

MAINTENANCE AGREEMENT

Between

**BUSINESS IMPROVEMENT DISTRICT #21
AND THE CITY OF MILWAUKEE**

Regarding

THE DOWNTOWN STREETSCAPING PROJECT

THIS AGREEMENT is made this ____ day of _____, 2005 by and between the City of Milwaukee ("City") acting through its Commissioner of Public Works ("Commissioner") and the Downtown Business Improvement District ("BID 21").

WITNESSETH:

WHEREAS, BID 21 was created for the purpose of promoting downtown Milwaukee by making the area cleaner, friendlier, and safer; and

WHEREAS, One of the ways downtown can be made cleaner, friendlier, and safer is by improving its appearance and upgrading its pedestrian environment; and

WHEREAS, The City of Milwaukee has secured grant monies which will be combined with local matching funds for the purpose of carrying out a streetscape enhancement project in downtown Milwaukee; and

WHEREAS, Some of the improvements that will be constructed are special amenities that would not normally be constructed by the City; and

WHEREAS, The Commissioner has determined it to be in the best interest of the City for BID 21 to assume maintenance responsibility for certain of these special amenities; and

WHEREAS, The City's Common Council via Resolution File No. _____, 2005 authorized the proper City officials to execute this Maintenance Agreement on the City's behalf;

NOW, THEREFORE, The City and BID 21, in consideration of the mutual promises and undertakings contained herein, agree as follows:

- A. The various improvements to be constructed as part of the streetscape enhancement project are listed in the attached Exhibit "A". BID 21's responsibilities for routine maintenance of and repairs to the various improvements are set forth in Exhibit "B" attached hereto. The threshold for routine maintenance or repairs shall be the same as or higher than that used by the City for other public right-of-way improvements. In no event shall BID 21 be responsible for replacement of the various improvements or for any work other than routine maintenance of and repairs. City, at its sole discretion, shall determine when and to what extent capital repairs or replacement shall be made.

- B. If BID 21 fails to comply with its responsibilities as outlined in Exhibit "B", the Commissioner shall provide BID 21 with a written notice setting forth the work which the Commissioner has determined has not been performed. If BID 21 does not commence such work within 30 days from the date of receipt of the Commissioner's written notice, the Commissioner may perform or cause to be performed the required work. The Commissioner shall bill BID 21 for all costs incurred in performing such work. If BID 21 has not paid any such bill within 60 days after having received it, the cost shall then be placed upon the tax bills of the properties within BID 21 as a special assessment in accord with the assessment formula established in BID 21's annual operating plan, provided, however, that no such special assessment (together with the standard BID 21 annual assessment) may cause any year's annual aggregate assessment to exceed the BID's prior year annual aggregate assessment by 6% or more. BID 21 agrees to include (and not eliminate) reasonable costs for the streetscape enhancement project described in this agreement in each of its annual operating plans, which costs shall include reserves consistent with the reserves that BID 21 maintains for its other programs.

- C. Notwithstanding paragraph “B” above, the Commissioner may, at his sole discretion, undertake emergency repairs to the improvements listed in Exhibit “A” in cases where he has determined that the public health or safety is at immediate risk. The cost of any such repairs to elements for which BID 21 is responsible (as outlined in Exhibit “B”) shall be billed to BID 21 following the procedures outlined in paragraph “B” above.

- D. Approval by the Common Council of the City of Milwaukee of this agreement shall (at no cost to BID 21) substitute for any Special Privilege Permit that might otherwise be required by City Code or State Statute for the items listed in Exhibit “A”. The Commissioner shall review and approve the specifications and location or relocation of all the improvements listed in Exhibit “A” prior to their initial installation or any subsequent relocation.

- E. Unless mutually agreed otherwise by both parties and subject to approval of its annual operating plan, the term of this agreement shall coincide with the existence of BID 21. However, should the City, per paragraph “A” above, remove or replace with standard City improvements any of the public improvements covered by this agreement, the provisions of this agreement pertaining to the removed or replaced improvements shall become null and void. If the City decides to remove or replace with standard City improvements all of the items listed in Exhibit “A”, the entire agreement shall terminate. In addition, the agreement shall automatically end upon termination of the BID. Such termination is currently contemplated to occur January 1, 2008, unless the BID extends its automatic termination date in a subsequent operating plan. In the event this agreement ends due to BID termination, City may maintain, modify, remove, or replace the improvements covered by this agreement to the extent and in whatever manner it deems appropriate. No potential methods for funding such activities, including through creation of a special assessment district, are precluded by this agreement.

F. While BID 21 has agreed to be responsible for routine maintenance of and repairs to the various improvements as set forth in Exhibit "B" attached hereto, subject to the terms of this agreement, BID 21 reserves the right to elect, at its sole option, any of the following means to satisfy such responsibilities: (i) BID 21 may levy special assessments against its property owners under an annual operating plan; (ii) a new business improvement district or special assessment district may be created and BID 21 may assign its responsibilities hereunder to such new business improvement district or special assessment district (in which case, BID 21 shall be released from all responsibilities hereunder); and/or (iii) BID 21 may take advantage of any new legislation adopted by the Wisconsin State Legislature either modifying current Wisconsin Statute section 66.1109 or creating or allowing for the creation of any new quasi-governmental entity to carry out purposes similar to BID 21's, to which entity BID 21 may assign its responsibilities hereunder thereby releasing BID 21 from such responsibilities.

IN WITNESS WHEREOF, the proper City Officers have caused this document to be signed and the City's seal to be affixed this _____ day of _____, 2005.

CITY OF MILWAUKEE

In Presence Of:

Tom Barrett, Mayor

City Clerk

COUNTERSIGNED

Comptroller

STATE OF WISCONSIN)
) (SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, Tom Barrett, Mayor of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. _____, adopted _____, 2005.

Notary Public, State of Wisconsin

My commission expires: _____

STATE OF WISCONSIN)
 (SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, Ronald D. Leonhardt, City Clerk of the above named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such City Clerk of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. _____, adopted _____, 2005.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
 (SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, W. Martin Morics, City Comptroller of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such City Comptroller of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. _____, adopted _____, 2005.

Notary Public, State of Wisconsin
My commission expires: _____