

**OUT OF PROGRAM AGREEMENT
HARLEY – DAVIDSON MUSEUM PROJECT**

THIS AGREEMENT, By and between H-D Milwaukee, LLC, an affiliate of Harley-Davidson, Inc., hereinafter known as “Developer”, 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 by the other, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained.

WHEREAS, The Developer plans to develop the land bordered by 6th Street on the west, the Menomonee River on the north, and the South Menomonee Canal on the east and the south including two parcels immediately west of 6th Street (the “Site”); and

WHEREAS, The development will consist of the Harley Davidson Museum and related retail, office, and commercial facilities; and

WHEREAS, The Developer has entered into a Cooperation, Reimbursement, and Redevelopment Agreement with the City of Milwaukee and its Redevelopment Authority; and

WHEREAS, This Agreement outlines the terms and conditions of the museum project; and

WHEREAS, In order for the Developer to undertake the museum project, a City water main located along the site's western border must be

relocated and several sections of water main within the site must be abandoned;
and

WHEREAS, In accord with the Development Agreement, the Developer has requested a subagreement providing for the water main relocation; and

WHEREAS, The requested water main relocation could be accomplished under the terms of an Out-of-Program Agreement upon condition that title to the relocated water main, upon its completion, shall vest in the City of Milwaukee subject to conditions more fully hereinafter stated.

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

Developer agrees to provide all funds required for design, construction, and inspection of the water main improvements, easement preparation as may be required, and any related City work necessitated by the project upon the terms and conditions set forth herein.

2. Water Main Improvements

The following alterations will be made to the existing system of water mains located either on the site or within the adjacent 6th Street and West Canal Street rights-of-way:

- a. Roughly 500 feet of 16-inch water main located in 6th Street right-of-way south of West Canal Street will be relocated approximately 50 feet to the west.

- b. A section of 20-inch water main located north of the West Canal Street right-of-way and east of 6th Street will be reconfigured to remove it from the development site.
- c. Approximately 450 feet of 6-inch water main located in West Canal Street right-of-way east of 6th Street will be abandoned in place.
- d. Approximately 350 feet of 8-inch water main located in 6th Street right-of-way north of West Canal Street will be abandoned in place.
- e. Approximately 500 feet of 8-inch water main extending easterly into the site from the northern end of the water main described in (d) above will be abandoned.

The estimated cost for the water main work is:

Design engineering	\$ 14,000
Construction engineering (including fittings & materials)	52,000
Construction contract	<u>124,000</u>
Total estimated cost	\$190,000

City agrees that the Developer may review and comment upon plans for the work described above. City further agrees that any permits required for the water main work shall be obtained by the City.

3. Timing

Relocation of the 16-inch water main in 6th Street (2a above) will occur in 2005 and can be accomplished while the site continues to be actively used by DPW. Abandonment of the other water lines cannot occur until DPW vacates the site in

accord with the Cooperation, Reimbursement, and Redevelopment Agreement. Developer agrees to provide a right-of-entry or similar right to the City and its contractors if water main abandonment work will be performed after City's conveyance of the site to the Developer.

4. Other Improvements

Developer agrees that any other utility and access improvements necessary to serve the site shall be its responsibility and shall be undertaken by Developer at its sole expense. Developer further agrees that the City shall review and approve plans for any work of Developer to occur in the public right-of-way or within public easement areas. Permits legally required for any such work shall be obtained by Developer.

5. Private Utilities

Developer agrees that all private utility lines, if any, as necessary to provide telephone, communications, and electrical services to the development shall be installed underground, except where the City Plan Commission finds that such underground installations are not feasible.

6. Design Engineering Deposit

Developer shall deposit \$14,000 via a check made out to the City of Milwaukee to cover the cost of design engineering. No design work shall be started until this check has been provided. The City will hold the design deposit in a separate account and, at the request of Developer, upon completion of the design work shall provide a summary report on all costs charged to the account.

7. Construction Engineering Deposit

Developer shall deposit \$52,000 via a check made out to the City of Milwaukee to cover the cost of construction engineering and all required fittings and materials. A contract for the water main improvements shall not be awarded until this deposit has been made. City will hold the construction engineering deposit in a separate account and, at the request of the Developer, upon completion of the water main construction work shall provide a summary report on all costs charged to the account.

8. Funding Guarantee

Developer shall provide 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 of

the water main work (Estimate: \$124,000) prior to the award of any improvement contract.

The irrevocable Letter of Credit or other form of funding guarantee shall ensure that the Developer or Developer's bank or savings and loan will provide the required funds to cover the estimated construction contract cost of installing the applicable public 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.

City acknowledges that the funding guarantee may take the form of a cash deposit by Developer into an escrow account. In such event, any interest generated by escrow funds shall accrue to the Developer.

A contract for the water improvements shall not be awarded until the Letter of Credit or other funding guarantee has been provided.

9. Actual Costs

It is understood and agreed that any actual cost in excess of amounts estimated herein will be billed to Developer upon determination that such excess costs have or will be incurred by City. It is also understood and agreed that if the City's actual costs of design or construction engineering are less than the deposited amounts, City shall refund the balance.

It shall be further understood and agreed that where Developer funded work covered under the terms of this

Agreement does not proceed to the bid or contract state, the City shall still retain a sufficient amount of the Developer's engineering fund deposit to cover actual expenses incurred by the City for engineering and plan preparation work commenced by the City at the Developer's request.

10. Inspections, Fittings & Materials

City shall be responsible for ensuring that all materials furnished and all work performed hereunder conforms to all regulations and specifications of the City of Milwaukee and its Commissioner of Public Works. Such work shall be subject to inspection by and approval of inspectors and engineers furnished by the Department of Public Works. All engineering, inspection, materials and fittings 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 completion of the water main relocation, title to the relocated water main 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. It is further understood and agreed that the abandoned water mains shall be taken over by the Developer. City shall cap the ends of the abandoned mains at the points of cut off.

12. Building Permits

It is understood and agreed by both parties hereto that building permits for any planned structures to be served by the relocated water main shall not be issued until the Developer has provided the Letter of Credit (or other funding guarantees) and cash deposits referenced in paragraphs 6, 7, and 8.

13. Occupancy Permits

It is understood and agreed by both parties hereto that occupancy permits for any structure to be served by the relocated water main shall not be issued until all planned public improvements have been sufficiently completed so essential public utility services are provided to the structure.

14. City Ordinances and Regulations

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 supercede such requirements.

15. Easements / Rights-of-Entry

All easements and rights-of-entry required pursuant to this Agreement shall be prepared in consultation with Developer in order to minimize any adverse impacts and to ensure compatibility with Developer's museum project.

16. Contingent Alternative

In the event the actual bid amount for the water main construction work exceeds the estimated amount enumerated in this Agreement by more than 10%, the Developer may require the City to reject the bid. The Developer shall then undertake the water main improvements with its own

contractor in accord with the approved plans and specifications. City shall inspect the contractor's work and shall provide the appropriate fittings and materials.

It is acknowledged by both parties hereto that selection of this contingent alternative is likely to require an amendment to subject Out-of-Program Agreement.

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, 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 _____, 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: _____