

**PUBLIC IMPROVEMENT DEVELOPMENT
AND MAINTENANCE AGREEMENT FOR
BUSINESS IMPROVEMENT DISTRICT NO. 36
(Riverworks II)**

This agreement is made this ____ day of _____, 2009, by and between the City of Milwaukee (“City”) and the Board of Business Improvement District No. 36 (“Board”)

WITNESS:

WHEREAS, on November 3, 2004 via Resolution File No. 040878, the Common Council of the City of Milwaukee created Business Improvement District No. 36 (“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 \$140,000 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 \$140,000 in from the Business Improvement District Loan fund (loan) to be repaid through special assessments levied by the Board on the real property within the District and \$140,000 from the Community Development Block Grant Agency (CDBG) Recovery Fund(grant).
- E. Construct the Project in accordance with the project budget attached to this agreement as Exhibit C.

II.

Board Activities

The Board shall:

- A. Repay the City for its portion loan including interest and finance charges applicable to the debt issued by the City for the Board's total portion of the project cost, through annual assessments on the real property within the District in accordance with the repayment schedule attached to this agreement as Exhibit C

- B. 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.

DRAFT 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. 36 (Riverworks 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 36 in accordance with the applicable special assessments method contained in the Operating Plan for BID 36 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 and 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.

Term

The term of the BID loan, in the amount of \$140,000 with an interest rate of 5.50%, shall be 20 years. This term shall include an option for prepay on the principal and an additional premium payment as calculated by the Office of the Comptroller.

VII.

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.

IX.

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

DRAFT

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:

Darryl Johnson, Executive Director
Riverworks II Business Improvement District 36
303 East Vienna Avenue
Milwaukee, WI 53212

X.

Exhibits

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

Exhibit A: Improvements List for Holton Streetscaping Project

Exhibit B: Maintenance Standards, Holton Streetscaping Project

Exhibit C: Budget, BID No. 36 Holton Streetscaping

Exhibit D: Repayment Schedule, BID No. 36 Holton Streetscaping Project

DRAFT

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

DRAFT

COUNTERSIGNED:

By _____
Comptroller

IN THE PRESENCE OF:

BOARD OF BUSINESS
IMPROVEMENTS DISTRICT NO.

3636

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 on Holton Street from Keefe Avenue to Concordia with a focus on the intersection on Townsend Street. Detailed plans for the streetscape improvements are on file in the City of Milwaukee Department of Public Works offices. The improvements listed below shall be considered to belong to the City of Milwaukee although the general maintenance obligations therefore shall be the responsibility of the BID. Specific maintenance responsibilities are outlined in Exhibit “B”.

Decorative Lighting Project:

The Milwaukee and Harp Style lighting will extend approximately two blocks on Holton Street from Concordia to Keefe Avenue.

Lighting:

- (8) Harp Style Lights
- (8) Milwaukee Style Lanterns

DRAFT

Pavement Treatments:

- Colored Concrete Crosswalk
- Decorative stamped Pavement
- Curb Bump-outs

Landscaping:

- Trees and planters will be installed along the Beer-line
- Recreational Trail

Other Street Amenities:

- Gateway signage
- Street furniture (benches, trash receptacle, and hanging planters)
- Holton/ Townsend Mural Project

EXHIBIT B

MAINTENANCE & REMOVAL / REPLACEMENT RESPONSIBILITIES

(to completed by DPW)

DRAFT

EXHIBIT C

Holton Streetscape Cost Estimates (Concordia to Keefe)

<u>Holton/Townsend Intersection</u>	
Bumpouts, crosswalks, colored concrete, etc.	
\$85,000 in contract work and \$30,000 in engineering work	\$ 115,000.00
<u>Lighting on Holton Street</u>	
Harp Lights (Max Cost)	\$ 85,000.00
Lanterns for Tall Street Lights	\$ 22,000.00
Total Lighting Costs	\$ 107,000.00
<u>Miscellaneous</u>	
Benches	\$ 4,000.00
Trash Receptacles (With Lids & Installation)	\$ 5,000.00
Landscaping/Hanging Planters	\$ 9,000.00
Signage	\$ 15,000.00
Holton Mural Project	\$ 20,000.00
Trees - Purchase & Installation	\$ 5,000.00
Total Misc. Costs	\$ 58,000.00
Total Costs for Holton Street	\$ 280,000.00

DRAFT

EXHIBIT D

AMORTIZATION SCHEDULE

DRAFT