

**SCHLITZ PARK
RIVERWALK EXTENSION DEVELOPMENT AGREEMENT**

This Riverwalk Extension Development Agreement is made this ____ day of _____, 2017, by and among the City of Milwaukee (the "City"), the Redevelopment Authority of the City of Milwaukee ("RACM") and The Brewery Works, Inc., a Wisconsin corporation (the "Developer").

RECITALS:

A. The Developer and entities affiliated with the Developer are the owners of all the real property identified on Exhibit A, attached hereto (the "Properties"). The Properties are all located within an office complex known as Schlitz Park.

B. In 2009, the City, RACM and Schlitz RiverCenter LLC, an affiliate of Developer ("RiverCenter") entered into a development agreement pursuant to which RiverCenter constructed a riverwalk along the eastern boundary of Schlitz Park abutting the Milwaukee River (the "Riverwalk").

C. The City, RACM and Developer now wish to extend the Riverwalk through and across portions of Schlitz Park as shown on Exhibit B, attached hereto, so as to create multi-directional pedestrian linkages between the Riverwalk and other public rights-of-way (the "Riverwalk Extension"). The Riverwalk Extension will cross some or all of the Properties. Upon completion of construction of the Riverwalk Extension, the Developer will maintain and operate the Riverwalk Extension, including making the Riverwalk Extension available for use by members of the general public.

D. The Riverwalk Extension will constitute a portion of the City's overall riverwalk system which is intended to cover a substantial portion of the Milwaukee River extending from the harbor entrance to the former North Avenue Dam area. Because of the Developer's willingness to make the Riverwalk Extension available to members of the public, the Riverwalk Extension will serve the public purpose of affording members of the public the opportunity to more fully enjoy the valuable river resource.

E. Because of the public purpose served by the construction and operation of the Riverwalk Extension, RACM is willing to make a grant to the Developer in an amount not to exceed \$475,000 to be used by the Developer to fund up to 70% of the estimated total cost of \$678,000 to construct the Riverwalk Extension.

F. The City, via Common Council Resolution File No. _____ adopted _____, 2017, has approved this Agreement and authorized proper officials of the City to execute this Agreement.

G. RACM, via Resolution No. _____ adopted February 16, 2017 has approved this Agreement and authorized proper officers of RACM to execute this Agreement on RACM's behalf; and

H. The Developer has approved this Agreement.

AGREEMENTS

In consideration of the premises and the mutual promises and undertakings hereinafter contained, the parties hereto mutually agree and covenant as follows:

I. RACM ACTIVITIES

A. Subject to the terms and conditions hereinafter set forth, and provided RACM receives the City Grant (as defined below), RACM agrees to provide a grant to the Developer to pay for 70% of the cost of construction of the Riverwalk Extension, but in no event shall such grant exceed \$475,000 (the "Riverwalk Extension Grant"). A preliminary construction budget for the Riverwalk Extension is attached hereto as Exhibit C.

B. The Riverwalk Extension Grant shall be disbursed to the Developer during the construction of the Riverwalk Extension provided the following requirements set forth below at numbers 1 through 5 are met:

1. The Developer has received all applicable federal, state and local agency approvals, and has complied with all applicable federal, state and local laws, including, but not limited to, the Americans with Disabilities Act, which are necessary to undertake construction of the Riverwalk Extension.

2. The Commissioner of the Department of City Development ("Commissioner") has approved the final plans and specifications for the Riverwalk Extension.

3. The Commissioner has approved the final construction budget for the Riverwalk Extension.

4. Each request for payment shall be submitted on appropriate AIA forms such as AIA Document G702 and signed by the Developer's architect certifying that the Riverwalk Extension has been completed in accordance with the Commissioner-approved plans and specifications and the Riverwalk Extension costs incurred to date have been fully substantiated on the draw request. The final request for payment shall also include submission of the as-built plans of the Riverwalk Extension.

5. RACM and the City have received a Grant of an Easement across the entire Riverwalk Extension in a form as set forth on Exhibit D.

6. Developer and City have entered into a Human Resource Agreement in form as set forth in Exhibit E. Prior to entering into the Human Resource Agreement, Developer shall meet and confer with the City's Office of Small Business Development.

II. CITY ACTIVITIES

The City shall make available to RACM an amount up to \$475,000 to pay for the Riverwalk Extension Grant (the "City Grant") in order to allow RACM to supply the Developer with the Riverwalk Extension Grant.

