

REPAIR AGREEMENT

AGREEMENT RELATING TO DAMAGE TO PROPERTY AT 1111 NORTH 10TH STREET

This Agreement, dated as of this day of May, 2006, is entered into by the Milwaukee Board of School Directors ("MPS"), and the Wisconsin Department of Transportation ("DOT"). The parties hereto hereby agree as follows.

1. **Marquette Interchange Project.** DOT, under authority of Wis. Stat. Ch. 84, has undertaken construction of what is commonly known as the Marquette Interchange Project.
2. **North Leg.** The North Leg of the Marquette Interchange Project involves construction extending from I-43 at North Avenue south to Wisconsin Avenue in downtown Milwaukee and requires construction directly adjacent to MPS' building located at 1111 N. 10th Street (sometimes also referred to as 1110 N. 10th Street or 1124 N. 11th Street), Milwaukee Wisconsin (hereinafter the "FM Building") (tax key no. 391-0261-111-3; 4th Aldermanic District).
3. **DOT-Walsh Contract.** The DOT awarded Walsh Construction Company of Illinois ("Walsh") the contract for construction of the North Leg of the Marquette Interchange Project. Walsh is DOT's contractor and change orders or directives referred to or contemplated herein pertain to the DOT-Walsh contract. DOT (not MPS) is responsible for payments to Walsh under the DOT-Walsh contract (including change orders thereto or directives thereunder). Nothing contained herein may be construed as any State or DOT waiver of any rights (contractual or otherwise) against Walsh, its surety, or Ace (defined below), or against any other DOT contractor, subcontractor or supplier. Nothing in this Agreement accords any third-party-beneficiary rights whatsoever on any non-party that may be enforced by any non-party to this Agreement. Change orders or directives from DOT to Walsh hereunder are intended to address duties to MPS hereunder, and are in no way intended to impact any right or claim DOT may have against Walsh, its surety, or Ace.
4. **Insurer, Ace.** Ace American Insurance Company is the general liability insurance carrier providing the general liability coverage for the DOT and all contractors working on the Marquette Interchange Project including Walsh.
5. **Damage.** During construction of a secant wall directly adjacent to the FM Building, Walsh over-excavated, causing soil instability and resulting damage to the secant wall and to the FM Building. Damage to the FM Building includes exterior as well as interior issues, including, but not limited to: structural and foundation damage; cracks on both the outside and inside of the FM Building; shifting of windows and gaps around their frames; foundation shifting; and damage to the sidewalk adjacent to the FM Building. The full extent of the actual damage is not yet necessarily known — but in the interim the DOT and MPS have cooperated by entering into this Agreement so that repair work can take place now (per the terms and conditions contained herein) and so freeway-project-work disruption can be minimized and MPS (see below) and DOT can reserve their rights.
6. **Ace Claim.** On or about February 13, 2006, MPS filed a Notice of Claim (the "Ace Claim") with Ace for the resulting damage to the FM Building. ACE acknowledged receipt of the MPS Claim. See April 20, 2006 letter from Ace's Jacqueline Miraglia (Claim No. JY06J0028083, Policy No. G18401903, Miraglia phone: 302-476-6905, Miraglia e-mail: Jacqueline.miraglia@ace-ina.com).
7. **State Claim.** MPS reserves all rights at law and in equity to file a claim with or against the State of Wisconsin.

8. **Emergency; Urgency.** DOT has informed MPS of the urgency of entering into this Agreement so that the repairs to the secant wall can be completed in a timeframe that will avoid or at least minimize disruption to the Marquette Interchange Project and freeway and traffic issues. MPS has informed Walsh, DOT, and Ace of its concern for the integrity of its FM Building (now and in the future) and for the safety of its employees and invitees who frequent and use the FM Building.

