

**INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN MILWAUKEE COUNTY AND THE CITY OF MILWAUKEE**

**REPLACEMENT, MAINTENANCE, AND USE OF IMPROVEMENTS WITHIN
MACARTHUR SQUARE EASEMENT AREA**

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (“Agreement”) is made pursuant to Wis. Stat. § 66.0301 by and between the City of Milwaukee, a municipal corporation (“City”) and Milwaukee County, a body corporate and politic (“County”) (hereafter individually referred to as “Party” or collectively as the “Parties”).

RECITALS

WHEREAS, by an agreement between the City and County dated September 14, 1976, and recorded with the Milwaukee County Register of Deeds as document number 05040509, the City granted to the County a permanent easement to certain City-owned real property described therein and used in conjunction with the Milwaukee County Museum (“Easement”). A copy of the recorded Easement and its legal description are attached hereto and marked as Exhibit A;

WHEREAS, the Easement granted certain rights and responsibilities to the County, including, but not limited to, the responsibility of “maintenance and repair of the surfaces of all floors, walls[,] and ceilings of the rooms situated in the areas herein conveyed”;

WHEREAS, the Easement granted certain rights and responsibilities to the City, including, but not limited to, the responsibility of “structural maintenance and repair of all such walls, ceilings[,] and floors”;

WHEREAS, by an agreement between the City and County dated October 6, 1983, the City granted additional rights to the County, but did not alter the responsibilities of the Parties to maintain and repair the floors, walls, and ceilings to the same extent as the original Easement;

WHEREAS, the flooring of Parcel 5 identified in the Easement as the Civic Center Plaza or Space Center (“Parcel 5”) was originally intended to be the floor of a building to be constructed thereon on a later date and was therefore made from voided concrete designed for indoor use;

WHEREAS, the structure above Parcel 5 was never constructed, and the voided concrete slab has deteriorated because it has been exposed to outdoor weather elements since its construction in the 1960s;

WHEREAS, a structural engineering consultant hired by the City has inspected the voided concrete slab and provided a report on June 8, 2015, that recommended replacement of the voided concrete slab;

WHEREAS, the structural engineering consultant has been hired to design a replacement slab that will meet the County’s needs for light parking or occupied outdoor space on Parcel 5;

WHEREAS, the work necessary to replace the deteriorated concrete slab is expected to occur in 2018 and/or 2019;

WHEREAS, the County will retain the rights to use Parcel 5 as described in the Easement, and shall be responsible for maintenance of the slab surface and snow removal and limited in its use of Parcel 5 as described in this Agreement;

WHEREAS, the City and County agree to a proportionate share of the cost of replacing the voided concrete slab, reflective of their respective roles as owner and easement occupant, and ensure that Parcel 5 can continue to be safely utilized for uses described in this Agreement, as well as the roof of the Kilbourn Avenue tunnel and the ceiling of the basement level of the MacArthur Square parking structure;

NOW, THEREFORE, the County and City, under the authority of Wis. Stat. § 66.0301, hereby mutually agree as follows:

1. PURPOSE

The purpose of this Agreement is to establish the parameters under which the County and the City will work cooperatively and in good faith to fund the replacement of the voided concrete slab which is the subject of this Agreement, including, but not limited to, preliminary engineering, construction, construction engineering, and inspection as necessary.

2. SCOPE OF AGREEMENT

This Agreement is a stipulation between the City and County that defines the division of costs to replace improvements owned by the City and occupied by the County under a permanent easement. This Agreement shall not be used as evidence of any admissions or intent by the Parties to assign liability for the conditions described herein. Each Party expressly denies liability for the conditions described herein.

3. DIVISION OF COSTS

The City and County agree to the following proportionate share of the included costs described in § 4. The City shall pay fifty percent (50%) of the included costs and the County shall pay fifty percent (50%) of the included costs. To facilitate the foregoing provision, the City shall pay any invoices for included costs in full and then invoice the County for fifty percent (50%) of those included costs. The County shall reimburse the City within thirty (30) days of the date the invoice is received by the County. The City shall provide to the County copies of all invoices related to included costs.

4. INCLUDED COSTS

The following included costs shall be divided by the aforementioned fifty/fifty (50/50) split between the City and County as described in § 3 of this Agreement, including all work performed prior and subsequent to execution of this Agreement:

a. Consultant Work

The cost of work performed by consultants to design and prepare plans, specifications, and bid package to replace the deteriorated concrete slab that is the subject of this Agreement.

b. Contractor Work

The cost to perform the replacement of the deteriorated concrete slab or any costs or liabilities arising out of said work, including the original awarded amount of the contract and any modifications thereto during construction.

c. Inspection Work

The cost to implement a construction inspection plan, as well as select and contract with a qualified construction inspection services firm to inspect contractor work.

d. City/County Employee Managerial Work

The salary, wage, and fringe costs for City employees to manage contractors, consultants, inspectors, or any other professionals necessary to complete the project such as: addressing communication related to the project; defining the roles for the City, County, Museum, WisDOT, and Bloom Consultants; scheduling, organizing, and running meetings to keep the project on task; providing review comments and approving design plans, specifications, estimates, and invoices. The salary, wage, and fringe costs for County employees to review/comment on related documentation from the City and act as point persons for related communications.

e. Compliance Costs

The cost incurred as a result of reasonable efforts to ensure compliance with relevant laws, rules, regulations, and contract provisions.