III. DEVELOPER ACTIVITIES

A. The Developer shall:

1. Prepare, or have prepared, final plans and specifications for the Riverwalk Extension subject to the approval by the Commissioner as provided in Section I.B.2.
2. Prepare, or have prepared, a final construction budget for the Riverwalk Extension for approval by the Commissioner as provided in Section I.B.3.
3. Obtain and pay for all governmental permits and approvals necessary to construct the Riverwalk Extension.
4. Comply with all applicable federal, state and local laws.
5. Construct the Riverwalk Extension in accordance with the approved plans and specifications and substantially complete the Riverwalk Extension by no later than December 31, 2017, subject to construction delays beyond the Developer's reasonable control and not caused by the fault or negligence of Developer (an "Excusable Delay"). If Developer provides the City and RACM with a notice describing the cause, nature and duration of the Excusable Delay, then the completion deadline shall automatically be extended for a period equal to the duration of the Excusable Delay.
6. Provide the Commissioner with as-built plans of the Riverwalk Extension.
7. Operate and maintain the Riverwalk Extension, including undertaking all necessary capital repairs and replacements, during the term of this Agreement. The Riverwalk Extension shall be operated and maintained in accordance with customary and recognized standards for a first class commercial facility. The minimum maintenance standards are set forth in the Grant of Easement attached as Exhibit D. The Developer reserves the right to periodically (i.e., not more than once a year for not more than 24 hours at a time) close off the Riverwalk Extension in order to prevent the acquisition of any adverse or prescriptive rights in the Riverwalk Extension.
8. Fund the difference between (a) the total cost of the Riverwalk Extension, and (b) the Riverwalk Extension Grant (the "Developer Share"). Developer shall fund the Developer Share pro rata with the Riverwalk Extension Grant as invoices are presented in accordance with Section I.B.6.

9. When the Riverwalk Extension is completed, as certified by the project architect, provide RACM and the City with a recordable Grant of Easement substantially in the form attached as Exhibit D.

B. Notwithstanding anything herein to the contrary, Developer's obligation to proceed with construction of the Riverwalk Extension is conditioned upon the board of Business Improvement District No. 42 (the "BID") adopting a resolution to reimburse Developer for the Developer Share through special assessments to be levied against the properties located within the BID, commencing in 2019.

IV. CHANGES

No material changes in the type, placement or use of construction materials, as indicated on the approved plans and specifications, shall be made by the Developer in the approved plans and specifications or in the manner in which the Developer is obligated to operate and maintain the Riverwalk Extension, without prior written consent of the Commissioner. Any changes approved by the Commissioner shall not increase the Riverwalk Extension Grant unless such increase has been approved by RACM.

V. INSPECTIONS

A. Developer and its contractor or subcontractor shall be solely responsible for the completion of the Riverwalk Extension. Nothing contained in this paragraph shall create or effect any relationship between the City or RACM, on the one hand, and any contractor or subcontractor employed by Developer, on the other hand, in construction of the Riverwalk Extension.

B. RACM may make reasonable inspections, including but not limited to inspections on behalf of RACM by the City Department of Public Works, Department of City Development and Department of Neighborhood Services, of the Riverwalk Extension during the period of construction thereof, provided that such inspections do not interfere with the progress of the work. In order to allow RACM and the City agencies to undertake these inspections in a meaningful fashion, the Developer shall provide RACM with a complete set of plans and specifications in respect of the Riverwalk Extension as well as any change orders and shop drawings relating thereto.

C. In the event that the Commissioner determines, as a result of such inspections, that the Developer's contractor or subcontractors are not constructing the Riverwalk Extension in accordance with the approved plans and specifications, the Commissioner shall promptly inform the Developer of such noncompliance and the Developer shall, as soon as reasonably possible, require its contractor or subcontractors to remedy such noncompliance. The Commissioner may withhold payment of any funds until such corrective measures are completed and the noncompliance cured in a satisfactory manner.

**VI.
RECORDS**

A. The Developer shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Riverwalk Extension, consistent with the approved budget, and shall include a provision in all of its contracts requiring its contractors and their subcontractors to do the same. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, and shall be kept for a period of six years subsequent to the completion of the Riverwalk Extension.

B. The City Comptroller, on behalf of RACM, shall have the right, upon reasonable notice to the Developer, its contractor or subcontractors, as the case may be, to examine the books, records and accounts of the Developer, contractor or subcontractors, which relate to the Riverwalk Extension, during normal hours of business.

