

**FIFTH AMENDMENT TO RIVERWALK
DEVELOPMENT AGREEMENT FOR BUSINESS
IMPROVEMENT DISTRICT NO. 2**

THIS FIFTH AMENDMENT TO RIVERWALK DEVELOPMENT AGREEMENT is made the _____ day of _____, 2004, by and between the City of Milwaukee ("City") and the Board of Business Improvement District No. 2 ("Board").

RECITALS

The City and the Board acknowledge the following:

A. The City and the Board entered into a Riverwalk Development Agreement for Business Improvement District No. 2 dated as of June 23, 1998 and subsequently amended same on July 30, 1998, February 9, 1999, July 22, 1999 and _____, 2002. (The initial Riverwalk Development Agreement and all amendments thereto are collectively referred to as the "Development Agreement.").

B. The Development Agreement provides for the construction and operation of a riverwalk system within the boundaries of Business Improvement District No. 2 (the "Riverwalk System").

C. The City and the Board of Business Improvement District No. 15 (the "BID 15 Board") entered into a Riverwalk Development Agreement for Business Improvement District No. 15 dated as of May 23, 1994 (the "BID 15 Development Agreement"). The BID 15 Development Agreement provides for the construction and operation of a riverwalk system through the area of the City within the boundaries of Business Improvement District No. 15 (the "BID 15 Riverwalk System").

D. The City, the Board and the BID 15 Board desire that the Riverwalk System and the BID 15 Riverwalk System be integrated into a single continuous riverwalk through the construction of a new riverwalk segment linking the two systems (the "Connector Segment"). The parties agree that the Connector Segment will be located within the boundaries of Business Improvement District No. 15 and have further agreed to participate in the funding of the costs of constructing the Connector Segment as provided herein.

E. The design of the Connector Segment will, in general, match the overall design of the various Project Segments of the Riverwalk System, rather than the BID 15 Riverwalk System, notwithstanding that it will be located within Business Improvement District No. 15. The Board will contract with the owner of the Connector Segment to maintain the Connector Segment in the same manner that the Board maintains the Project Segments in the Riverwalk System.

F. The City and the BID 15 Board will, simultaneously with the execution of this Fifth Amendment, enter into an amendment to the BID 15 Development Agreement consistent with and conforming to the terms of this Fifth Amendment.

G. The City has, via Resolution _____, approved this Fifth Amendment and authorized the proper City officers to execute same on the City's behalf.

H. The Board has approved this Fifth Amendment and authorized _____ to execute same on its behalf.

AGREEMENTS

Now, therefore, in consideration of the Recitals and the mutual promises and undertakings hereinafter contained, the parties mutually agree and covenant as follows:

- 1. The total construction budget for the Connector Segment is \$500,000. This amount shall be funded as follows:
 - a. \$250,000 shall be provided by the City as a grant from funds made available to the City through a State of Wisconsin Stewardship Grant.
 - b. \$195,000 (78% of the remaining \$250,000) shall be provided by the City as an additional grant as part of the City Share set forth in the BID 15 Riverwalk Development Agreement.
 - c. \$27,500 (11% of \$250,000) shall be advanced by the City on behalf of and as a loan to the BID 15 Board.
 - d. \$27,500 (11% of \$250,000) shall be paid by BID 2. Such amount shall be paid in full within 15 days following written request from the City.
- 2. The design and construction of the Connector Segment shall be carried out in accordance with the terms and requirements of the BID 15 Development Agreement; provided, however, that in the event of any conflict between the terms and requirements of the BID 15 Development Agreement and the terms and requirements of the State of Wisconsin Stewardship Grant, the latter shall control. To the extent permitted under the Stewardship Grant, the City will coordinate the design and construction process for the Connector Segment with the Board's design and construction activities for the Riverwalk System so as to maximize joint contracting opportunities and efficiencies.
- 3. The City agrees to enter into an amendment to the BID 15 Development Agreement with the BID 15 Board pursuant to which the BID 15 Board agrees to fund its share of the cost of the Connector Segment as provided in paragraph 2, above.
- 4. The Board agrees to enter into an agreement with the owner of the Connector Segment pursuant to which the Board will agree to maintain and repair the Connector Segment (for a fee agreed upon by such owner and the Board) in the same manner that the Board maintains and repairs the Project Segments in the Riverwalk System.
- 5. All capitalized and/or defined terms in this Fifth Amendment shall have the same meaning as set forth in the Development Agreement.
- 6. In the event of any conflict between the terms of this Fifth Amendment and the terms of the Development Agreement, the terms of this Fifth Amendment shall control.

In Witness Whereof, the City and the Board have executed this Fifth Amendment as of the day and year first above written.

IN THE PRESENCE OF: CITY OF MILWAUKEE

, Mayor

, City Clerk

COUNTERSIGNED:

, Comptroller

IN THE PRESENCE OF: BUSINESS IMPROVEMENT
DISTRICT BOARD NO. 2

Approved as to content this
_____ day of _____, 2004.

Special Deputy City Attorney

Approved as to form and execution
this _____ day of _____, 2004.

Special Deputy City Attorney

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