

**INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN THE CITY OF MILWAUKEE AND
THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
CONCERNING THE REPLACEMENT OF THE 6TH STREET BRIDGE
OVER THE KINNICKINNIC RIVER**

The CITY OF MILWAUKEE, a municipal corporation (“City”), and the MILWAUKEE METROPOLITAN SEWERAGE DISTRICT, a municipal body corporate, organized and operating under Wis. Stat. §§ 200.21 through 200.65 (“MMSD”), enter into this Intergovernmental Cooperation Agreement (“ICA”), pursuant to Wis. Stat. § 66.0301, for the purpose of establishing the responsibilities of MMSD and the City with respect to the design and construction of a replacement bridge over the Kinnickinnic River (the “KK River”) at South Sixth Street in the City of Milwaukee (the “6th Street Bridge”) and with respect to matters relating thereto.

RECITALS

A. MMSD has taken jurisdiction of the KK River for purposes of projecting, planning, design and construction for the drainage needs of the watershed and has devised a KK River flood management plan to ameliorate or alleviate flood damage to property along the KK River within the corporate boundary of the City.

B. During the planning phase of the MMSD-KK-Flood Management Project, MMSD determined that the existing 6th Street Bridge is inadequate to allow flows from the 1% probability flood to pass, and that replacement of that existing bridge to create a free opening under the roadway that is adequate to allow flows from the 1% probability flood to pass, along with stream improvements under the bridge, is the most cost-effective way to achieve the goals of the MMSD-KK-Flood Management Project in the area of Sixth Street. This conclusion was based on preliminary planning level cost estimates for the replacement of the 6th Street Bridge and the associated construction work. Replacement of the 6th Street Bridge also requires (i) abandonment and removal of existing MMSD-owned-MIS sewers, and the relocation and replacement of new MMSD-owned-MIS sewers (the “MMSD MIS Sewers”), and (ii) abandonment and removal of an existing City-owned water main, and the relocation and replacement of a new City-owned water main (the “City Water Main”), and (iii) abandonment and removal of existing City-owned communication cables, and the relocation and replacement of new City-owned communication cables (the “City Cables”), and (iv) abandonment and removal of an existing City-owned combined sewer, and the relocation and replacement of a new City-owned combined sewer (the “City Combined Sewer”).

C. The Metropolitan Sewerage Commission, acting on behalf of MMSD, by Commission Resolution 09-086-7 dated July 27, 2009, approved creation of the “KK River Flood Management Project—South 6th Street to South Chase Avenue” (the “MMSD-KK-Flood Management Project”) which includes authorizing the negotiation of an ICA to provide for replacement of the 6th Street Bridge; this Commission approval was based upon the MMSD preliminary planning level cost estimates for the project that were available at that time.

D. The City has determined that the current conditions of the existing 6th Street Bridge indicate that replacement of the bridge in the near future would be warranted and the City is willing to expedite this replacement in return for a cost-sharing arrangement with MMSD, so that both the City's and the MMSD's public purposes may be furthered by replacing the existing 6th Street Bridge in a cost-effective way.

E. The City received funding approval by the Federal Highway Administration ("FHA") through the Surface Transportation Program-Milwaukee Urbanized Area Funding under the American Recovery and Reinvestment Act ("ARRA") (the "ARRA Funding"), and the City entered into a "State/Municipal Agreement for a Stage 2 Local ARRA 2010 Construction Season Improvement Project" with the Wisconsin Department of Transportation ("DOT"), dated July 11, 2009 concerning expenditure of the ARRA Funding and the construction of a replacement 6th Street Bridge (the "City-DOT Contract") (Project I.D. 2235-01-71). A copy of the City-DOT Agreement, as amended by that certain letter agreement between the City and DOT (i.e., October 22, 2009 letter from Jeffrey Polenske to Kathleen Chung with attachment signed by the DOT on November 9, 2009, by Mary Forienza, Chief, WisDOT Local Transportation Programs & Finance) is attached to this ICA as **EXHIBIT A**. This ICA is premised upon the City-DOT Contract proceeding forward.