9. **Walsh Exterior Work.** The parties agree that DOT shall direct Walsh via change order(s) to promptly perform the necessary structural and exterior repairs to the FM Building, along with all work necessary to stabilize the FM Building and ensure its integrity. Before undertaking any such work, DOT will direct Walsh to provide MPS with plans and specifications governing the design and method of the structural and exterior repairs (the "Walsh Plans and Specs") and obtain MPS' written approval of the Walsh Plans and Specs as evidenced by the signatures of both Gina Spang and Richard Moore prior to any work commencing. DOT will direct Walsh's work to be done in a good and workman like manner and in strict accordance with the Walsh Plans and Specs. Without compromising quality and integrity of work, DOT will direct Walsh to carry out its work duties in a prompt and speedy fashion – understanding that Walsh's activities will be disruptive to MPS and that the parties hereto wish to minimize such disruption to the greatest extent possible. Prior to commencing work, DOT will direct Walsh to provide MPS with a written schedule (dates and times) for the Walsh work and DOT will obtain MPS' written approval of same (by signatures of said Spang and Moore), which written approval shall not be withheld unreasonably. DOT has directed Walsh to so perform. All work to the FM building and otherwise required by the Walsh Plans and Specs shall be completed within 45 days of initial commencement of such work.

10. **Walsh Interior Work.** The parties agree that MPS at its sole option may either perform all work on the interior of the FM Building necessary to restore the building to status quo ante, or have that work done by Walsh via DOT direction or change order(s) as may be appropriate. MPS' decision with respect to who shall perform the work shall be made within 5 days of DOT's written notification to Richard Moore that all of the work anticipated in and required by paragraph 9 is complete. Should MPS opt to perform its own work, reimbursement to MPS will be made pursuant to paragraph 14. Should MPS opt to have the work performed by Walsh, MPS will hire an architect to prepare the plans and specifications detailing the scope, design and method of the repairs ("Interior Plans and Specs"), and DOT shall then direct Walsh (by change order or directive) to perform and complete the work necessary as required by the Interior Plans and Specs. The cost of preparing the Interior Plans and Specs shall be paid to MPS as set forth in paragraph 14. If Walsh (or its subcontractor) will be doing the work required by the Interior Plans and Specs, the same shall be completed promptly and within 20 days of the latter to occur of DOT and Walsh receipt of the Interior Plans and Specs, or the effective date of the Walsh subcontract for the work.

11. **Adequacy.** Notwithstanding MPS' review and approval of the Walsh Plans and Specs, or MPS' entry into this Agreement, or the Interior Plans and Specs, the DOT understands that MPS assumes no responsibility as to the adequacy of the design or method of the work required by the Walsh Plans and Specs, or for the work required by the Interior Plans and Specs, or for the cost thereof.

12. **MPS Not Responsible for Payment to Walsh.** DOT agrees that MPS shall have no responsibility or liability for any of the expense necessary for Walsh (or its agents, employees or subcontractors or materialmen or suppliers) to make any of the repairs or to do any of the work required of Walsh.

13. **Security During Construction.** During the period of time the FM building's front entrance is inaccessible via its current paved sidewalk, DOT, by change order or directive to Walsh, shall require

Walsh to provide a security guard from a nationally- or regionally- recognized firm to guard the temporary entrance from 7 a.m. – 5 p.m. on each weekday so that no unauthorized persons are permitted entrance to the building.

14. **Payment to MPS.** DOT agrees that it will fully support prompt payment to MPS, on a reimbursement basis, for MPS' reasonable costs and expenses for the following resulting from the damages to the FM Building: (a) MPS' costs to repair any damage to the interior of its building resulting from over-excavation and damage described herein should MPS elect to do the interior work and provide the required notice under paragraph 10 above; (b) The actual costs to MPS of an architect to draft the Interior Plans and Specs addressed in paragraph 10, should MPS choose to have Walsh perform the interior work; (c) MPS' costs to employ a structural engineer to review the adequacy of Walsh's Plans and Specs and any MPS plans to repair damage to the FM Building (including interior work); and (d) MPS' costs to re-locate a temporary entrance required as a result of the repair to the FM Building, including the cost to temporarily relocate an MPS receptionist. The parties understand that MPS needs to be promptly reimbursed for the aforementioned costs. If ACE does not promptly reimburse MPS (under MPS' Ace Claim), then DOT will set off the reimbursement amount against moneys otherwise due and payable by DOT to Walsh and pay that money over to MPS directly. (MPS, in any event, reserves all rights, including, but not limited to, rights against the State, DOT, Walsh, and Ace).

