

**COOPERATION
AND
DEVELOPMENT
AGREEMENT**

**LAKESHORE STATE
PARK PROJECT**

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**COOPERATION AND
DEVELOPMENT AGREEMENT**

LAKESHORE STATE PARK PROJECT

THIS AGREEMENT is made and entered into at Milwaukee, Wisconsin, effective on the 1st day of September, 2004, by and among the CITY OF MILWAUKEE, a municipal corporation of the State of Wisconsin, acting by and through its BOARD OF HARBOR COMMISSIONERS, as heretofore authorized by law (hereinafter collectively referred to as "CITY"), and the STATE OF WISCONSIN, acting through the Division of Facilities Development (hereinafter referred to as "DFD") and the Department of Natural Resources (hereinafter referred to as "DNR") (hereinafter collectively referred to as "STATE").

WITNESSETH:

WHEREAS, the DNR approved the Lakeshore State Park Master Plan and Environmental Assessment Report, (the "Master Plan") on October 24, 2000.

WHEREAS, Milwaukee World Festival, Inc. ("FESTIVAL") and CITY have entered into a Lease Agreement effective as of January 1, 2001, (the "Festival Lease") for real property commonly known as the Henry Maier Festival Grounds (the "Festival Property"); and

WHEREAS, CITY holds title to real property adjacent to the Festival Property including Harbor Island, the Municipal Pier, and the South Urban Park, all as hereinafter defined; and

WHEREAS, CITY, and STATE are entering into this Cooperation and Development Agreement ("Agreement") in order to provide for the construction and operation of a new state park to be known as Lakeshore State Park ("State Park") as well as related offshore improvements in the vicinity of the Municipal Pier; and

WHEREAS, this Agreement sets forth the respective actions to be undertaken by the parties in order to provide for development and operation of the State Park Project and the Municipal Pier Breakwater, as hereinafter defined.

NOW, THEREFORE, In consideration of the premises and the mutual obligations of the parties hereto, CITY, and STATE hereby covenant and agree as follows:

**ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms when used in this Agreement shall have the following meanings:

Conservation Easement

Means the Conservation Easement – Lakeshore State Park, dated as of September 1, 2004 by and among CITY, STATE, and FESTIVAL.

Festival Lease

Means the Lease Agreement between CITY and FESTIVAL effective on the 1st day of January, 2001.

Festival Property

Means the real property subject to the Festival Lease.

Island

Means a peninsula constructed on Lake Michigan lakebed immediately adjacent to the Festival Property.

Municipal Pier

Means a man-made pier located at the foot of East Michigan Avenue, extended, currently containing facilities housing the Pieces of Eight Restaurant and the Wisconsin Lake Schooner Education Association, a/k/a Pier Wisconsin.

Municipal Pier Breakwater

Means the construction of breakwater and offshore improvements as depicted in the Project Design Documents.

Project

Means the overall construction activities contemplated by this Agreement, including the infrastructure development for the Municipal Pier Breakwater and the State Park.

Project Budget

Means the description of the Project and a construction budget for the Project attached as EXHIBIT “A”.

Project Design Documents

Means final design documents for the Project prepared pursuant to section 2.2a of this Agreement.

South Urban Park

Means CITY park lands situated immediately to the north of the Festival Property and east of Harbor Drive.

State Park

Means the Lakeshore State Park to be established by the STATE pursuant to the terms of this Agreement.

State Park Deed

Means a quit-claim deed from CITY to STATE, acceptable as to form and substance to each of the parties, conveying Harbor Island and certain adjacent areas of Lake Michigan to the State for the State Park.

State Park Project

Means the construction of the State Park as depicted in the Project Design Documents.

State Park Property

Means the real property comprising the State Park, including the real property conveyed by the State Park Deed and the real property subject to the Conservation Easement.

1.2 Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

- (a) Words importing the singular number shall include the plural number and vice versa.
- (b) The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- (c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

**ARTICLE II
THE PROJECT**

2.1 CITY Actions.

The CITY shall:

- a. In consultation with STATE, review the design for the infrastructure development of the Municipal Pier Breakwater and the State Park as set forth in the Project Design Documents.
- b. Assist the STATE in the preparation of an application to the United States Corps of Engineers for the Municipal Pier Breakwater and assist STATE, as lead sponsor, in the implementation of that component of the Project.

- c. Coordinate its construction activities, if any, undertaken pursuant to this Agreement with FESTIVAL.
- d. Provide funding for implementation of the Municipal Pier Breakwater consistent with the Project Budget attached as **Exhibit “A”**. The Project Budget includes figures for the entire Project. Included in the Project Budget will be **funds** from STATE to fund portions of the Municipal Pier Breakwater component of the Project and \$2,000,000.00 provided by FESTIVAL pursuant to the Festival Lease to be expended in conjunction with implementation of the overall Project.
- e. Assist STATE in the application for all permits necessary in conjunction with implementation of the Project.
- f. Execute and deliver the State Park Deed, the Conservation Easement and any temporary construction easements or rights-of-entry necessary to implement the Project.
- g. In cooperation with FESTIVAL, execute any amendments to the Festival Lease necessary to adjust legal descriptions in conjunction with implementation of the Project and to allow implementation of the Project as contemplated by this Agreement.

