

AGREEMENT

THIS AGREEMENT, dated as of the ____ day of _____, 2002, is entered into by and between the CITY OF MILWAUKEE ("the City"), acting through its Commissioner of Public Works ("Commissioner"), and WISCONSIN PAPERBOARD CORP. ("Wisconsin Paperboard").

WHEREAS, Wisconsin Paperboard is the owner of certain real property located at 1514 East Thomas Avenue, Milwaukee, Wisconsin, and adjacent to the Milwaukee River ("the Property"); and

WHEREAS, in September 1998, a water main owned by the City and operated by the City's Water Works Department ruptured. The rupture resulted in the deposit of soils from the Property ("Native Soils") into the Milwaukee River and the creation of a hole on the Property on the bank of the Milwaukee River, referred to herein as "Impacted Fill Area" and depicted in yellow on Attachment A, which measured approximately 80 feet long, 40 feet wide into the Property from the bank of the River (narrowing in width at the top of the bluff), and 25 feet deep; and

WHEREAS, the City, through its Department of Water Works, took responsibility for repairing the water main and restoring the Property to its previous condition; and

WHEREAS, during the final three days of repair work, the City determined that recovered Native Soils were insufficient to fill the entire Impacted Fill Area, and the City obtained additional "Off-Site Material" and had that Off-Site Material (estimated to be 12 truck loads containing approximately 120 cubic yards) deposited into the topmost portion of the Impacted Fill Area; and

WHEREAS, Wisconsin Paperboard has requested the City, and the City has agreed, to remove the Off-Site Material and replace it with clean fill material; and

WHEREAS, Wisconsin Paperboard filed a notice of claim with the City on January 8, 1999, seeking either equitable or legal relief regarding the damage to the Property arising from the ruptured water main and, since that time, the parties have been discussing alternatives for the removal of the Off-Site Material and the replacement thereof with suitable material; and

WHEREAS, the City, acting through its Commissioner, desires to settle any potential legal claims that Wisconsin Paperboard may have against it relating to the Impacted Fill Area and to reduce its potential liability for future claims or regulatory proceedings that may arise related to the Impacted Fill Area;

NOW, THEREFORE, in consideration of the mutual covenants described herein, the parties hereby agree as follows:

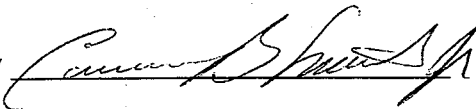
1. Subject to the provisions of paragraph 3, the City will perform excavation and restoration work (the "Work") at the Property to remove all Off-Site Fill Material (currently estimated to be 120 cubic yards of material) in the topmost portion of the Impacted Fill Area and to restore the Property to substantially the same condition as existed prior to the rupture of the water main. Wisconsin Paperboard hereby gives its permission to the City, its contractors and subcontractors, to enter upon the Property to perform the Work.
2. The City and Wisconsin Paperboard hereby agree that City personnel and/or contractors shall begin site investigation work on a date mutually agreeable to the Company and the Commissioner, and the parties further agree that the City will diligently endeavor to complete the Work by an agreed upon date. If weather conditions will not permit commencement of the Work on the date initially agreed to, the City shall coordinate the re-scheduling of the Work with Wisconsin Paperboard plant manager, Robert Wright.
3. The sampling plan attached hereto as Attachment B details the sampling locations, sampling methodology, and laboratory parameters for samples to be obtained from the excavation (the "Sampling Plan"). Upon the request of Wisconsin Paperboard, the City shall direct its contractor to provide "split" samples to Wisconsin Paperboard of all samples obtained during the Work. The final parameters of the excavation shall be jointly determined by the parties based upon the results obtained from the Sampling Plan. If the parties' representatives are unable to reach agreement on the final parameters of the excavation, then the Regional Vice-President and General Manager of Wisconsin Paperboard, and the Superintendent of the Milwaukee Water Works shall meet and attempt to resolve any disputes. If the parties can not agree on the final parameters of the excavation within 10 days after the completion of the Sampling Plan, then either party may terminate this Agreement upon delivery of a written notice to the other party.
4. The excavation shall not be filled in until the finally agreed upon parameters of the excavation have been completed. Wisconsin Paperboard may inspect the excavation prior to filling in order to determine if the excavation has been completed in accordance with the agreed upon parameters. If Wisconsin Paperboard determines that the excavation has not been completed in accordance with the agreed upon parameters, then the parties shall attempt to resolve the dispute. If the parties' representatives are unable to reach agreement on this issue, then the Regional Vice-President and General Manager of Wisconsin Paperboard, and the Superintendent of the Milwaukee Water Works shall meet and attempt to resolve any disputes.
5. All material excavated from the Property shall be disposed of in accordance with applicable federal, state, and local laws. Any manifests or other disposal documentation shall identify the City as the generator of the material.
6. Fill material used to fill the new excavation and restore the Property shall: (1) be tested prior to placement on the Property to demonstrate that the replacement fill material is not contaminated, and the scope of testing and all test results for the fill material must be approved by Wisconsin Paperboard before the fill material is placed on the Property; or