5. EXCLUDED COSTS

The following excluded costs shall not be subject to the fifty/fifty (50/50) divide between the City and County and are specifically excluded from this Agreement:

a. Employee Administrative Work

The wage, salary, and fringe cost of the Parties' employees to draft and finalize the language of this Agreement.

b. Other Costs

Any cost not listed in the included costs under § 4.

6. ESTIMATED COST OF PROJECT

The estimated budget for the project shall be \$2.6 million. Any contracts to perform work under this project shall be approved by each Party's governing body as required by law.

7. PROJECT MANAGEMENT

Representatives from the City and County shall meet once per week, or as often as the Parties agree to meet, to reach consensus and share information for the entirety of the planning through implementation process regarding selection and management of contractors, consultants, and other professionals necessary to complete the replacement of the voided concrete slab, related costs, and progress of construction. Either Party may invite third parties related to the project to participate in any meeting.

8. APPROVAL OF CONTRACTORS

To the extent required by law, the City shall select the lowest responsible bidder to perform any public construction. The City shall provide notice under § 13.m. to the County that the City has selected the lowest responsible bidder. The County shall either approve or object to the lowest responsible bidder selected by the City within three (3) business days after receiving the notice. If the County approves the bidder or fails to object within three (3) business days after receiving notice, the City shall proceed in executing the contract and the City and County shall be bound to pay the invoice pursuant to § 3. If the County timely objects, the City and County shall meet as soon as practicable to resolve the objection. The City may proceed only if the County withdraws its objection or may provide a new notice to the County under this section.

9. APPROVAL OF CHANGE ORDERS

If the City receives a proposed change order, the City shall provide notice under § 13.m. to the County that the City has received a proposed change order. The County shall either approve or object to the change order within three (3) business days after receiving the notice. If the County approves the change order or fails to object within three (3) business days after receiving notice, the City shall proceed in executing the change order and the City and County shall be bound to pay the invoice pursuant to § 3. If the County timely objects, the City and County shall meet as soon as practicable to resolve the objection. The City may proceed only if the County withdraws its objection or may provide a new notice to the County under this section.

10. MAINTENANCE AND USE OF PARCEL 5

After construction of the new improvements to Parcel 5, the County shall be responsible for maintenance and repair of the slab surface as defined in attached Addendum A and consistent with the terms of this Agreement. The City shall have the right to enter and inspect the slab at the sole cost of the City and at any time with prior notice given to the County. After completion of the project, no alterations to the slab surface will be allowed without previous consent from the City including, but not limited to, drilling or anchoring. In addition, Parcel 5 may only be used for light vehicle parking or pedestrian occupancy, defined as 95 pounds per square foot pedestrian loading or an H10 service vehicle (20,000 lbs); Parcel 5 shall not be used for outdoor storage of materials, large vehicle parking, or any other use without previous consent from the City. The City is not

obligated to provide any alternative accommodations for exhibits, parking or other uses of Parcel 5 while future inspection and maintenance work is being performed and as a means of egress from the Milwaukee County Museum.

11. DISPUTE RESOLUTION

The Parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in good faith and in the spirit of cooperation consistent with the intent of this Agreement during scheduled meetings under § 7. If any dispute cannot be settled, either Party may, by providing written notice to the other Party, request a meeting between the County's Facilities Management Director and the City's Commissioner of the Department of Public Works (collectively, "Department Heads"). Within five (5) business days of receipt of such written notice, the Department Heads shall set a time and place to meet no later than fifteen (15) business days from the date of receipt of the notice in an attempt to resolve a dispute. If the Department Heads cannot resolve the dispute, both Parties may mutually agree to mediation or either Party may pursue any remedy to which they are entitled under this Agreement, at law, or in equity.

12. TERMINATION

This Agreement shall terminate if and when the permanent easement is removed from title to the property described in Exhibit A. In addition, this Agreement may be terminated by mutual agreement of the Parties and under the terms described in such an agreement. In addition, either Party may terminate this Agreement based upon the other Party's material breach of this Agreement, so long as (i) the terminating Party provides the non-terminating Party written notice of at least ninety (90) days, (ii) such written notice explains and describes the nature of the material breach in reasonable detail; and (iii) the breaching Party was given a reasonable period of time to cure and fails to do so within that period of time.

