

**PUBLIC IMPROVEMENT DEVELOPMENT  
AND MAINTENANCE AGREEMENT FOR  
BUSINESS IMPROVEMENT DISTRICT NO. 41  
(Downer)**

This agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Milwaukee (“City”) and the Board of Business Improvement District No. 41 (“Board”)

WITNESS:

WHEREAS, on October 23, 2007 via Resolution File No. 070843, the Common Council of the City of Milwaukee created Business Improvement District No. 41 (“District”) pursuant to section 66.1109, Wisconsin Statutes, and approved the District’s first annual operating plan;

WHEREAS, the approved operating plan calls for the Board and the City to enter into an agreement to finance and install a mutually acceptable streetscape improvement project (“Project”) for the District;

WHEREAS, on \_\_\_\_\_, via Resolution File No. \_\_\_\_\_, the Common Council of the City of Milwaukee provided \$300,000 in the City funds for the Project;

WHEREAS, on \_\_\_\_\_, Resolution File No \_\_\_\_\_, the Common Council of the City of Milwaukee authorized the Commissioner of Public Works to proceed with the Project;

WHEREAS, on \_\_\_\_\_, via Resolution File No. \_\_\_\_\_, the Common Council of the City of Milwaukee approved this agreement and authorized the proper City officers to execute the agreement on its behalf; and

WHEREAS, on \_\_\_\_\_, the Board approved this agreement and authorized the proper officers of the Board to execute the agreement on its behalf;

NOW, THEREFORE, the City and the Board, in consideration of the premises and the mutual promises and undertakings hereinafter contained, mutually agree as follows:

I.

**City Activities**

The City shall undertake the following, except that with the concurrence of the commissioner of Public Works the Board or its contractor may perform portions of A., B., or E. below:

- A. Obtain all governmental permits and approvals necessary to construct the project:
- B. Construct the Project in accordance with the Improvements List attached to this agreement as Exhibit A.
- C. Provide City funds for the Project as specified in Common Council Resolution File No. \_\_\_\_\_;
- D. Assist the Board in financing its portion of the Project's cost by providing up to \$300,000 grant from the Neighborhood Commercial District Street Improvement Fund (NCDSI) and \$300,000 from the Legacy Redevelopment Corporation (see Exhibit D.
- E. Construct the Project in accordance with the project budget attached to this agreement as Exhibit C.

II.

**Board Activities**

The Board shall:

- A. Provide funding for maintenance and repair of the features of the Project, which exceed City standards in accordance with Section V of this agreement.

II.

**Changes**

No material changes shall be made by the City in the Project improvements listed in Exhibit A or in the Project budget as shown in Exhibit B without prior written consent by the Board.

IV.

**Inspections**

The Board or its contractor may make reasonable inspections of the Project during construction, provided that such inspections do not interfere with the progress of the work.

In the event that the Board suspects, as a result of the inspections made by it or its contractor, that the City is not constructing the project in accordance with the approved plans and specifications, the Board shall promptly inform the City of its concerns in writing and the City shall, as soon as reasonably possible, remedy the area of concern or, if it cannot, satisfy the Board in writing the reasons why.

V.

**Maintenance**

- A. Business Improvement District No. 41 (Historic Downer Avenue II) shall perform routine maintenance of and shall undertake capital repairs to the various improvements covered by this agreement as set forth in Exhibit "A" (Improvements LIST) and Exhibit "B" (MAINTENANCE & CAPITAL REPAIR RESPONSIBILITIES) attached hereto. The threshold for maintenance or repairs shall be same or higher than that used by the City of Milwaukee on other public right-of-way improvements in the city.
- B. If the Board fails to comply with its responsibilities as outline in Exhibit B, the City's Commissioner of Public Works ("Commissioner") shall provide the Board with a written notice setting forth the work, which the Commissioner determines, has not been performed. If the Board 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 cost of such work shall be billed to the BID. If the Board has not paid the cost of such maintenance work within 60 days after having received a written bill for such work from the commissioner, the City may assess the cost against the property within BID 41 in accordance with the applicable special assessments method

contained in the Operating Plan for BID 41 or any amendment to the Operating Plan.