F. The preliminary final project cost estimates for the 6th Street Bridge Replacement Project have increased significantly over the planning level cost estimates and show that the 6th Street Bridge replacement is a cost effective option for MMSD to implement in order to allow for the 1% probability flood to pass, as compared to the "Culvert Alternative Cost", as defined below, *only* if MMSD responsibility for sharing in the City's costs of the Replacement 6th Street Bridge is capped at \$1,690,140 and subject to the other limitations stated in this ICA. City is willing to accept this cost reimbursement cap of \$1,690,140, and to pay the remaining costs at its sole expense, and, therefore, City and MMSD are willing to cooperate with each other, on, and subject to, the terms and conditions contained herein, so that both the City's and MMSD's public purposes may be furthered by replacing the existing 6th Street Bridge, replacing the MMSD MIS Sewers, replacing the City Water Main, replacing the City Cables, and replacing the City Combined Sewer, and so that work may take place as contemplated by and in harmony with the City-DOT Contract.

G. Subject to MMSD's \$1,690,140 cost reimbursement cap and other limitations stated in this ICA, MMSD has agreed to reimburse the City: (i) for a portion of the total 6th Street Bridge Construction Cost (defined below) if ARRA funds are not sufficient; (ii) the full costs of relocating the MMSD MIS Sewers, the City Water Main and the City Cables as each of those costs are defined herein, and (iii) the full City Combined Sewer Relocation Cost (defined below) to the extent not covered by subparagraph (i) of this Recital G.

H. Based on estimates currently available, MMSD's total reimbursement to the City under this ICA is currently estimated to be: \$1,491,650.

\$1,491,650 =

\$1,424,892 (= the "MMSD-MIS Sewer-Relocation Cost" + the "City Water Main and City Cable Relocation Cost" + the "City Combined Sewer Relocation Cost")

PLUS

\$66,758 (i.e. 50% of 20% of the "6th Street Bridge Construction Cost" that is currently expected to exceed the \$1,579,034 ARRA Funding) (i.e., 10% of the current estimate of the excess over the "6th Street Bridge Construction Cost").

AGREEMENT

1. Recitals Accepted. MMSD and City acknowledge and accept the recitals above and agree to the same. For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, MMSD and City agree to the terms and conditions herein.

2. Defined Terms. The following terms shall have the following meanings.

(a) **"Replacement 6th Street Bridge"** means the structures necessary to permit pedestrian and vehicular travel over the KK River along 6th Street while providing a free opening under the 6th Street Bridge adequate to allow flows from the 1% probability flood to pass.

(b) **"Stream Improvements"** means the stream realignment, concrete channel removal and any associated sediment or soils removal and disposal, bank stabilization, restoration, and landscaping improvements associated with the MMSD-KK-Flood Management Project, from approximately 50 feet upstream to approximately 50 feet downstream of the 6th Street Bridge.

(c) **"6th Street Bridge Construction Cost"** means

(i) all costs actually incurred by the City or DOT to demolish and remove the existing 6th Street Bridge, including construction engineering for bridge removal; and

(ii) all costs actually incurred to move any and all utilities including the City Combined Sewer, but *other than* the MMSD MIS Sewers, the City Water Main, and the City Cables; and

(iii) all costs actually incurred to perform Stream Improvements, including the costs to test, remove and properly dispose any contaminated soils or

sediments in or along the stream bed as required by law; and

(iv) all costs actually incurred to build the Replacement 6th Street Bridge, including but not limited to, costs of construction-contract bidding and award, construction-contract engineering, administration of the construction contract, inspection of construction, mobilization and demobilization for construction, all payments made to the construction contractor for the Replacement 6th Street Bridge.

The parties agree that the 6th Street Bridge Construction Cost was preliminarily estimated, at the time of project submittal to DOT for the award of ARRA funds, not to exceed **\$1,579,034** (which included \$1,268,300 for construction, \$19,025 for DOT oversight, and \$291,709 for construction contingencies and construction engineering), and the parties agree that this **\$1,579,034** amount *included* the preliminary estimate of \$42,000 for the City Combined Sewer Relocation Cost (defined below).

The parties agree that the 6th Street Bridge Construction Cost has been further refined and is currently estimated not to exceed **\$2,246,616** (which does not include any estimate for the City Combined Sewer Relocation Cost). The current estimate for City Combined Sewer Relocation Cost is now in ¶2(f), and this amount will be paid in accordance with ¶4.

(d) **“MMSD-MIS Sewer-Relocation Cost”** means (i) the costs actually incurred to abandon and remove the existing MMSD MIS Sewers; and (ii) the costs actually incurred to install and relocate the replacement MIS Sewers, including but not limited to costs of materials, mobilization and demobilization for construction of the MIS Sewer relocation, and all payments made to the construction contractor for the MIS Sewer relocation. The MMSD MIS Sewer Relocation Cost is currently estimated at **\$919,263**.

