

**COOPERATION AGREEMENT FOR SUMMERFEST ACCESS
AND WIDENING OF HARBOR DRIVE**

This Agreement is made and entered into as of the _____ day of _____, 200__ by and among Discovery World Ltd. (as the successor in interest to Pier Wisconsin Ltd.) (“Discovery World”), the City of Milwaukee acting through its Board of Harbor Commissioners (“City”), Milwaukee World Festival, Inc. (“Festival”), the State of Wisconsin Department of Natural Resources (“DNR”), and Milwaukee County (“County”).

W I T N E S S E T H:

WHEREAS, the City and Discovery World entered into an October 11, 2003 Development and Lease Agreement for the construction and operation of the Discovery World facility (the “Discovery World Lease”); and

WHEREAS, the City and Festival entered into a January 1, 2001 Lease Agreement for the operation, use and maintenance of the SummerFest Grounds (the “Festival Lease”); and

WHEREAS, the City and DNR entered into a February 1, 2003 Cooperation and Development Agreement for the development of the Lake Shore State Park (the “Park Agreement”); and

WHEREAS, the parties hereto desire to enter into this Cooperation Agreement to facilitate the access to and operation of their various facilities located on the Discovery World Site (as defined in the Discovery World Lease), SummerFest Site (as described in

the Festival Lease), Lake Shore State Park Site and South Urban Park (as described herein); and

WHEREAS, the Common Council of the City of Milwaukee has approved this Agreement via Common Council File No. _____ adopted _____ and the Board of Harbor Commissioners has approved this Agreement at its _____ meeting; and

WHEREAS, Discovery World has approved this Agreement and authorized _____ to execute it on its behalf; and

WHEREAS, Festival has approved this Agreement and authorized _____ to execute it on its behalf; and

WHEREAS, the DNR has approved this Agreement on _____; and

WHEREAS, Milwaukee County has approved this Agreement via County Resolution No. _____ adopted _____;

NOW, THEREFORE, in consideration of the premises and for the other good and valuable consideration hereinafter expressed, the parties agree as follows:

I. Discovery World Obligations

1. Discovery World shall provide all funding over and above the funds provided by Festival, as specified below, needed to pay for the design and construction of the "Harbor Drive Widening" and the "New Access Roadway" and the removal of the "Existing Access Roadway" (collectively, the "Work"), all as more particularly depicted and described on Exhibit A.

2. Discovery World shall prepare final plans and specification for and then construct the Work in accordance with such final plans and specifications after their approval by Festival and the City.

3. Discovery World shall construct the Work pursuant to the right of entry granted to Discovery World by the City as set forth in this Agreement. Discovery World shall indemnify the City from and against any and all claims arising in connection with the construction of the Work by Discovery World and/or its contractors, consultants, agents and representatives. Prior to commencement of the Work, Discovery World shall deliver to the City certificates of insurance in conformity with the City's insurance requirements set forth on Exhibit E attached hereto.

4. Discovery World shall require all contractors performing the Work to comply with the City's prevailing wage requirements applicable to public work projects.

II. Festival Obligations

1. Festival shall provide \$_____ in funding for the design and construction of the Work and shall have the right to approve the final plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed. The approval shall be in writing delivered to all other parties to this Agreement.

2. In exchange for the City's grant of a non-exclusive access easement (a copy of such easement is attached hereto and incorporated herein as Exhibit B), Festival hereby releases its easement interest for ingress and egress over the Existing Access Roadway, as described in the February 1, 2005 Conservation Easement by and among the City, DNR and Festival recorded on March 29, 2006 as Document No. 09208873.

3. Festival hereby accepts a license from the City to operate the South Urban Park, as more particularly described on Exhibit C, in accordance with the maintenance, housekeeping, indemnification and insurance provisions of ¶¶ 14, 22 and 23 of the SummerFest Lease and further shall operate and use the South Urban Park in accordance with all terms and conditions established by the City's Board of Harbor Commissioners. This license supersedes the 1987 "Use and Control Agreement" between Festival and the Board of Harbor Commissioners.

4. Festival hereby agrees to maintain and operate the New Access Roadway and all sidewalks included as part of the Harbor Drive Widening portion of the Work (as shown on Exhibit A) in accordance with ¶¶ 14, 22 and 23 of the Summerfest Lease.