13. MISCELLANEOUS PROVISIONS

a. Prevailing Wage

If any work performed under this Agreement is controlled by Wis. Stat. § 66.0903, the City shall comply with said statute to the extent required by law.

b. Compliance With Other Laws

The City shall take all reasonable efforts to ensure compliance with relevant laws during the management of this project.

c. Entire Agreement

The entire agreement of the Parties with respect to the subject matter hereof is contained in this Agreement. This Agreement supersedes any other intergovernmental cooperation agreement between the Parties on this subject matter.

d. Modification

This Agreement may only be modified by a writing signed by both Parties and identified as an amendment to or modification of this Agreement.

e. Authorizing Resolutions

This Agreement is entered into by the Parties pursuant to authority granted under Wis. Stats. § 66.0301, and other provisions of the Wisconsin Statutes. By resolution or ordinance adopted by its governing body, each Party has authorized and directed the representatives of the governing body to enter this Agreement on behalf of the Party.

f. No Separate Legal Entity

Nothing contained in this Agreement shall be construed or deemed to create a separate legal entity among the Parties.

g. Indemnification

Each Party retains for itself all legal responsibility for injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment. Nothing in this Agreement shall be construed as an assumption or indemnification by one Party of any liability of the other Party.

h. Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of the provisions of this Agreement.

i. Governing Law

This Agreement is entered into and shall be construed in accordance with the laws of the State of Wisconsin.

j. Effective Date

This Agreement shall become effective and binding on both the County and the City upon the last date of execution by either party.

k. Severability

If any provision of this Agreement is finally determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall be construed as if the invalid or unenforceable provision had been deleted from the Agreement and the balance of the Agreement shall continue in full force and effect.

l. Non-waiver

No provision of this Agreement will be deemed waived by reason of one Party

delaying or failing to enforce the provision on one or more occasion. Any waiver of a provision given on one occasion shall not obviate the need to obtain future waivers of the same provision or excuse a future breach of that provision.

m. Notices

Any notices required or permitted under this Agreement shall be in writing and shall be considered given upon delivery, if personally delivered or emailed with evidence thereof, or one (1) business day after deposit with a nationally-recognized commercial courier, or two (2) business days after deposit in the United States Postal Service, certified or registered mail, postage prepaid, in all cases addressed as follows:

If to the County: Milwaukee County
 901 N. 9th Street
 Milwaukee, WI 53233
 Attn: Facilities Management Director

If to the City: City of Milwaukee
 841 North Broadway, Room 516
 Milwaukee, WI 53202
 Attn: Commissioner, Dept. of Public Works

n. No Assignment

No Party to this Agreement may assign its interest in this Agreement to any other entity or individual without the express written consent of the other Party.

o. Counterparts

This Agreement may be executed in one or more counterparts, which, when combined with the other counterparts, shall constitute and be a completely executed document and one single agreement. Signatures submitted by photocopy, facsimile or electronic transmission shall be deemed original, fully enforceable against the Party whose signature is represented thereon; but no one Party's signature shall be binding until all signatures have been added hereto.

[SIGNATURE PAGE TO FOLLOW]

ADDENDUM A

This addendum shall outline the general responsibilities of the County regarding the maintenance of the proposed concrete slab starting from the completion date of the slab as required by § 10 of the Intergovernmental Cooperation Agreement between the County and City dated _____, 2017, to which this addendum is attached (document # 227691).

The County and City shall be responsible for the costs for which they are made responsible by this Addendum.

A. CITY INCLUDED COSTS

The City shall be responsible for the following included costs:

a. Inspection

The cost and effort to prepare inspection plans, visually inspect, and complete inspection reports for the underside of the reinforced concrete slab within Parcel 5.

b. Repair

The cost, design, and labor to perform structural repairs on the reinforced concrete slab, including but not limited to the following:

- Crack repair
- Concrete surface repair
- Drain repair or replacement

c. Compliance Costs

The cost incurred as a result of reasonable efforts to ensure compliance with relevant laws, rules, and regulations.

B. COUNTY INCLUDED COSTS

The County shall be responsible for the following included costs:

a. Inspection

The cost and effort to inspect the top surface of the reinforced concrete slab to make determinations regarding maintenance of the surface including waterproof membrane.

b. Maintenance

The cost of the activities to prevent or delay the formation of defects in the reinforced concrete slab, including but not limited to the following:

- Yearly spring wash downs to remove salt and debris build-up and inspection of the waterproof membrane. Coordinated with the City

inspection as described previously to determine the location of potential leaks.

- Drain trap cleaning as needed. Traps should be replaced and maintained as necessary to reduce debris from entering MacArthur Square drainage system.
- Snow and ice removal from the slab surface
 - Rubber blade attachment or brush must be used to not mar or otherwise blemish the surface of the waterproof membrane that would compromise the effectiveness of waterproofing
 - If deicers are to be used, ensure products are either magnesium chloride, magnesium acetate, or calcium chloride to avoid degradation of the membrane and reinforced concrete slab.
- Waterproof membrane recoat every 10 years or as necessary, whichever occurs first. Conditions that would require repairs and recoating of the waterproof membrane include, but are not limited to, delamination, blistering, peeling, loss of aggregate, leaking or open cracks, excessive wear, exposed substrate, etc.
 - Recoat must be compatible with existing system and use a UV-stable topcoat
 - Efforts to coordinate any concrete repairs with the City prior to membrane reapplication.

c. Compliance Costs

The cost incurred as a result of reasonable efforts to ensure compliance with relevant laws, rules, and regulations.