- C. Notwithstanding paragraph “B” above, the Commissioner may, at his sole discretion, undertake emergency repairs to the items listed in Exhibit “A” in cases where public health or safety is at immediate risk. The cost of such repairs shall be billed to the BID following the procedures outlined in paragraph “B”>
- D. Approval by the Common Council of this Agreement shall substitute for any Special Privilege Permit that might otherwise be required by Section 245.12 of the Milwaukee Code of Ordinances and Section 66.045 of State Statutes of the items listed in Exhibit “A”. The Commissioner shall review and approve the specifications and location of all the improvements listed in Exhibit “A” prior to their initial installation .
- E. The term of this agreement shall be for 20 years but extended up to an additional 20 years upon mutual concurrence of both parties. The total removal of all items listed in Exhibit “A” and their replacement with standard City of Milwaukee public improvements shall automatically resulting termination of this agreement.

## VI.

### **Force Majeure**

If any party is prevented from performing an obligation stipulated in this agreement and such delay is for reasons which were beyond the party’s control, including but not limited to: acts of God, war, unusually severe weather conditions, strikes, civil disturbances, delays in obtaining or inability to obtain easements or other property rights which are necessary for construction or operation of the project, or delays in obtaining necessary supplies and/or equipment for construction, then the time within which the party was to perform shall be extended for a period equal to the delay.

## VIII.

### Coordination and Cooperation

- A. The City, through its Commissioner of Public Works, shall cooperate with the Board in the performance of the City's responsibilities under this agreement. The Commissioner of Public Works shall formally designate a representative to serve as liaison with the Board for the Project.
- B. The Board, through its Chairperson, shall cooperate with the City in the performance of the Board's responsibilities under this agreement. The Chairperson of the Board shall formally designate a representative to serve as liaison with the City for the project.

### Written Notices

Any written notices to be sent under this agreement shall be sent to the following individuals:

- A. For the City:

Commissioner of Public Works  
Department of Public Works  
Room 516, Municipal Building  
841 North Broadway  
Milwaukee, WI 53202

With a copy to:

Commissioner of City Development  
Department of City Development  
809 North Broadway  
P.O. Box 324  
Milwaukee, WI 53202

- B. For the Board:

Jake Provan, Executive Director  
Historic Downer Avenue Business Improvement District 41  
788 North Jefferson ST; Suite 800  
Milwaukee, WI 53202

X.

**Exhibits**

The following Exhibits A, B, C, and D are incorporated herein and made part hereof:

- Exhibit A: Improvements List for Downer Avenue Streetscaping Project
- Exhibit B: Maintenance Standards, Downer Avenue Streetscaping Project
- Exhibit C: Budget, BID No. 41 Downer Avenue Streetscaping
- Exhibit D: Legacy Redevelopment Corporation Loan Commitment for BID No. 41 Downer Avenue Streetscaping

IN WITNESS HEREOF, the parties have executed this agreement the day and year first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

\_\_\_\_\_

By \_\_\_\_\_  
Mayor

\_\_\_\_\_

By \_\_\_\_\_  
City Clerk

COUNTERSIGNED:

By \_\_\_\_\_  
Comptroller

IN THE PRESENCE OF:

BOARD OF BUSINESS  
IMPROVEMENTS DISTRICT NO.

4141

\_\_\_\_\_  
\_\_\_\_\_

By

Approved as to Form, Content and Execution  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By \_\_\_\_\_  
Special Deputy City Attorney

**EXHIBIT A**  
**IMPROVEMENTS LIST**

The streetscape improvements listed below will be located along Downer Avenue from Webster to Park Place. Detailed plans for the streetscape are on file in the City of Milwaukee department of Public Works offices (DPW). Specific maintenance responsibilities are outlined in Exhibit "B". (See attached streetscape plans)

**Pavement Treatments**

Demo Sidewalk, Pavers  
Curb and Asphalt Contingency  
New sidewalk/integral  
walk(pavers section)  
Improved Pedestrian crosswalks  
New Tenant Entries  
Bury Power Lines  
Planning/Surveying Fees

**Other Street amenities**

New Trash Receptacles  
Trees and Planters  
Bike Racks  
Street Furniture





**EXHIBIT B**

**MAINTENANCE & REMOVAL / REPLACEMENT RESPONSIBILITIES**

( to completed by DPW)