C. After substantial completion of the Riverwalk Extension, the Developer shall submit to the Commissioner a complete set of "As Built" plans and specifications.

**VII.
HUMAN RESOURCE REQUIREMENTS**

In contracting for the construction of the Riverwalk Extension, the Developer shall utilize best efforts to comply with the following requirements (with all capitalized terms having the meanings ascribed to same under Chapter 360, Milwaukee Code of Ordinances): (i) 18% Small Business Enterprise ("SBE") requirement for professional services; (ii) 25% SBE requirement for construction contracts; and (iii) 40% Resident Preference Program for worked hours on-site. Developer shall enter into a Human Resource Agreement, in form as set forth in Exhibit E.

**VIII.
TERM**

This Agreement shall terminate after the last to occur of the following: (i) the completion of construction of the Riverwalk Extension; and (ii) payment in full to Developer of the Riverwalk Extension Grant. The BID's obligations for reimbursement of the Developer Share shall survive the termination of this Agreement. The Grant of Easement for public access, in the form attached hereto as Exhibit D, shall run with the land on which it is granted for the term set forth on the Grant of Easement.

**IX.
DEFAULT**

If the Developer has not substantially completed the Riverwalk Extension by the date specified herein, and the failure to substantially complete was either the Developer's fault or was for reasons substantially within the Developer's control, RACM and the City shall have the right to reduce the amount of unpaid portions of the Riverwalk Extension Grant by an aggregate amount equal to \$200 for each day, up to 90 days, that substantial completion of the Riverwalk Extension is so delayed, plus \$300 for each day beyond 90 days but less than 180 days that

substantial completion of the Riverwalk Extension is so delayed and \$500 for each day thereafter that substantial completion of the Riverwalk Extension is so delayed.

**X.
CONFLICT OF INTEREST**

No member, officer or employee of RACM, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

**XI.
WRITTEN NOTICES**

Any written notice required to be sent under this Agreement shall be sent to the following:

For RACM:

Redevelopment Authority of the City of Milwaukee
809 North Broadway
Milwaukee, WI 53202
Attn: Executive Director/Secretary

For the City:

City of Milwaukee
Department of City Development
809 N. Broadway
Milwaukee, WI 53202
Attn: Commissioner

For the Developer:

The Brewery Works, Inc.
Attn: Mr. Sam Denny
Suite 204
1555 North Rivercenter Drive
Milwaukee, WI 53212

**XII.
ASSIGNMENT**

No party to this Agreement may assign any of its interest or obligations hereunder without the written consent of the other party, except that:

1. RACM and the City may each assign its respective rights hereunder to the other without the consent of Developer; and

2. The Developer may grant a collateral assignment of its rights hereunder to any lender providing construction financing for improvements located on the Properties, provided however the City and/or RACM shall have a right to review any documents it/they may be asked to sign regarding such assignment.

In Witness Whereof, the parties have executed this Agreement on the day and year first above written.

REDEVELOPMENT AUTHORITY OF
THE CITY OF MILWAUKEE

By: _____
Lois A. Smith
Chair

And By: _____
David P. Misky
Assistant Executive Director/Secretary

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
James Owczarski, City Clerk

COUNTERSIGNED

By: _____
Martin Matson, Comptroller

THE BREWERY WORKS, INC.

By: _____

Its: _____

Approved as to form, content and execution
this ____ day of _____, 2017.

Assistant City Attorney

EXHIBIT A

The Properties are comprised of:

101 East Pleasant Street Tax Parcel 361-1963-100-3
Owner: Schlitz Park Associates I Limited Partnership

1505-1555 North RiverCenter Drive Tax Parcel 361-0184-112-4
Owner: Schlitz RiverCenter LLC

