

**N. WATER STREET / E. BRADY STREET TRIANGLE
LANDSCAPE MAINTENANCE AGREEMENT**

This agreement by and between Michael Mervis and Mary Ellen McCormack-Mervis, private citizens, hereinafter known as the “Mervises”, and the City of Milwaukee, a municipal corporation, hereinafter known as the “City”.

Witnesseth

Whereas, The Mervises have expressed interest in beautifying the City-owned vacant lot, hereinafter known as the “Triangle”, located at the northeast corner of the N. Water Street / E. Brady Street intersection; and

Whereas, The beautification project would involve development of several landscaping beds, installation of an underground irrigation system, and placement of several pieces of sculpture on the Triangle; and

Whereas, The Mervises will fund, through the Brady Area Foundation for Arts and Education, Inc., improvement of the landscaping beds and will be responsible for long term maintenance of the Triangle except as noted herein; and

Whereas, The City will maintain the public sidewalks abutting and transecting the Triangle including snow removal and periodic replacement as warranted; and

Whereas, The City will maintain the lawn areas surrounding the landscaping beds; and

Whereas, The City will also install the irrigation system for the Triangle and will be responsible for seasonally activating and deactivating it; and

Whereas, The City and the Mervises shall agree upon a mutually acceptable plan for the landscaping beds; and

Whereas, For the duration of subject agreement the Triangle shall be known as the Mervis/McCormack Brady Street Park or Gardens; and

Whereas, The terms and conditions of this arrangement have been codified in a Maintenance Agreement between the City and the Mervises as outlined more fully hereinafter;

Now, therefore, in consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations;

It is acknowledged and agreed by and between the parties hereto that

1. The City shall retain ownership of the Triangle and shall continue to accept all potential liability therefore except as specifically noted herein.
2. The City and the Mervises shall mutually agree upon a plan for landscaping and associated improvements. The Department of Public Works' Forestry Division shall collaborate with the Mervises in preparing the plan.
3. The City shall be solely responsible for installation of any irrigation system improvements shown on the agreed upon plan.
4. The Mervises shall be solely responsible for improvement of the landscaping beds shown on the plan including preparation and importation or removal, if necessary, of soil; construction of any retaining walls or other structural improvements; installation of plant materials; placement of sculptural elements; installation of special lighting (if any); installation of special signing (if any); and installation of benches and similar "outdoor furniture".
5. After initial planting, the Mervises shall be responsible for all maintenance of the landscaping beds. Maintenance of the beds shall include, but need not be limited to, mulching; fertilizing; pruning; annual and seasonal plantings; weeding; replacement of dead plant material; keeping the planting beds free from trash and litter; and repair as needed of the sculptural pieces, special signing (if any), special lighting (if any), and "outdoor furniture".
6. The Mervises shall be responsible for repair of any damage to the irrigation system within the landscape beds unless such damage is clearly the fault of the City; and
7. It is understood and acknowledged that the Mervises or their successors may hire a professional service to perform the required maintenance.
8. The City shall maintain the sidewalks surrounding and transecting the Triangle consistent with the level of maintenance performed for similar City owned properties. Sidewalk maintenance shall include, but need not be limited to, snow removal and repair or replacement as warranted.
9. The City shall maintain the grass areas surrounding the landscape beds consistent with the level of grass maintenance performed on City boulevards.
10. The City shall turn on the irrigation system in the spring and turn it off in the fall consistent with its operating schedule for boulevard medians. Plant materials selected should be those likely to thrive given the anticipated schedule of water availability. City shall also be responsible for repair of any damage to the irrigation system outside of the landscape beds unless such damage is clearly the fault of the Mervises. City shall not charge the Mervises for the cost of water used by the Triangle's irrigation system.

11. Should the Mervises not maintain the landscape beds to a standard generally consistent with the standard the City employs for its boulevard medians, the City shall notify Mervis in writing of the maintenance deficiencies. If the Mervises do not rectify the maintenance deficiencies within the time allotted in the written notification (which shall not be less than 14 days), the City may resume full maintenance of the Triangle and may make any changes to the landscaping of the Triangle it chooses in order to minimize the level of maintenance required.
12. Notwithstanding the notification provisions of point number 11 above, the City may make immediate repairs or alterations to the landscape beds if the Commissioner of Public Works determines that conditions present a threat to public safety. The justification for such repairs shall be provided to the Mervises and the cost of same may be charged to the Mervises at the sole discretion of the Commissioner.
13. The Mervises shall hold the City harmless and shall indemnify the City against all claims that may arise as a result of the Mervises' or their designee's failure to perform the maintenance obligations as herein described.
14. It is hereby acknowledged and agreed that the Mervises may, upon the approval of the Commissioner of Public Works, assign their rights and obligations under this agreement to another entity. The Commissioner's approval shall not be unreasonably withheld.
15. This agreement shall have an indefinite term. The agreement may be terminated by either the Mervises or the City for any reason and at any time upon issuance of a 30 day advance notice. However, unless the Mervises fail to fulfill their obligations hereunder, City shall not terminate the agreement for a period of at least seven (7) years from the effective date thereof. Upon termination of the agreement, City may make alterations to the Triangle and perform maintenance as it deems appropriate. All sculptures and artwork provided by the Mervises shall be returned to the Mervises at their sole option.

FOR THE MERVISES

Signature _____ Date _____

Print Name _____

Signature _____ Date _____

Print Name _____

FOR THE CITY OF MILWAUKEE

Signature _____ Date _____

Print Name _____ Title _____