



Department of City Development
City Plan Commission
Redevelopment Authority of the City of Milwaukee
Neighborhood Improvement Development Corporation

Rocky Marcoux
Commissioner
rmarco@milwaukee.gov

Martha L. Brown
Deputy Commissioner
mbrown@milwaukee.gov

January 27, 2014

Mr. James R. Owczarski
City Clerk
City Hall, Room 205
Milwaukee, WI 53202

Dear Mr. Owczarski:

Enclosed is a fully executed copy of the Riverwalk and Dockwall Development Loan Agreement, Contract No. 14-004 (CM), between the City of Milwaukee and Business Improvement District No. 49.

Please insert this agreement into Common Council Resolution File No. 130622, adopted November 5, 2013.

Sincerely,

Scott Stange
Department of City Development
Procurement and Compliance Manager

Enclosure



DUPLICATE

ORIGINAL

**CITY OF MILWAUKEE AND BOARD OF BID NO. 49
RIVERWALK AND DOCKWALL DEVELOPMENT LOAN AGREEMENT**

This Agreement is made this 8th day of January, 2014, by and between the City of Milwaukee ("City") and Board of Business Improvement District No. 49 ("BID No. 49").

WITNESSETH:

Whereas, BID No. 49 is undertaking a riverwalk and dockwall construction project along the south bank of the Menomonee Canal at the Reed Street Yards ("Riverwalk and Dockwall Work") which will constitute a portion of the overall riverwalk system; and

Whereas, BID No. 49 has requested that the City provide \$354,000 in loan funds ("City Loan") to enable it to undertake the financing of the Riverwalk and Dockwall Work; and

Whereas, The City is desirous of assisting in the orderly development of the riverwalk system in the BID No. 49 area and has approved of such a loan, under the terms stated herein, and in the agreement by and among Building 41, LLC and RSY, LLC (collectively, the "Developer"), the City, and the Redevelopment Authority of the City of Milwaukee approved by Common Council File No. 090688, adopted November, 30 2011 ("Development Agreement"); and

Whereas, BID No. 49 has approved of this Agreement in action taken on December 23, 2013, and has agreed to repay such City Loan by providing for special assessments for such purposes via its Operating Plan;

Now, Therefore, The City and BID No. 49 in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree and covenant as follows:

I.

CITY ACTIVITIES

A. Subject to the terms and conditions hereinafter set forth, the City shall provide a loan of \$354,000 to BID No. 49 over a term of 15 years bearing an interest rate of 4.5% (the "City Loan"). The funds shall be provided from TID 75 account TD07588002 and be repaid to TID 75 account TD07588002. The City Loan is to be disbursed to, or at the direction of, BID No. 49 pursuant to the conditions set forth in section I.B below and is to be used solely to fund the approved Riverwalk and Dockwall Work activities.

B. City Loan funds shall be disbursed according to draw requests received from BID No. 49. No City loan funds shall be disbursed unless BID No. 49 demonstrates that all of the

following conditions listed below have been completed for the specific work referenced in said draw request (the "Covered Work"):

1. BID No. 49 or the Developer has received all federal, state and local agency approvals, including but not limited to the United States Army Corps of Engineers, the Wisconsin Department of Natural Resources, and the City of Milwaukee's Board of Harbor Commissioners, City Plan Commission, and Departments of City Development and Neighborhood Services, which are necessary to undertake construction of the Riverwalk and Dockwall Work.
2. The Commissioner of the Department of City Development ("Commissioner") has approved the final plans and specifications for the Covered Work.
3. The Commissioner has approved the final construction budget for the Covered Work.
4. The Commissioner has approved all the contracts entered into by the BID No. 49 or the Developer for the preparation of plans and specifications for the Covered Work.
5. The Commissioner has approved all contracts and subcontracts entered into by the BID No. 49 or the Developer to undertake the construction of the Covered Work.
6. The Riverwalk and Dockwall Work's architect/engineer has certified in writing to the Commissioner that the Covered Work has been completed in accordance with the Commissioner approved plans and specifications and the Covered Work costs have been fully substantiated by the BID No. 49 or the Developer on appropriate AIA forms such as AIA Document G702.
7. The Commissioner has been presented with final lien waivers on the Covered Work by BID No. 49 or the Developer and such lien waivers are satisfactory to the Commissioner.

II.

BID NO. 49 AND/OR DEVELOPER ACTIVITIES

BID No. 49 or the Developer shall:

1. Prepare or have prepared final plans and specifications for the Riverwalk and Dockwall Work subject to the approval by the Commissioner as provided in I.B.4 above.
2. Prepare or have prepared a final construction budget for the Riverwalk and Dockwall Work for approval by the Commissioner as provided above.
3. Obtain and pay for all governmental permits and approvals necessary to construct the Riverwalk and Dockwall Work.
4. Construct the Riverwalk and Dockwall Work in accordance with the

approved plans and specifications.

5. Provide insurance coverage (builder's risk, liability and property damage) satisfactory to the City on the Riverwalk and Dockwall Work during construction and afterward.