2.2 STATE Actions.

The STATE shall:

- a. In Consultation with CITY finalize the Project Design Documents.
- b. In consultation with CITY, finalize and submit an application to the United States Corps of Engineers for the Municipal Pier Breakwater and act as lead sponsor for the implementation of that component of Project.
- c. Coordinate contracts with the U.S. Army Corps of Engineers as necessary for the construction of the Project and the Municipal Pier Breakwater.
- d. Coordinate its construction activities undertaken pursuant to this Agreement with FESTIVAL and Pier Wisconsin.
- e. Provide funding for the Project consistent with the Project Budget attached as **Exhibit “A”**. Included in the Project Budget will be funds from STATE to fund portions of the Municipal Pier Breakwater of the Project and \$2,000,000.00 provided by FESTIVAL pursuant to the Festival Lease to be expended in conjunction with implementation of the overall Project.

- f. Use and improve the State Park Property in a manner consistent with the goals, terms and requirements of the Master Plan as amended from time to time.

ARTICLE III MAINTENANCE

3.1 DNR.

DNR shall be responsible for and shall bear the cost of maintenance for those portions of the State Park Property conveyed pursuant to the State Park Deed. Maintenance of all other areas of the State Park shall be undertaken in accordance with the terms of the Conservation Easement.

3.2 CITY.

CITY shall be responsible for and shall bear the cost of maintenance of the Municipal Pier Breakwater following completion and transfer of the Municipal Pier Breakwater to CITY.

ARTICLE IV UTILITIES

4.1 Water and Sewer.

All construction, maintenance, replacement and repair of water and sewer lines on the State Park Property and through the Festival Property, for water and sewer lines which serve the State Park, shall be undertaken by STATE at its own expense.

4.2 Other Utility Services.

All other utility services on the State Park Property and through the Festival Property, for utility services which serve the State Park, shall be provided for and paid for in full by the STATE.

ARTICLE V REMEDIES

If an Event of Default shall occur, an aggrieved party may pursue any available remedy against the party in default, either at law or in equity.

**ARTICLE VI
COMMENCEMENT OF AGREEMENT**

This Agreement shall commence upon the date first set forth above.

**ARTICLE VII
EXHIBITS AND RECITALS**

The various Exhibits appended to this Agreement and the opening recitals are incorporated herein and for all purposes are a part of this Agreement. Certain of the Exhibits attached to this Agreement are in substantially final form but may require minor revisions in conjunction with the implementation of the Project. The parties agree to use their best efforts to cooperate in the finalization of such Exhibits in order to allow the Project to be implemented as contemplated by this Agreement.

**ARTICLE VIII
TIME OF THE ESSENCE**

It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Agreement.

**ARTICLE IX
APPROVALS AND CONSENTS**

Whenever in this Agreement the consent or approval of any party is required or the discretion of any party may be exercised, such consent shall not be unreasonably withheld, conditioned or delayed and any such discretion shall be exercised in good faith and in a reasonable manner. Whenever in this Agreement the consent or approval of the CITY is required or the discretion of the CITY may be exercised, the Board of Harbor Commissioners shall have the authority to provide such consent or approval or to exercise such discretion.

**ARTICLE X
WAIVER**

One or more waivers by either party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

**ARTICLE XI
SOLE AGREEMENT AND AMENDMENT**

This Agreement and the attached Exhibits to which reference is made herein contain all of the agreements and covenants made between the parties hereto with respect to the subject matter set forth herein, shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement.

**ARTICLE XII
GOVERNING LAW**

This Agreement shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Agreement or any Exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement and Exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

**ARTICLE XIII
NOTICE**

In the event any notice is required to be delivered hereunder, it shall be given in writing, and shall be delivered personally or shall be deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, in which latter event it shall be deemed given five days after the date mailed. If it is to be sent to CITY, then it shall be addressed as follows:

Port of Milwaukee
2323 South Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

With a copy to:

Office of the City Attorney
City of Milwaukee
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

If it is to be sent to STATE it shall be addressed as follows:

State of Wisconsin Department of Natural Resources
Southeast Region Headquarters
2300 North Dr. Martin Luther King, Jr. Drive
PO Box 12436
Milwaukee, WI 53212

Attn: Southeast Region Director

**ARTICLE XIV
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. The term "CITY" whenever used herein shall include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority as the context may require.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed by their proper respective officers and their corporate seals to be affixed hereto on the day and year first above written.

**CITY OF MILWAUKEE,
a Wisconsin municipal corporation**

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, City Comptroller

STATE OF WISCONSIN

**BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF MILWAUKEE**

Secretary, Building Commission

President

Secretary, Department of Natural Resources

Secretary

TOG/kg
10-14-04
1050-2002-914
84364

EXHIBIT A
PROJECT DESCRIPTION AND BUDGET

[To Be Developed By State]