

**COOPERATION AGREEMENT
BETWEEN
THE CITY OF MILWAUKEE AND
THE MENOMONEE VALLEY PARTNERS, INC.**

THIS AGREEMENT ("Agreement"), is entered into this ____ day of _____, 2005, by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin ("City"), through its Department of Public Works ("DPW"), and its Department of City Development ("DCD"), and the Menomonee Valley Partners, Inc., a 501(c)3 nonprofit organization ("MVP"), (collectively, "the Parties").

WHEREAS, MVP is under contract to purchase the Stockyards Property and will subsequently transfer the Stockyards Property to the Developer/End User; and

WHEREAS, the Parties wish to develop a shared Stormwater Treatment Facility ("Facility"), at the Stockyards Property in the Menomonee River Valley; and

WHEREAS, the Parties have agreed that cooperative effort will maximize the economic, environmental, and community impacts of a Facility, to the benefit of the City, MVP, the Stockyards Property Developer/End User, future developers of adjacent properties, and the general public; and

WHEREAS, the Parties have reached agreement regarding the commitments necessary to develop a Facility in the Menomonee River Valley; and

WHEREAS, the City's Common Council has by Resolution File No. 041741, adopted on the ____ day of _____, 2005, authorized the appropriation of funds and the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties agree as follows:

ARTICLE I
Definitions

For purposes of this Agreement, the following definitions shall apply:

A. "Stockyards Property" means an approximately thirteen (13) acre parcel currently part of the property located at 104 South Emmer Lane in the City's Menomonee River Valley. See Exhibit 1.

B. "MVP's Assignee" means the Milwaukee Economic Development Corporation, a 501(c)3 nonprofit organization that will hold title to the Stockyards Property on behalf of MVP.

C. "Project" means the planning and implementation of the Facility by the Parties that is capable of treating stormwater from a tributary area as large as 37 acres in the Central Menomonee River Valley. The initial phase of the Facility will be constructed and operated at the Stockyards Property, and will treat stormwater from a seventeen (17) acre tributary area that includes a five (5) acre portion of the Canal Street Right of Way ("ROW"), and up to ten (10) acres of private sector development that will occur on the Stockyards Property ("Phase I").

D. "Developer/End User" means the party/parties responsible for developing and/or operating a business entity at the Stockyards Property.

ARTICLE II

Agreements

A. Design of Facility

1. The Parties will be jointly responsible for designing and developing a Facility that is capable of managing the anticipated volume of stormwater and conveying and discharging stormwater to the South Menomonee Canal.

2. The Parties will ensure that the Facility is capable of meeting the initial and ongoing needs of the Developer/End User and DPW, while satisfying all stormwater requirements under state and local regulations.

3. Phase I of the Facility will be capable of meeting the initial stormwater volume from the Canal Street ROW and the developed portions of the Stockyards Property, and the Parties will work to the best of their efforts to ensure that the Facility could be capable of future expansion to accommodate stormwater from up to twenty (20) acres of adjacent land (property currently identified as 210 South Emmer Lane, owned by Aldrich Chemical; 1201 West Canal Street, owned by Canal St., LLC; 200 South Emmer Lane, owned by Emmpak Foods, Inc.; and the site known as the Stockyards Exchange Building, owned by PFS, Inc.), ("Phase II"). It is estimated that approximately two (2) acres would be immediately necessary for Phase I to treat stormwater from the initial seventeen (17) acre tributary area (comprised of the twelve (12) acre Stockyards Property

and the five (5) acre segment of the Canal Street ROW), and a total of four (4) acres would be needed for Phase II to treat stormwater from the expanded, thirty-seven (37) acre tributary area.

4. DPW, MVP, and the Developer/End User will work collaboratively to design and construct a publicly accessible pedestrian connection on the Stockyards Property to connect the Canal Street ROW to the South Menomonee Canal. To the extent practicable, this pedestrian corridor will assist in the treatment and/or conveyance of stormwater to the Facility, and will be maintained by DPW.

B. Property Ownership

1. The Parties agree to work together in an attempt to assemble an estimated four (4) acres through public easements that will be used in treatment of stormwater from a tributary area as large as thirty-seven acres in the Central Menomonee River Valley.