## EXHIBIT C

### Downer Avenue Streetscape Budget

<b>Conceptual Budget</b>	<b>Budget Value</b>
Demo Pavers	\$ 43,444.00
Curb and Asphalt Contingency	\$ 31,771.00
Demo Tenant Entries	\$ 13,489.00
New sidewalk	\$ 109,501.00
New integral walk (pavers section)	\$ 302,050.00
New Tenant Entries	\$ 25,170.00
Bury Power Lines	\$ 50,000.00
Planning/Surveying Fees	\$ 24,575.00
 <u>Variables</u>	
New Trash Receptacles	\$ 12,000.00
Updated Pedestrian Crosswalks	\$ 93,600.00
Tree Areas	\$ 8,000.00
Planters	\$ 15,000.00
 Bike Racks	 \$ -
Benches	\$ 23,100.00
 BID Package Subtotal	 \$ 600,000.00

# Exhibit D



**LEGACY BANK**  
2102 West Fond du Lac Avenue  
Milwaukee, WI 53206  
Tel. 414-343-6900 • Fax 414-343-6910  
[www.legacybancorp.com](http://www.legacybancorp.com)

June 11, 2009

Mr. Jake Provan  
Historic Downer Avenue Business Improvement District #41  
788 N. Jefferson St., Suite 800  
Milwaukee, WI 53202

Dear Mr. Provan:

On behalf of Legacy Bank and Legacy Redevelopment Corporation we want to thank you for this opportunity to finance the street scape project for the Historic Downer Avenue Business Improvement District #41, City of Milwaukee, State of Wisconsin. The following terms and conditions will be part of the loan:

Borrower:	Historic Downer Avenue Business Improvement District #41
Type:	Term Loan
Amount:	\$300,000
Purpose:	Finance \$300,000 of the \$600,000 proposed streetscaping project for Downer Ave, Milwaukee, WI
Total Project:	\$600,000 with \$300,000 provided in a grant from the City of Milwaukee. \$300,000 to be financed by Legacy Bank with a \$150,000 participation by Legacy Redevelopment Corporation
Interest Rate:	6.50%
Bank Fees:	1% closing fee and \$275.00 documentation fee
Term:	5 years
Amortization:	15 years

## Exhibit D

Repayment:	Interest only monthly. Annual principal payments of \$20,000 due on March 31 <sup>st</sup> of each year beginning on March 31, 2010.
Maturity Date:	Matures 5 years from the date of the loan
Prepayment Penalty:	1%
Collateral:	None
Guarantees:	Unlimited guaranty of Van Buren Management, Inc.
Disbursement:	\$300,000 grant will be received from the City of Milwaukee prior to any loan disbursements. These funds are to be deposited into borrowers account at Legacy Bank in an escrow account. All disbursements will be made through Chicago Title Insurance Company under the terms of a written disbursing agreement. Any fees associated with the disbursements will be the responsibility of the borrower.

This commitment is also subject to the following terms and conditions:

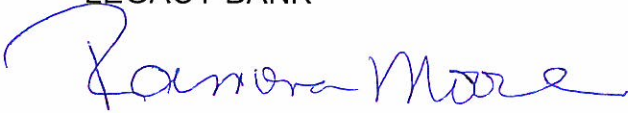
1. Borrower to be responsible for all title fees, recording fees, disbursement costs, out-of-pocket expenses associated with preparation, execution and filing of the documentation required evidencing this credit facility.
2. Reporting Requirements:
  - a) Annual management prepared financial statements from borrower
  - b) Annual budget from borrower
  - c) Annual assessment breakdown of BID properties
  - d) Annual management prepared financial statements from guarantor
3. Prior to closing:
  - a) Articles of Incorporation, Certificate of Status, Operating Agreement, and a Certificate of Authorized Signers for borrower and guarantor
  - b) Complete project budget with itemization of cost, vendor and purpose.
  - c) All corporate depository accounts of borrower to be maintained with Legacy Bank.

Again Legacy Bank and Legacy Redevelopment Corporation would like to thank you for this opportunity and we appreciate the corporate relationship. Please contact me at 343-3041 with questions or if I can be of any assistance.

# Exhibit D

Sincerely,

LEGACY BANK



Ramona Moore  
Vice President

LEGACY REDEVELOPMENT CORPORATION



Susan K. Eick  
President

Please sign and return by 7/15/09 if you agree to the Terms and Conditions set forth in this commitment letter.

Historic Downer Avenue Business Improvement District #41

\_\_\_\_\_  
BY: Jake Provan, Executive Director

\_\_\_\_\_  
Date