- (2) be a specific product to be purchased from a specific commercial materials supply company selected by Wisconsin Paperboard.
7. The City or its contractor and/or subcontractor shall coordinate the soil removal and replacement work with Wisconsin Paperboard's plant manager, Robert Wright, to prevent and minimize inconvenience to Wisconsin Paperboard's operations and allow representatives of Wisconsin Paperboard to observe the City's activities.
 8. The City or its contractor and/or subcontractor will cut, remove and salvage portions of the existing chain link fencing and posts as required to access the site to perform these activities. Temporary construction fencing will be installed across the opened fence area during the time there are no construction activities taking place.
 9. The City will restore the property to substantially the same condition as existed prior to the rupture of the water main, including, but not limited to, compaction and grading of the replacement fill material, placement of topsoil, seed and mulch in replacement fill areas and areas disturbed by the City's activities hereunder and replacement of fencing.
 10. Upon or prior to the execution of this Agreement, and as a condition to the effectiveness of this Agreement, the City shall notify the Wisconsin Department of Natural Resources ("WDNR") of its decision to remove the Off-Site Material, replace the Off-Site Material and any additional removed material with clean fill and restore the Property. The removal of the Off-Site Material shall be to the satisfaction of the WDNR.
 11. Upon completion of the excavation and restoration work, the City shall prepare a report of the excavation and restoration activities, which shall be subject to Wisconsin Paperboard's approval. Upon obtaining Wisconsin Paperboard's approval of the report, the City shall, within 14 days following such approval, submit the report to the WDNR and request final closure for this matter.
 12. The City shall obtain written confirmation of closure from the WDNR, which confirmation shall include the following assurances:
 - (a) no further action is required by the WDNR regarding the presence and removal of the Off-Site Material; and
 - (b) All Off-Site Material has been removed and therefore no deed restriction is required by the WDNR relative to the presence of such material.
 13. The City shall perform any additional work relative to the removal of any additional Off-Site Material requested by the WDNR in order to obtain written confirmation of closure as described herein at paragraph 12. The City shall have the right to contest a determination by the WDNR requiring the removal by the City of additional Off-Site Material, but such right to contest such determination does not relieve the City of its obligation to diligently and promptly pursue and obtain written confirmation of closure at its sole expense.

14. The City will reimburse Wisconsin Paperboard for the reasonable costs and expenses of Wisconsin Paperboard's environmental consultant to review and comment upon the City's work plan and report, to review sampling data, and to observe the City's activities. The amount of such reimbursement shall not exceed \$5,805.
15. Upon completion of the activities set forth in paragraphs 1 through 14, Wisconsin Paperboard shall confirm in writing that it will not pursue any legal or equitable claims or regulatory proceedings against the City arising from the placement of the Off-Site Material into the Impacted Fill Area. It is expressly understood and agreed that Wisconsin Paperboard will not release the City from any liability arising from the disposal of the excavated materials or arising out of the City's performance of the excavation and restoration activities described in this Agreement.
16. The statements in this Agreement are contractual terms, and are not mere recitals. This Agreement shall be governed by the laws of the state of Wisconsin.
17. No modification, amendment, extension or waiver of this Agreement or any provision thereof shall be binding upon the parties unless made in writing and signed by a representative of the City and an authorized representative of Wisconsin Paperboard.
18. The enforceability, and validity or legality of any provision of this Agreement shall not affect or impair the continuing enforceability or validity of any other part of this Agreement, all of which shall survive and be valid and enforceable.
19. This Agreement may be executed in any number of counterparts and shall be binding when it has been executed by the final signatory party to execute a counterpart. Facsimile signatures may be provided and are equally binding on both parties.

Dated as of the 16 day of July, 2002.

WISCONSIN PAPERBOARD CORP.

By 

Name: Converse B. Smith, Jr.
Title: Regional Vice President

Dated as of the ____ day of _____, 2002.

CITY OF MILWAUKEE

By _____

Name: Mariano Schifalacqua
Title: Commissioner, Department of
Public Works