2. In Phase I, MVP or the Developer/End User will maintain ownership of the entire Stockyards Property, but will be responsible for conveying, at no cost to the City, an easement of sufficient acreage and of sufficient duration to construct, operate, and maintain the Facility in a manner consistent with the provisions outlined within this Agreement. If at any point, all or a portion of the lands governed by easement to the City are not necessary for immediate and long-term stormwater management objectives, unencumbered control of the acreage not necessary for stormwater management would revert to the Stockyards Property owner (either MVP or the Developer/End User). Under this circumstance, MVP or the Developer/End User will then be responsible for maintaining a publicly-accessible pedestrian corridor connecting the Canal Street ROW and the South Menomonee Canal.

C. Performance Standards and Design Principles. The Parties will ensure that the Facility meets all applicable permit requirements, including City Ch. 120, NR 216, MMSD Ch. 13 and the stormwater management, landscape, and the Performance Standards and Design Principles contained in Appendix 1.

D. Stormwater Management Plan.

1. The Developer/End User will be responsible for creating and submitting a Stormwater Management Plan ("SWMP"), to the City Development Center. This plan is required by City ordinance.

2. The City will provide detailed information regarding the design of the Facility to any party required to submit an SWMP.

E. Construction Management and Permit Responsibility.

1. DPW will be responsible for all aspects of managing the construction of the Facility, including amending any existing SWMPs and permits issued for the Canal Street reconstruction project and securing and maintaining any additional applicable regulatory permits for construction and operation of the Facility.

2. The Parties agree to work together to coordinate the construction, permitting, and operation of future additional phases of the Facility.

F. Capital Construction Costs.

1. DPW will be responsible for securing all capital costs associated with the construction of the Facility. In no event shall the total amount expended by the City for Phase I exceed one million (1,000,000), dollars.

2. DPW will not seek a special assessment of either MVP or the Developer/End User as a way to fund the capital construction of Phase I of the Facility.

3. The Parties agree to work together to ensure that any and all funding solicitations of third (3rd) parties made by the Parties on behalf of the Project are planned and executed in a coordinated manner.

G. Availability of Structural Fill. DCD agrees to provide MVP or the Developer/End User with an amount of structural fill necessary to meet grading requirements determined by the Facility design, estimated at approximately 35,000 cubic yards. The fill will be provided at no cost to MVP or the Developer/End User, except that if the fill is to be used for a direct fill operation, MVP or the Developer/End User will pay the handling costs.

H. Operations and Maintenance Responsibilities and Costs.

1. DPW will be responsible for operating and maintaining the Facility in compliance with all applicable permits and the Performance Standards and Design Principles contained in Appendix 1.

2. MVP or the Developer/End User will enter into an agreement with DPW that will outline the cost sharing arrangement necessitated by the long term

operation and maintenance of the Facility and all of its essential components. The prorated costs associated with the ongoing operation and maintenance of the Facility are the only costs of this project that will be transferred to the Developer/End User.

I. Stormwater Volume.

1. DPW will maintain responsibility for conveying stormwater to the Facility from an impervious, five (5) acre tributary segment of the Canal Street ROW.

2. MVP will be responsible for conveying stormwater from the developed portions of the Stockyards Property to the Facility.

3. The Parties agree to work together with the Developer/End User to determine the specific impervious acreage from the developed portions of the Stockyards Property that will lie tributary to the Facility and that will be necessary to meet the initial and ongoing needs of the Developer/End User.

J. Coordination with Adjacent Properties. DPW will work with DCD to seek approval for an amendment to the City's stormwater ordinance as a mechanism to require future development within the thirty seven (37) acre tributary area to use the Facility. Alternatively, DCD will work with DPW to seek approval for a renewal plan, zoning or stormwater overlay district or other regulatory framework deemed appropriate to require that property within the thirty seven (37) acre tributary use the facility. The proposed solution will include cost sharing provisions outlining the method/s by which property owners of the additional acreage beyond the Stockyards Property will compensate DPW for capital costs associated with construction of Phase I and/or Phase II (should expansion be necessary to accommodate additional properties), as well as for costs associated with ongoing operations and maintenance of the Facility.

