, as amended, the “Riverwalk Development Agreement” between the City and Business Improvement District No. 2 (“BID-2”), BID-2 would be “responsible for carrying out the development and construction of . . . the MIAD Riverwalk.” However, under the terms of the Riverwalk Development Agreement, construction of the MIAD Riverwalk would not begin until the means of financing MIAD’s portion of the cost of the MIAD Riverwalk were established to the satisfaction of the City.

C. The Initial Agreement detailed the means of financing MIAD’s portion of the cost of the MIAD Riverwalk and further provided that the City would consider financing MIAD’s portion of the cost of the Riverwalk at an interest rate equal to the City’s cost of funds and secured with collateral acceptable to the City Comptroller.

D. The source of City funds to fund the financing of MIAD’s portion of the cost of the MIAD Riverwalk was provided under the January 25, 2000 Second Amendment to Cooperation Agreement for 511 East Menomonee Street and 151 North Jackson Street Blight Designation Project between the City and the Authority (hereinafter referred to as the “Second Amendment”).

E. The Second Amendment provided that the Authority could expend up to \$1,850,000, as provided thereunder, upon entry by the City and the Authority into one or more agreements with MIAD and/or BID-2 providing for the reimbursement to the City of \$1,700,000.

F. The purpose of this Amendment is twofold: 1. to satisfy the Second Amendment's precondition for disbursing \$680,000 of the \$1,850,000 described in the Second Amendment and to set forth the conditions for MIAD reimbursement, as special assessments, of that \$680,000 plus interest at a rate equal to the City's cost of funds; and 2. to relieve BID-2 from the responsibility for carrying out the development and construction of the MIAD Riverwalk and to transfer that responsibility to MIAD.

G. The City's Common Council has adopted Resolution File No. _____ on _____ authorizing the proper City officers to execute this Amendment.

H. The Authority has adopted Resolution No. _____ authorizing the proper Authority officers to execute this Agreement.

I. MIAD has authorized _____ to execute this Agreement on its behalf.

Now, Therefore, The City, Authority and MIAD, in consideration of the premises and mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

1. MIAD Construction of Riverwalk.

BID-2 is hereby relieved from the responsibility of undertaking the construction of the MIAD Riverwalk and that responsibility is transferred to MIAD and shall be exercised by MIAD in accordance with the terms and conditions under which BID-2 would have undertaken that responsibility as provided in the Riverwalk Development Agreement.

2. Authority Funding

In accordance with the terms and conditions of the Second Amendment, the Authority hereby authorizes the disbursement of \$680,000 (the "Reimbursable Assessment") directly to MIAD in accordance with the terms and conditions for disbursement hereinafter set forth.

3. City Disbursement of Reimbursable Assessment

In accordance with Section 3(a) of the Initial Agreement and subject to the terms and conditions hereinafter set forth, the Authority shall provide to MIAD, as MIAD's contribution, up to \$680,000 of the Reimbursable Assessment to cover MIAD's 50% share of the final \$1,360,000 cost of the MIAD Riverwalk. The other \$680,000, which shall include the amount of all soft costs for the MIAD Riverwalk design already incurred by the City on MIAD's behalf, will be provided to MIAD in the form of the City Grant, as that term is defined in the Initial Agreement. The Authority shall disburse the Reimbursable Assessment amount, as the MIAD 50% share of the costs of the MIAD Riverwalk; however, prior to the disbursement of any Reimbursable Assessment amount, MIAD shall have undertaken or demonstrated, to the satisfaction of the City's Commissioner of the Department of City Development ("Commissioner") that:

(a) All of the preconditions of Section 1(d)(ii) of the Riverwalk Development Agreement with BID-2 have been satisfied; and

(b) MIAD has delivered to the Commissioner an irrevocable and unconditional Letter of Credit (the "Letter of Credit") in a form and from a bank acceptable to the Commissioner and BID-2. The amount of the Letter of Credit shall be equal to the amount of the final construction budget for the MIAD Riverwalk (including all soft costs for the MIAD Riverwalk design as referenced above), as approved by the Commissioner (hereinafter referred to as the "Final Budget"), minus the final \$1,360,000 of such costs. The Commissioner may immediately draw against the Letter of Credit, upon delivery of a written notice to the Letter of Credit bank stating that MIAD had failed to provide funds to pay any MIAD Riverwalk cost over and above the amount of \$1,360,000. Such withdrawn funds shall be disbursed directly to the City, or at the direction of the Commissioner, to the MIAD Riverwalk contractor or subcontractor submitting the unpaid construction invoice.