15. **TLE.** In order to provide Walsh access to make the necessary repairs to the secant wall and FM Building, surrounding areas (including the sidewalk) and interior repairs if MPS chooses that option, MPS hereby grants to DOT and Walsh a temporary limited easement and right of entry ("TLE") on the MPS lands surrounding, under and, if necessary, within the FM Building. The term of the TLE shall be coterminous with Walsh's duties hereunder. Prior to entry under the TLE for exterior work and prior to entry for interior work, DOT shall, in each instance, furnish MPS with a copy of the pertinent DOT-to-Walsh change order or directive regarding the work.

16. **PE.** MPS, after consultation with the City Attorney and approval by the City of Milwaukee's Common Council per Wis. Stat. § 119.60 (2), will grant the DOT a permanent easement ("PE") for the improvements necessary for Walsh as a result of Walsh's work hereunder. The actual PE shall be signed by each of DOT and City and shall be in form and substance reasonably approved by each of DOT and City, and shall be recorded by MPS at DOT's expense in the Milwaukee County Register of Deeds Office.

17. **DOT to Pay for TLE and PE.** Prior to Walsh commencing work required hereunder, DOT shall promptly pay to MPS \$3,000 for the TLE and \$15,000 for the PE. Per Wis. Stat. § 119.60 (1), the proceeds from the TLE and PE shall not go to the general City fund but shall become part of the school-construction fund.


18. **MPS Reservation of Rights.** Notwithstanding anything to the contrary contained herein, MPS expressly reserves (and does not waive) any and all rights it has at law and in equity, as well as any and all claims it may now or hereafter have under applicable Wisconsin law against the DOT, the State of Wisconsin, Walsh (and its agents, subcontractors, materialmen, and suppliers), and/or Ace for any and all loss, cost, expense, and/or damages to or affecting the FM Building or MPS, including, but not limited to, any and all rights to recover for known and unknown damages (whether exterior or interior, above surface or subterranean, and whether detected or not yet detected) affecting, directly or indirectly, the FM Building or MPS. Likewise, DOT expressly reserves (and does not waive) any and all rights at law and in equity against its contractors, subcontractors, suppliers, and materialmen, including all rights against Walsh, its surety and/or ACE.

19. **Amendment; Counterparts.** This Agreement may only be amended by a written instrument signed by or on behalf of all the parties hereto. This Agreement may be signed in one or more counterparts, each of which, when taken together, shall constitute one and the same document. Facsimile signatures shall be accepted as originals. The parties acknowledge that the 45 day and 20 day completion time frames in paragraphs 9 and 10 above are reasonable estimates, but are subject to mutual change upon completion and review of the related plans and specifications for the work.

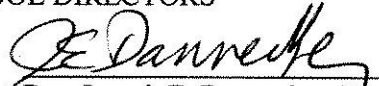
20. **Drafter Doctrine.** The doctrine of construing this Agreement against the drafter shall not apply. While drafted by MPS, it was reviewed, negotiated, and approved by all parties hereto who had the opportunity to obtain legal counsel prior to entry.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE ENTERED AS OF THE DATE FIRST WRITTEN ABOVE.

WISCONSIN DEPARTMENT OF
TRANSPORTATION


By: _____

MILWAUKEE BOARD OF SCHOOL
SCHOOL DIRECTORS


By: Joseph E. Dannecker, President
Milwaukee Board of School Directors

CAO doc no 104223

MPS BOARD MINUTES

[ITEM 11]

REPORT AND ACTION ON THE EMERGENCY AUTHORIZATION OF AN AGREEMENT RELATING TO REPAIRS OF DAMAGE TO THE FACILITIES AND MAINTENANCE SERVICES BUILDING AND THE GRANTING OF TEMPORARY AND PERMANENT EASEMENTS TO FACILITATE THE REPAIRS

This item initiated by the Administration

Attachments, under separate cover

BACKGROUND

MAY 25, 2006 Meeting

1. In June 2004, the Board approved a sale of property and the granting of temporary limited easements to the State Department of Transportation for work associated with the reconstruction of the Marquette Interchange Project adjacent to the Division of Facilities and Maintenance Services (DFMS) building.
2. During construction of a secant wall directly in front of the DFMS Building on Eleventh Street, the contractor over-excavated, causing soil instability which resulted in damage to the secant wall and to the DFMS building. Damage was to both the exterior and exterior of the building, including, but not limited to, structural and foundation damage; cracks on both the outside and inside of the building; shifting of windows and creation of gaps around their frames; shifting of the foundation; and damage to the sidewalk adjacent to the building.

