

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
THE CITY OF MILWAUKEE'S DEPARTMENT OF PUBLIC WORKS (DPW) AND THE MILWAUKEE COUNTY
TRANSIT SYSTEM (MCTS)**

This Memorandum of Understanding ("MOU") is entered into as of the last date appearing in the signature block below, by and between the Milwaukee County Transit System, operated by Milwaukee Transport Services Inc. (MTS), a quasi-governmental instrumentality of Milwaukee County (hereinafter "MCTS") and the City of Milwaukee, by its Department of Public Works, a municipal corporation of the State of Wisconsin, (hereinafter referred to as "DPW").

RECITALS:

WHEREAS, DPW ranks improvement of public transportation as a high priority; and,

WHEREAS, DPW and MCTS have a common interest in development of a system of Bus Rapid Transit ("BRT") lines; and,

WHEREAS, MCTS, in cooperation with the DPW, initiated in 2016, the East-West BRT project, Milwaukee County's planned 9-mile, regional, modern transit service connecting major employment, education and recreation destinations through downtown Milwaukee, Milwaukee's Near West Side, Marquette University, Wauwatosa and the Milwaukee Regional Medical Center; and,

WHEREAS, DPW and MCTS intend to cooperate to assure maximum effectiveness of this joint effort; and,

WHEREAS, MCTS has developed a Locally Preferred Alternative Report dated August, 2016 ("LPA"); "Milwaukee County East-West BRT Small Starts Application" updated August 31, 2018 ("Application"); and Federal Transit Administration ("FTA") Finding of No Significant Impact confirmation dated November 29, 2018; and,

WHEREAS, Milwaukee County's East-West BRT project has been accepted into the Project Development phase of the FTA's Small Starts funding program and received a "Medium" rating included in the President's Annual Report on Funding Recommendations for Fiscal Year 2019 Capital Investment Grants Program in February 2018, budget awaiting congressional appropriation; and,

WHEREAS, funding for the East-West BRT project has been approved in Milwaukee County's 2017 and 2019 Adopted Budgets; and,

WHEREAS, the East-West BRT will provide improved transit access within an area of high ridership, numerous activity centers and increasing reinvestment in business centers and neighborhoods; and,

NOW, IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

AGREEMENT:

1. Design, Engineering and Construction of East-West BRT.

- a. MCTS shall lead design, engineering and construction for the East-West BRT project.
- b. MCTS's work on the East-West BRT project does impact areas under the purview of DPW for the city of Milwaukee such as roadway related drainage items (drainage inlets, and other appurtenances), curb ramps, sidewalks, street lighting items, city underground conduit facilities, streetscaping and traffic signalization items.
- c. MCTS will reimburse DPW for its share of the preliminary engineering costs and all engineering work performed prior to the actual commencement of construction, for the East-West BRT project at the written request of the City of Milwaukee. The amount of funding provided by MCTS is estimated to be \$165,000.00.
- d. MCTS will reimburse DPW for its share of the construction (including temporary signals, lighting, etc.) and construction engineering costs for the East-West BRT project at the written request of the City of Milwaukee. The amount of funding provided by MCTS is estimated to be \$395,000.00.
- e. MCTS, as the lead agency in the billing process, will review the billings prepared and submitted by the DPW.
- f. MCTS agrees to consult with and seek concurrence with DPW during the project design process and plan preparation for the East-West BRT project, and for any field change orders that would result in additional construction costs that may occur after the project had been awarded.
- g. MCTS will hold a 15% contingency on DPW's infrastructure costs. Should the bids/actual construction costs exceed the total estimated costs, plus the contingency, MCTS will conduct a justification assessment through an independent cost estimate (ICE) process to validate the cost increase. In addition, any cost over and above the cost contingency created by DPW in the field during construction shall be agreed upon by MCTS prior to reimbursement through a justification process to determine the increased costs are due to the E-W BRT project and not a betterment.

2. Payment. DPW shall submit an invoice to MCTS for MCTS's share of DPW's incurred project costs. The first invoice will be sent following execution of the construction contract and this agreement, and shall provide a breakdown accounting of the costs of the East-West BRT project elements. To expedite the payment of invoices under this MOU, all invoices shall be sent directly to the following address:

Mr. Dan Basile
1942 N. 17th St.
Milwaukee, WI 53205

3. Reports. At the end of every three (3) month period during the East-West BRT project, MCTS shall provide a written report to the DPW describing the progress made on the design or construction of the project during the preceding three (3) month period.

4. Materials. The County shall furnish all materials, equipment, and supplies needed for the East-West BRT project.

5. Independent Contractor. Nothing contained in this MOU shall constitute or be construed to create a partnership or joint venture between DPW or its successors or assigns and MCTS or its successors or assigns. In entering into this MOU, and in acting in compliance herewith, DPW and MCTS are at all times acting and performing as independent contractors, duly authorized to perform the acts required of them hereunder.

6. Mutual Indemnification. The parties to this MOU agree to indemnify, defend and hold harmless the other party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses (including reasonable attorney's fees) to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representative of the indemnifying party which may arise out of or are connected with the activities covered by this MOU. Each party's liability shall be limited by Wis. Stat. sec. 345.05(3) for automobile liability and sec. 893.80(3) for general liability. Nothing in this MOU shall be construed to constitute a waiver of any otherwise applicable immunity, limited immunity or limitation on liability under Wisconsin law.

7. Exclusive Agreement. This MOU contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties hereto, or to vary any of the terms contained herein. Any Amendments or revisions of this MOU shall be made in writing and executed by the Parties.

8. Contract Completion. The parties agree that the Joint Project shall be completed no later than December 31, 2021.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

City of Milwaukee, by its Department of Public Works "DPW"

By: _____
Commissioner of Public Works

By: _____
City Comptroller

Approved as to form and execution:

Office of the City Attorney Date

ATTEST:

Director, Milwaukee County Department of Transportation

**Milwaukee Transport Services Inc. (MTS),
operator, Milwaukee County Transit System
"MCTS"**

By: _____
President/Managing Director