ARTICLE III
Other Provisions

A. Assignment of MVP Responsibilities. MVP will fulfill its commitments outlined within this Agreement directly or through the contractual assignment of its commitments to MVP's Assignee and to a Developer/End User.

B. Entire Agreement, Future Agreements, and Amendments.

1. Except as otherwise specifically provided, this Agreement, together with Exhibit 1 and Appendix 1, sets forth all of the covenants, provisions,

agreements, conditions, and understandings between the Parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, other than are herein set forth. Any amendments to this Agreement shall be in writing and signed by the Parties.

2. DPW will enter into a separate agreement with the Developer/End User that codifies their respective commitments as defined in this Agreement in addition to those commitments that have been agreed upon through negotiation and clarification.

C. Duration and Termination.

1. This Agreement shall commence upon the execution of the Agreement by the authorized representatives of the Parties, and shall remain in force for the entire duration of the Project, unless terminated as herein provided.

2. The Parties agree that continuation of this Agreement is dependent on obtaining necessary approval and funding from the City's Common Council. DPW agrees to seek such approval and funding for Phase I in the City's 2006 budget, it being understood that additional approvals and funding would be required for Phase II. DPW shall seek such approvals and funding in good faith. If, however, at any time DPW is unable to obtain necessary approvals or funding, this Agreement, and all of the City's obligations hereunder, shall terminate, it being further agreed that such termination will result in no liability on the part of the City to MVP, MVP's Assignee, or the Developer/End User.

D. Disputes. In the event of any dispute arising under this Agreement, the determination of the City shall prevail.

E. Indemnification. MVP and the City each agree to indemnify, defend, and save harmless the other, and each other's officers, directors, employees, and agents, from and against any and all liability for injuries or damages to persons or property, in whole or in part, as a result of this Agreement, not arising through their fault, including, but not limited to, liability in contract, in tort, or under federal or state law arising or resulting from performance or failure to perform under this Agreement, and in addition, for any and all related expenses, including, but not limited to, defense costs and reasonable attorney's fees.

F. Conflict of Interest.

1. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any

requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

2. No member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

G. Discrimination Prohibited.

1. The Parties warrant that they are equal opportunity employers and fully support the letter and spirit of Title VII of the Civil Rights Act of 1964, as amended, and that they are in compliance with such Act and all applicable legally managed Affirmative Action Programs.

2. The Parties will comply with all applicable provisions of the Americans with Disabilities Act of 1990.

3. The Parties will cause the foregoing provisions to be inserted in any and all contracts and subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the date hereinbefore set forth.

For the City of Milwaukee:

Signature: _____
Richard Marcoux, Commissioner
Department of City Development

Date: _____

Signature: _____
Jeffrey Mantes, Commissioner
Department of Public Works

Date: _____

Countersigned
Signature: _____
W. Martin Morics, Comptroller

Date: _____

For Menomonee Valley Partners, Inc.:

Signature: _____
Laura Bray, Executive Director

Date: _____

Approved as to form and execution:

Signature: _____
Assistant City Attorney

Date: _____

Appendix 1

Performance Standards and Design Principles to Govern the Development of a Shared Stormwater Management Facility at the Stockyards Property in the Menomonee River Valley

The Facility developed at the Stockyards Property will be designed, constructed, and operated to meet the following performance standards and design principles:

A. The Facility will be designed to reduce, to the maximum extent practicable, the Total Suspended Solids load by 80%, based on an Average Annual Rainfall, (defined by NR 151.12), as compared to no runoff management controls.

B. The Facility will avoid the direct concentrated discharge of stormwater into the South Menomonee Canal, and will capture and infiltrate stormwater up to a two (2) year storm event without any discharge to surface water or municipal storm sewers.

C. The Facility should use a connected series of vegetated swales and channels for stormwater infiltration in place of enclosed storm sewers.

D. The overall site development plan should establish a publicly accessible pedestrian corridor from the Canal Street ROW to the South Menomonee Canal.

E. All landscape planting materials, soils, and sub-soils should be designed for infiltration and evapotranspiration of rainwater.

F. Drought resistant species should be used, eliminating the need for irrigation other than collected rainwater.

G. Native plant and tree species should be used for at least 80% of planted area.