6. Substantially complete the Riverwalk and Dockwall Work by June 30, 2014.

7. When the Riverwalk and Dockwall Work is completed, as indicated by the project architect/engineer's certification as referenced above, provide the City with final lien waivers for all such work.

III.

CHANGES

No material changes in the type, placement or use of construction materials as indicated on the approved plans and specifications, shall be made by BID No. 49 in the approved plans and specifications of the Riverwalk and Dockwall Work without prior written consent of the Commissioner.

IV.

INSPECTIONS

A. BID No. 49 or the Developer and its contractor or subcontractor shall be solely responsible for the completion of the Riverwalk and Dockwall Work. Nothing contained in this paragraph shall create or affect any relationship between the City and any contractor or subcontractor employed by BID No. 49 or the Developer in construction of the Riverwalk and Dockwall Work.

B. The City may make reasonable inspections, including but not limited to inspection by the City's Department of Public Works, Department of City Development, and Department of Neighborhood Services, of the Riverwalk and Dockwall Work during the period of construction thereof, provided that such inspections do not interfere with the progress of the work. In order to allow the City and City agencies to undertake these inspections in a meaningful fashion, BID No. 49 or the Developer shall provide a complete set of plans and specifications as well as any change orders and shop drawings.

C. In the event that the Commissioner determines, as a result of the inspections made by City representatives, that BID No. 49's or the Developer's contractor or subcontractor are not constructing the Riverwalk and Dockwall Work in accordance with the approved plans and specifications, the Commissioner shall promptly inform BID No. 49 of the noncompliance with the plans and specifications; and BID No. 49 shall, as soon as reasonably possible, require its or the Developer's contractor or subcontractors to remedy such noncompliance.

V.

RECORDS

A. BID No. 49 or the Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Riverwalk and Dockwall Work, consistent with the approved budget, and shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years subsequent to the completion of the Riverwalk and Dockwall Work.

B. The City Comptroller shall have the right, upon reasonable notice to BID No. 49 or the Developer, its contractor or subcontractors as the case may be, to examine the books and accounts of the BID No. 49 or the Developer, its contractor or subcontractors during normal hours of business.

C. After substantial completion of the Riverwalk and Dockwall Work, BID No. 49 or the Developer shall submit to the Commissioner a complete set of "As Built" plans and specifications as well as a copy of all approved shop drawings.

VI.

HUMAN RESOURCES

In contracting for the construction of the Riverwalk and Dockwall Work, BID No. 49 or the Developer shall comply with an 25% Small Business Enterprise requirement and 40% Resident Preference Program, as contained in the Development Agreement.

VII.

TERM

This Agreement shall terminate upon repayment in full of the City Loan.

VIII.

DEFAULT

If BID No. 49 or the Developer has not substantially completed the Riverwalk and Dockwall Work by the time specified in Section II. above and the failure to substantially complete was either BID No. 49's or the Developer's fault and/or was for reasons within BID No. 49's or the Developer's control, the City shall have the right to terminate this Agreement if, within 60 days after receipt from the Commissioner of a notice of intent to terminate because of failure to substantially complete, BID No. 49 or the Developer has not substantially completed the Riverwalk and Dockwall Work. If the City terminates this Agreement pursuant to this

provision, the City shall have no further obligation to provide BID No. 49 with City Loan funds and/or no further obligation to perform any other acts under this Agreement.

IX.

CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

X.

WRITTEN NOTICES

Any written notice required to be sent under this Agreement shall be sent to the following individuals:

For the City:

Commissioner, Department of City Development
City of Milwaukee
809 North Broadway
Milwaukee, Wisconsin 53202

For BID No. 49:

Business Improvement District No. 49
600 West Virginia Street, Suite 207
Milwaukee, WI 53204
ATTN: Mr. Peter Moede

XI.

ASSIGNMENT

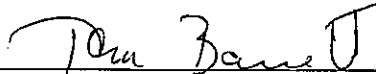
No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party.

[SIGNATURE PAGE FOLLOWS]

In Witness Whereof, The parties have executed this Agreement on the day and year first above written.

CITY OF MILWAUKEE

By:

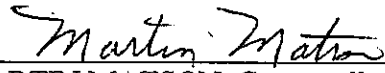


TOM BARRETT, Mayor



JIM R. OWCZARSKI, City Clerk

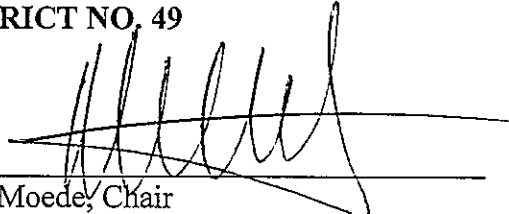
Countersigned:



MARTIN MATSON, Comptroller 1-23-14 *ek*

**BOARD OF BUSINESS IMPROVEMENT
DISTRICT NO. 49**


BY:



Peter Moede, Chair

Approved as to content this

23rd day of January, 2014.



Assistant City Attorney

Approved as to form and execution

this 23rd day of January, 2014.



Assistant City Attorney

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