(c) As a complete alternative to satisfying the section (b) precondition, BID-2 may deliver to the Commissioner a legally binding commitment to provide the necessary funds that would have been subject to the Letter of Credit. MIAD hereby agrees that if BID-2 delivers such a legally binding commitment, that BID-2 may recover, and shall so amend its Operating Plan and submit the amendment to the City for approval, the advanced funds as a special assessment in accordance with the provisions of Section 4 below and its amended Operating Plan. Such recovery to be in accordance with the repayment schedule determined by BID-2 in its Operating Plan.

4. MIAD Repayment of Reimbursable Assessment as a Special Assessment

MIAD agrees or acknowledges as follows:

(a) The MIAD Riverwalk, although owned by MIAD, will be subject to a covenant and/or easement making it available for public use and therefore the MIAD Riverwalk is in the nature of an improvement for which the City may recover all or part of the cost for construction through the imposition of special assessments under sec. 66.0703, Stats., and sec. 115-42, Milwaukee Code of Ordinances.

(b) MIAD waives any and all notice or hearing requirements of sec. 66.0703, Stats., and sec. 115-42, Milwaukee Code of Ordinances, and will accept and pay the special assessments levied by the City to recover the Reimbursable Assessment in accordance with the Repayment Schedule attached hereto as Exhibit I. If the final cost of the MIAD Riverwalk, as determined by the Commissioner, is less than the Final Budget amount, MIAD shall receive a credit against the principal amount to be recovered through the Reimbursable Assessment. If the final cost of the MIAD Riverwalk is greater than the Final Budget amount, MIAD shall either pay such additional sum to BID-2 or, with the consent of the Commissioner, the principal amount to be recovered through the Reimbursable Assessment shall be increased by such additional sum with that additional principal amount being paid to BID-2 on MIAD's behalf.

(c) The City may enforce the repayment of the special assessments to recover the Reimbursable Assessment as authorized hereunder as the City would enforce the repayment of any other special assessments authorized by law and further that such enforcement may be against MIAD and/or the MIAD premises. Prior to placing the amount of any assessment required under Exhibit I or under Section 3(c) on the MIAD tax bill, the City or BID-2, as the case may be, shall invoice MIAD for that payment amount. The Commissioner or BID-2, as the case may be, shall prescribe the method of invoicing.

5. Except as herein amended, the Initial Agreement remains in full force and effect.

IN WITNESS WHEREOF, The parties have executed this Amendment on the day and year first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED:

Comptroller

IN THE PRESENCE OF:

REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE

Chair

Executive Director-Secretary

IN THE PRESENCE OF:

MILWAUKEE INSTITUTE
OF ART AND DESIGN

Approved as to form, execution
and content this _____ day of
_____, 2002

Special Deputy City Attorney

This Agreement has been approved by the
Board of Business Improvement District No. 2
by _____, Chair.

PBMcD:dms
1/31/02
1050-2001-2799
49776

EXHIBIT I

Debt Service on \$680,000 Loan

AMOUNT = \$ 680,000

	4%			4.25%		
	Principal	Interest	Total	Principal	Interest	Total
2003	\$125,546	\$27,200	\$152,746	\$124,921	\$28,900	\$153,821
2004	\$130,568	\$22,178	\$152,746	\$130,230	\$23,591	\$153,821
2005	\$135,791	\$16,955	\$152,746	\$135,765	\$18,056	\$153,821
2006	\$141,223	\$11,524	\$152,746	\$141,535	\$12,286	\$153,821
2007	<u>\$146,872</u>	<u>\$5,875</u>	<u>\$152,746</u>	<u>\$147,550</u>	<u>\$6,271</u>	<u>\$153,821</u>
Total	\$680,000	\$83,732	\$763,732	\$680,000	\$89,104	\$769,104

mjd/2-4-02