

THIS AGREEMENT, By and between Marquette University, hereinafter known as MU and the City of Milwaukee, a municipal corporation, hereinafter known as "City";

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00) to each party in hand paid by the other, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained.

WHEREAS, MU is constructing a new Marquette University Law School Building, and

WHEREAS, In conjunction with the building construction, MU is reconstructing the street abutting the new building, (location is more particularly described by Exhibit "A"; and

WHEREAS, A City of Milwaukee water main is located within the limits of the above mentioned street; and

WHEREAS, The proposed elevation of the street is significantly lower than current elevation which requires the water main to be lowered; and

WHEREAS, The cost of the relocation of the water main will be funded entirely by MU, cost to include construction costs, material costs, and engineering and inspections costs; and

NOW, THEREFORE, In consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations,

IT IS AGREED, By and between the parties hereto that:

1. Funding Obligation

MU agrees to provide all funds necessary for design, construction, and inspection of the new water main.

2. Design Review

City shall review the water main alterations necessitated by the streetscape project. The proposed alterations to the water main have been design by the MU civil engineering consultant, R.A. Smith National. R.A. Smith National is also the designer of the streetscape project; therefore, the design of the water main is accommodated within the streetscape design.

3. Construction Option

MU and the Commissioner of Public Works have agreed that MU will let and administer the construction contract for the water main relocation covered by this Agreement. This agreement formalizes MU intent to manage the construction activities as it relates to the relay of the water main. The City shall perform its normal inspections during the course of construction. In addition, MU agrees to make a good faith effort to comply with and administer on behalf of the City, all applicable City rules and requirements pertaining to Emerging Business Enterprise and local resident involvement in the construction contract. MU agrees to comply with the Wisconsin Prevailing Wages. MU will furnish the City with an affidavit confirming compliance with the Wisconsin Prevailing Wages.

MU shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works. All payments to contractors must be pre-approved by the Commissioner.

4. Water Main Improvements

The estimated cost for plan review for the new water main is \$2,900. The estimated costs to construct and inspect the sewer improvements are as follows:

Construction (includes all materials and fittings)	\$65,125
Inspection (including as-built drawings)	\$14,600

Attached is the bid proposal accepted by MU which shall be used as the basis for determining the cost of the work.

5. Design Review and Inspection Fees

MU shall provide the \$17,500 fee for the review of the water main design and all inspections required by the City in the form of a check made out to the City of Milwaukee prior to the commencement of any work on the water main.

6. Easements

If needed, MU agrees to provide, where necessary and at no cost to the City, all easements and other property rights required to construct, operate and maintain the public improvements described herein.

7. Funding Guarantee for Construction

MU shall submit an irrevocable Letter of Credit or other funding guarantee, satisfactory in format to the City Attorney, in an amount equal to the estimated construction contract cost and all materials

and fittings (i.e. \$65,125) for the public infrastructure improvements that will be constructed by third party contractors prior to the award of any contracts, whether privately or publicly let. At the request of MU, the actual contract amount for the various improvements may be substituted for the estimated costs. In addition, the amount of the Letter of Credit may be reduced periodically to reflect payments made to contractors. Any such reductions shall be approved by the Commissioner of Public Works.

Any and all irrevocable Letters of Credit shall guarantee that MU's bank or savings and loan will provide the required funds to cover the contract cost of installing the applicable infrastructure improvements and will, upon simple request by the Commissioner of Public Works and the City Treasurer, release same to City as required, all such funds to be furnished interest free. The Letter of Credit or other funding guarantee shall be submitted to the City prior to the City or MU entering into any contracts for installation of public improvements.

8. Payments

In the event the City lets the public improvement construction contract, the contract costs for the public improvements will be billed to MU upon determination that such costs have been incurred by City. MU shall provide the City with funds to make contract payments. If such funds are not provided within 30 days of being requested, City may draw against the funding guarantee referenced in paragraph 10. It shall be further understood and agreed that where MU funded work covered under the terms of this Agreement does not proceed to the bid or contract stage, the City shall still retain a sufficient amount of the MU's design review and

inspection fee fund to cover expenses incurred by the City for plan review work commenced by the City at the MU's request.

9. Refunds

Upon completion of the public improvements and all associated City work, City shall return any unspent portions of MU cash deposits (i.e. the Engineering Design Deposit and the Construction Engineering Deposit).

10. Inspections

Both parties agree that all materials furnished and all work performed hereunder shall conform to all regulations and specifications of the City of Milwaukee and its Commissioner of Public Works and shall be subject to inspection by the Department of Public Works. All engineering and inspection costs incidental to the installation of the public improvements covered by this Agreement shall be subject to the terms of this Agreement, the cost of such service when furnished by City being established as the wages of the person or persons engaged in such work plus all costs of overhead.

11. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon satisfactory completion to the water main improvements installed under the terms of this Agreement, title to such improvements shall vest in the City of Milwaukee and that the City will accept the obligation of operation and maintenance in accordance with its standard practice.

12. Termination of Existing Water Main Easement

In connection with the water main improvements described in paragraph 4 above, an existing, recorded water main easement, a copy of which is attached hereto as Exhibit "B", will be vacated by the City and the section of water main located therein will be abandoned. The City shall record such termination of the easement upon execution of this agreement and upon provision by MU of the deposits and funding guarantees listed in paragraphs 9, 10, and 11.

13. City Ordinances and Regulations

City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedures unless such work is to be undertaken by City Forces or by MU per paragraph 3. It is further understood and agreed that this Agreement is subject to all City ordinances and regulations and nothing herein shall be deemed to waive or supersede such requirements.

THIS AGREEMENT, drafted by the City of Milwaukee, shall be binding upon MU and its successors and assigns, and upon the City, its successors and assigns.

IN WITNESS WHEREOF, MU has caused this document to be signed  
and sealed this \_\_\_\_ day of \_\_\_\_\_, 2010.

Marquette University

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN    )  
  ) SS  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2010,  
\_\_\_\_\_ as \_\_\_\_\_ of Marquette University  
who executed the foregoing instrument, and acknowledged that they executed the  
same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_

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 \_\_\_\_\_, 2010.

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 \_\_\_\_\_, 2010, 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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_



STATE OF WISCONSIN    )  
  ) SS  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
Ronald 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  
\_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_

STATE OF WISCONSIN    )  
  ) SS  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
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  
\_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_