III. The City of Milwaukee (Board of Harbor Commissioners)

1. The City shall grant to Festival a non-exclusive access easement, in the form as more particularly set forth in Exhibit B, across the City owned property described therein for the purpose of utilizing and maintaining the New Access Roadway.

2. The City hereby grants to Discovery World a right of entry upon and across City owned property (including the easement area conveyed by the County to the City under Article V, herein) for the purpose of constructing all of the Work.

3. The City grants to Festival a non-exclusive license to use the South Urban Park as described on Exhibit C in accordance with the terms and conditions of this Agreement and such terms and conditions as are established from time to time by the City's Board of Harbor Commissioners.

4. The City shall have the right to approve the final plans and specifications of the Work, which approval shall not be unreasonably withheld or delayed.

5. The City shall have the right to inspect the construction of the Work to insure compliance with the approved final plans and specifications.

IV. DNR Approvals

The DNR approves the terms and conditions of this Agreement, in particular the grant of the easement to Festival for the New Access Roadway and Festival's release of its easement for the Existing Access Roadway.

V. County Easement

The County shall grant a non-exclusive easement to the City over the County owned land necessary to construct the Harbor Drive Widening portion of the Work. A copy of such easement is attached hereto as Exhibit D.

VI. 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.

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 completion and approvals of the final plans and specifications for the Work and the installation thereof. The parties agree to use their

best efforts to cooperate in the finalization of such Exhibits in order to allow the Work to be completed as contemplated by this Agreement.

VIII. Time is 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.

IX. Approvals and Consents

Whenever in this Agreement the consent or approval of any party is required, or when 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, unless otherwise expressly stated herein the City's Commissioner of Public Works shall have the authority to provide such consent or approval or to exercise such discretion.

Whenever in this Agreement the consent or approval of the County is required, or the discretion of the County may be exercised, the County's Director of Transportation and Public Works shall have the authority to provide such consent or approval or to exercise such discretion.

X. One or more waivers by any of the parties of any covenant or condition of this Agreement shall not be construed as a waiver or a substantial breach of the same or of any other covenant or condition. The consent or approval given by a party with respect to any act by another party requiring such consent or approval shall not be deemed to

wai ve or render unnecessary further consent or approval by subsequent similar act by such party.

XI. This Agreement and the Exhibits to which reference is made herein shall 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 the respective successors and assigns, and shall not be modified orally or in any manner other than by agreement, in writing, signed by each of the parties to this Agreement.

XII. 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 the 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 such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

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 such latter event it shall be given five days after the date mailed. The addresses of the parties (which may be changed by any party upon delivery of proper notice to the other parties) are as follows:

City:

Department of City Development

Attn: _____

809 North Broadway, 2nd Floor

Milwaukee, Wisconsin 53202

With a copy to:

Port of Milwaukee

Attn: Municipal Port Director

2323 South Lincoln Memorial Drive

Milwaukee, Wisconsin 53207

Discovery World:

Discovery World Ltd.

Attn: Mr. Joel Brennan

500 North Harbor Drive

Milwaukee, WI 53205

Festival:

Milwaukee World Festival, Inc.

Attn: Mr. Frank Nicotera

200 North Harbor Drive

Milwaukee, WI 53202

DNR:

State of Wisconsin

Department of Natural Resources

Southeast Regional Headquarters

Attn: Southeast Regional Director

2300 North Martin Luther King, Jr. Drive

P.O. Box 12436

Milwaukee, Wisconsin 532__

County:

Milwaukee County

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 in the same agreement.

XV. Conflict of Interest

A. Interest in agreement. No officer, employee or agent of the City or County who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this agreement pertains, shall have any personal interest, direct or indirect, in this agreement.

B. Interest of Other Local Public Officials. No member of the governing body of the City or County and no other public official of the City or County who exercises any functions or responsibilities in the review or approval of the carrying out of this agreement shall have any personal interest, direct or indirect, in this agreement.

XVI. Discrimination Prohibited

In all hiring or employment made possible by or resulting from this agreement there: (1) will not be any discrimination against any employee or applicant for employment because of marital status, age, disability, lawful source of income, race, color, sexual orientation or familial status, religion, sex, national origin or ancestry, gender identity or expression, past or present membership in the military service, or based upon affiliation with, or perceived affiliation with any of these protected categories; and (2) affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their marital status,

age, disability, lawful source of income, race, color, sexual orientation or familial status, religion, sex, national origin or ancestry, gender identity or expression, past or present membership in the military service, or based upon affiliation with, or perceived affiliation with any of these protected categories.

