

**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 (hereinafter "MCTS"), operated by Milwaukee Transport Services Inc. ("MTS"), a quasi-governmental instrumentality of Milwaukee County 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 improvement of a system of Bus Rapid Transit ("BRT") lines; and,

WHEREAS, MCTS, in cooperation with the DPW, initiated in 2016, the 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 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 BRT project has Capital Investment Grants Program; and,

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

WHEREAS, funding for DPW's portion of the hereafter described proposed BRT project is included in the City of Milwaukee's proposed 2026 budget; and,

WHEREAS, the 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. Construction and Coordination of BRT asphalt surface overlay project on N. Hawley Rd. and W. Wisconsin Ave.**

- a. MCTS shall lead design and engineering for the asphalt surface overlay including pavement markings.
- b. MCTS shall lead construction and construction oversight for the BRT asphalt surface overlay including pavement markings on N. Hawley Rd.- W. Bluemound Rd. to a point 300' +/- north of W. Valley Forge Dr., and W. Wisconsin Ave.- N. 44th St. (ext.) to a point 225' +/- west of N. 45th Pl.
- c. DPW will design and construct ADA corner pedestrian ramps under a separate City of Milwaukee contract.
- d. MCTS's work on the 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), city underground communication, city water mains and services.
- e. DPW will reimburse MCTS for its share of the asphalt overlay including pavement markings construction and construction engineering costs for the BRT project at the written request of the MCTS. The amount of funding provided by DPW for the BRT project shall be as follows:
  - i. N. Hawley Rd. from W. Bluemound Rd. to W. Wisconsin Ave. - 50% of the final total cost
  - ii. N. Hawley Rd. from W. Wisconsin Ave. to a point 300' +/- north of W. Valley Forge Dr. - 100% of the final total cost
  - iii. W. Wisconsin Ave. from N. 44th St. (ext.) to a point 225' +/- west of N. 45th Pl. - 75% of the final total cost
- f. DPW will review the billings prepared and submitted by MCTS.
- g. MCTS agrees to consult with and seek concurrence with DPW during the construction for any field change orders that would result in additional construction costs that may occur after the project had been awarded in excess of 10% of the original contract.
- h. DPW will hold a 10% contingency on the estimated construction cost. Should the bids/actual construction costs exceed the total estimated costs, plus the contingency, DPW 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 MCTS in the field during construction shall be agreed upon by the City of

Milwaukee prior to reimbursement through a justification process to determine the increased costs are due to the BRT paving project and not a betterment.

- 2. Payment.** MCTS shall submit an invoice to the City of Milwaukee DPW for City's share of MCTS'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 BRT project elements. To expedite the payment of invoices under this MOU, all invoices shall be sent directly to the following address:

Ms. Holly Rutenbeck, PE  
3850 N. 35th Street  
Milwaukee, WI 53216  
hjruten@milwaukee.gov

- 3. Reports.** At the end of every three (3) month period during the construction of the BRT paving project, MCTS shall provide a written report to the City of Milwaukee describing the progress made during the construction of the project from the preceding three (3) month period.
- 4. Materials.** MCTS contractor shall furnish all materials, equipment, and supplies needed for the construction of the BRT paving project on N. Hawley Rd. and W. Wisconsin Ave.
- 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 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 BRT project on N. Hawley Rd. and W. Wisconsin Ave. shall be completed no later than March 31, 2027.

**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 Transportation Services Inc. (MTS),  
Operator, Milwaukee County Transit System  
"MCTS"**

By: \_\_\_\_\_  
President/Managing Director