ADMINISTRATION'S ANALYSIS

3. Due to the instability of the soils, the contractor has undertaken temporary stabilization efforts. Design efforts needed to begin immediately. Certain commitments on the part of the District were required in determining the best method of repair.
4. The office of the City Attorney worked with the State Department of Transportation to draft the attached agreement for the repairs and associated easements. All repairs will be made by the state's contractor and paid for by the Marquette Interchange's general liability insurance carrier.
5. Any and all costs incurred by the District – including but not limited to, staff time, independent consultants, security personnel, and repairs to the interior and exterior of the building – will be totally paid by the Marquette Interchange's general liability insurance carrier.
6. The DFMS will approve any plans for repairs to the District's building prior to work commencing. The State and its

contractor are responsible for all work associated with the repairs and will indemnify and hold MPS harmless.

7. The temporary easement is required for the contractor to be able to work on our property to make the necessary repairs to the building. The permanent easement is required for the tie-back system that will be used for the repair of the secant wall. These tie-backs will extend under the foundations of the existing building.
8. The temporary right of entry is required to access DFMS building's main parking lot and receiving dock from 10th street so that the current entrance on Highland can be closed due to safety concerns. The Administration anticipates a permanent relocation of the entrance due to the anticipated increased traffic patterns that will develop on Highland Avenue as a result of the opening of the entrance ramp on Highland Avenue at 11th street.

STRATEGIC PLAN COMPATIBILITY STATEMENT

9. The agreed-upon activities are consistent with the practice of fiscal responsibility to aid in informed decisions about allocation of resources for district programs, functions and operations.
10. The Board's approval is required to execute third-party easements.

STATUTE, ADMINISTRATIVE POLICY, OR BOARD RULES STATEMENT

11. In accordance with Wis. Statute 119.60 (1) and Administrative Policy 5.01, Facilities, proceeds from the easements are to be placed in the construction fund.

FISCAL IMPACT STATEMENT

12. This item does not authorize expenditures. The temporary limited easement will generate \$3,000 of unanticipated revenue, and the permanent easement will generate \$15,000. These proceeds will be placed in the construction fund. There is no cost associated with the right of entry.
13. All work by the contractor for the repair of the building will be paid by the Marquette Interchange's general liability insurance carrier directly to the contractor.

14. Any expenses incurred by the District will be reimbursed by the Marquette Interchange's general liability insurance carrier and deposited into the accounts from which expenditures were made.
15. Upon approval of this item, the attached agreement will be executed by the proper officials. Work is scheduled to begin within the month and is anticipated to be completed by August.

ADMINISTRATION'S RECOMMENDATION

The Administration recommends that the Board:

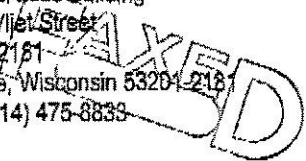
1. grant the temporary limited easement for repairs associated with the MPS facility at 1124 North 11 Street;
2. grant the permanent easement for repairs associated with the repair of the secant wall that has been constructed as a part of the Marquette Interchange Project;
3. approve the agreement relating to repairs of damage to the MPS property located at 1124 North 11 Street, and the terms in the right of entry; and
4. authorize the appropriate officials to execute the repair agreement, right of entry, and associated easement documents.

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MILWAUKEE PUBLIC SCHOOLS

Central Services Building
5225 W. Vliet Street
P.O. Box 2161
Milwaukee, Wisconsin 53201-2161
Phone: (414) 475-8833



October 16, 2006

Gregg Hagopian
Milwaukee City Attorneys Office
200 E Wells St # 800
Milwaukee, WI 53202-3515

Re: Permanent Easement on parcel 391-0261-111-3

Dear Mr. Hagopian:

I write to formally request that the City Council act to approve the permanent easement entered into between Milwaukee Public Schools ("MPS") and the Wisconsin Department of Transportation, necessitated by damage to MPS property during the construction of the North Leg of the Marquette Interchange.

As you know, the City Council's approval is required by virtue of its nominal ownership of the subject property for the benefit of MPS.

If you have any questions, please do not hesitate to contact me at (414) 475-8833.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joan C. Aguado'. The signature is fluid and cursive, with the first name 'Joan' being the most prominent.

Joan C. Aguado
Contract Law Specialist
Milwaukee Public Schools

cc: Richard Moore