This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to marital status, age, disability, lawful source of income, race, color, sexual orientation or familial status, religion, sex, national origin or ancestry, gender identity or expression, past or present membership in the military service or based upon affiliation with, or perceived affiliation with any of these protected categories.

No person in the United States shall, on the ground of marital status, age, disability, lawful source of income, race, color, sexual orientation or familial status, religion, sex, or national origin or ancestry, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this agreement. The City and each employer will comply

with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

The parties will comply with all applicable provisions of the Americans With Disabilities Act of 1990.

IN WITNESS WHEREOF, the parties have cause, these presence 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:

**BOARD OF HARBOR
COMMISSIONERS:**

Tom Barrett, Mayor

By: _____
President

Ronald D. Leonhardt, City Clerk

Secretary

COUNTERSIGNED:

DISCOVERY WORLD LTD.:

W. Martin Morics, Comptroller

By: _____
President

Executive Secretary

**MILWAUKEE WORLD
FESTIVAL, INC.:**

**STATE OF WISCONSIN,
DEPARTMENT
OF NATURAL RESOURCES:**

By: _____
President

By: _____
Secretary of Building Commission

Secretary

Secretary of DNR

MILWAUKEE COUNTY:

By: _____

Approval as to content execution and form this ____ day of _____, 2008.

Assistant City Attorney

COOPERATION AGREEMENT EXHIBITS

Exhibit A – Survey and legal descriptions depicting Existing Access Roadway, New Access Roadway and Harbor Drive Widening.

Exhibit B – City/Festival Easement for New Access Roadway.

Exhibit C – Legal Description for South Urban Park License Area.

Exhibit D – County/City Easement for Harbor Drive Widening.

Exhibit E – City insurance requirements.

EXHIBIT A

Survey and Legal Descriptions

EXHIBIT B

EXHIBIT C

Legal Description for South Urban Park License Area

EXHIBIT D

EXHIBIT E

Insurance Requirements

Prior to the start of work, the consultant shall furnish to the City certificates of insurance which confirm that the consultant has the types and amounts of insurance listed in a) through e) below, and provide for a thirty (30) days notice to the City prior to policy change, termination or cancellation. The City shall be named as an additional insured for insurance types b) through d) below. An affidavit of "no interest" must accompany certificates of insurance. The consultant shall require its subcontractors to carry the same types and amounts of coverage as required of the consultant, or may instead provide the coverage for its subcontractors. The consultant is responsible for assuring subcontractor compliance with these insurance requirements. The City reserves the right to review the actual policies of insurance. The minimum limits of insurance are as follows:

a) Workers' Compensation And Employers' Liability

Coverage Amounts

Workers' Compensation		Statutory
Employers' Liability		
Bodily Injury By Accident	Each Accident	\$100,000
Bodily Injury By Disease	Each Employee	\$100,000
Bodily Injury By Disease	Policy Limit	\$500,000

To Include

Other State's Coverage

b) Commercial General Liability

Limits Of Liability

Bodily Injury/Property	Each Occurrence	\$1,000,000
Damage	General Aggregate	\$1,000,000
	Products/Completed	
	Operations Aggregate	\$1,000,000
Personal Injury	Aggregate	\$1,000,000

To Include

Occurrence Form

Premises/Operations Coverage

Products/Completed Operations Coverage Including Extension Of Coverage For Two (2) Years

After Acceptance Of Work By The City

Contractual Liability For Risks Assumed In This Agreement

c) Automobile Liability

Limits of Liability

Bodily Injury/Property Damage	Each Accident	\$1,000,000
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To Include

Coverage On All Owned, Non-owned, And Hired Vehicles

d) Umbrella Liability

Limits Of Liability

Personal Injury/Property	Each Occurrence	\$2,000,000
Damage	Aggregate	\$2,000,000

To Include

Occurrence Form

First Dollar Defense Coverage

Insuring Agreement Which Will Provide Excessive Protection To The Primary Coverage (Exclusive Of Professional Liability)

e) Professional Liability

Limits Of Liability

Wrongful Act	Per Incident	\$1,000,000
	Aggregate	\$1,000,000

To Include

Insuring Agreement To Cover Errors And Omissions Including Loss, Costs And Expenses, Which Result From The Operations Of The Service Provider. If Insuring Agreement Is Claims Made, The Coverage Must Be Continued For The Duration Of The Contract Or For A Period Of Time After The Contract Completion Date As Required By The City