1500 North Second Street Tax Parcel 361-1962-100-8
Owner: Schlitz Park Associates II Limited Partnership

1542 North Second Street Tax Parcel 361-1852-121-2
Owner: Schlitz Park Associates II Limited Partnership

EXHIBIT B

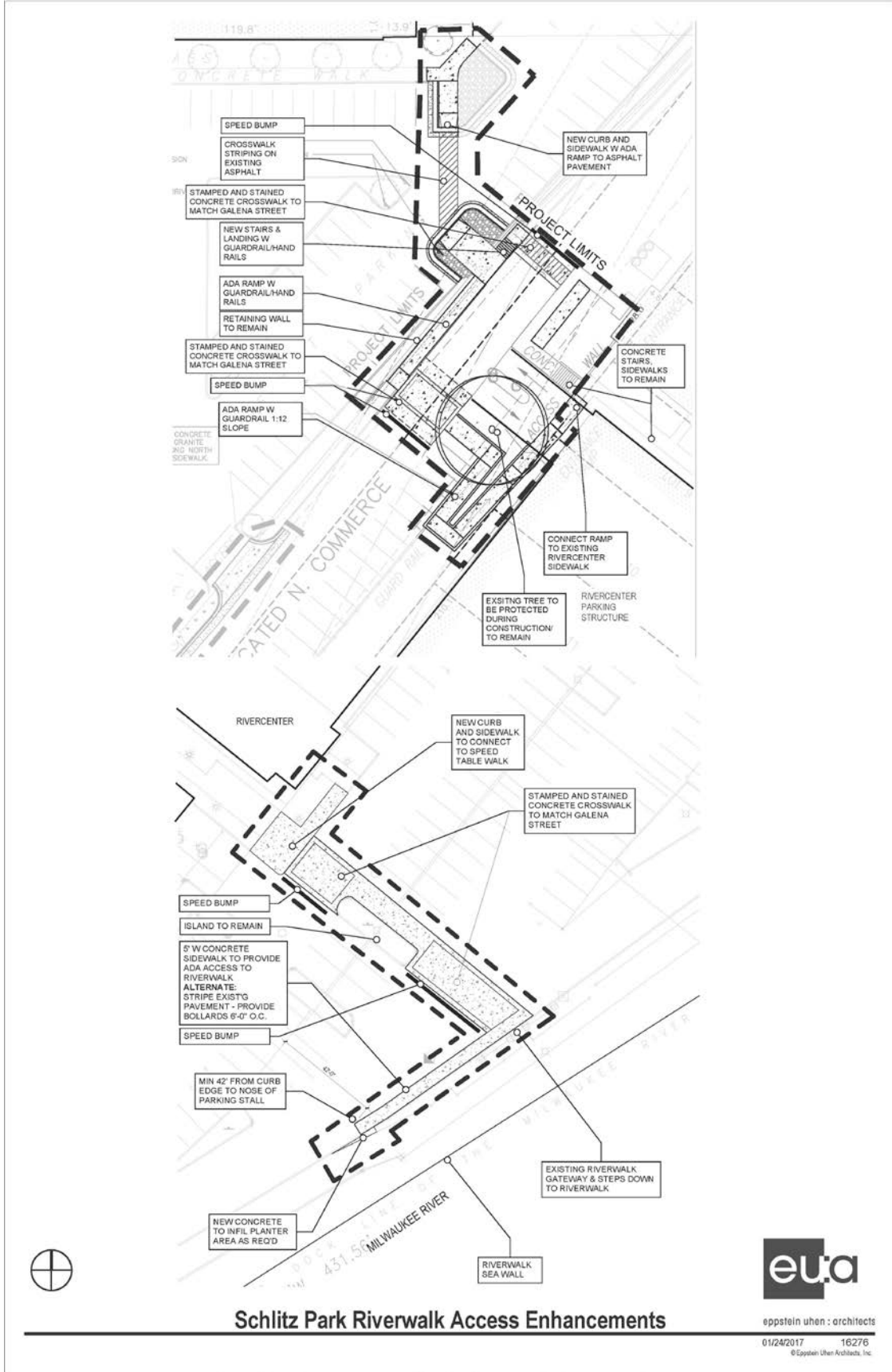


Exhibit C
Preliminary Construction Budget

EXHIBIT C

Riverwalk Extension Budget

| | |
|---------------------------------------|-----------------------|
| Grading | |
| Grading | 69,598 |
| Excavation & Fill | 34,800 |
| Backfilling | 9,600 |
| Erosion Control | 1,500 |
| Exterior Improvements | |
| Paving | 69,448 |
| Paving Specialties | 6,600 |
| Curbs, Gutters, Sidewalks & Driveways | 211,962 |
| Site Specialties | 102,000 |
| Landscaping | 26,250 |
| Subtotal | <u>531,758</u> |
| General Conditions | 37,223 |
| Permits | 5,000 |
| Construction Fee | 28,699 |
| Insurance | 2,870 |
| Architect's Fees | 21,800 |
| Contingency | 50,650 |
| Total | <u><u>678,000</u></u> |

EXHIBIT D

Grant of Easement

Exhibit E
Human Resources Agreement