(e) **“City Water Main and City Cable Relocation Cost”** means (i) the costs actually incurred to abandon and remove the existing City Water Main and City Cables; and (ii) the costs actually incurred to install and relocate the replacement City Water Main and City Cables, including but not limited to costs of materials, mobilization and demobilization for construction of the City Water Main and City Cables relocation, and all payments made to the construction contractor for the City Water Main and City Cables relocation. The City Water Main and Cable Relocation Cost are currently estimated at **\$188,709**, with \$153,709 estimated for the City Water Main relocation and **\$35,000** for the City Cables relocation.

(f) **“City Combined Sewer Relocation Cost”** means (i) the costs actually incurred to abandon and remove the existing City Combined Sewer; and (ii) the costs actually incurred to install and relocate the replacement City Combined Sewer, including but not limited to costs of materials, mobilization and demobilization for construction of the City Combined Sewer relocation, and all payments made to the construction contractor for the City Combined Sewer relocation. The City Combined Sewer

Relocation Cost was preliminarily estimated at **\$42,000**, which amount was included in the estimated 6th Street Bridge Construction Cost as submitted and approved in the application for ARRA funds. The current estimate for City Combined Sewer Cost is **\$316,920**; this amount is based on site conditions discovered since the preparation of the preliminary estimate. The City intends to seek full funding either by requesting ARRA Funding or requesting other federal funding administered by DOT for the City Combined Sewer Relocation Cost. The City Combined Sewer Relocation Cost shall be paid in accordance with ¶4.

(g) **“Overall Project”** means the demolition and replacement of the 6th Street Bridge, the Stream Improvements, and the removal and replacement of the MMSD MIS Sewers, the City Water Main, the City Cables, and the City Combined Sewer.

(h) **“Culvert Alternative”** means the construction of two culverts to divert KK River flow around the base of the existing 6th Street Bridge which MMSD has identified as an alternative method of increasing river flow capacity in the area of the 6th Street Bridge to achieve flood management goals.

(i) **“Culvert Alternative Cost”** means the current cost estimate developed by MMSD for construction of the Culvert Alternative less the design costs incurred by MMSD for the construction of the Replacement 6th Street Bridge; this amount is \$1,690,140.

3. Design Services; MMSD Plans; Permits.

(a) **Costs.** MMSD shall at its expense, fund 100% of the costs incurred to design the Overall Project. If any City-review fees are required for the design of the Overall Project, the City agrees it will not charge MMSD for any such review fees.

(b) **Preliminary Engineering Report for the Utility Relocations.** MMSD has at its expense, prepared a preliminary engineering report for the relocations of the MMSD MIS Sewers, the City Combined Sewer, and the City Water Main. The preliminary engineering report recommends the most cost-effective alternative for relocating each such utility that is acceptable to MMSD and the City, for their respective utility. The City has prepared a preliminary engineering report for relocating the City Cables.

(c) **Preliminary Plan and Design.** MMSD has, at its expense, prepared a preliminary plan that represents the 30% completion stage for the Overall Project, and MMSD has, after City approval, submitted the preliminary plan to DOT for approval. Also at the 30% completion stage, MMSD, on October 13, 2009, made the necessary presentation to the Milwaukee Arts Board.

(d) **90%, Final Plan; MMSD Option to Withdraw from Overall Project after Final Estimate.** After DOT approval of the preliminary plan, MMSD completed and submitted to the City for review and approval, 90% and final plans and specifications

for the Overall Project. MMSD and City reviewed and approved each such plan prior to submitting same to DOT for approval. MMSD coordinated with the City and DOT the planning and the design for each of the 30%, the 90%, and the final plans. MMSD's designs and plans were prepared in accordance with the DOT Bridge Design Manual and Facilities Development Manual. MMSD retains the right under this ICA, at any time prior to advertisement of this project by DOT for bids, to re-evaluate the cost effectiveness of the 6th Street Bridge replacement option, as compared to the "Culvert Alternative Cost", after receipt of the City and DOT comments on the final plans, final specifications and final cost estimate and to notify the City if the final cost estimates for the Overall Project have caused the 6th Street Bridge replacement option to exceed the Culvert Alternative Cost. If that determination is made, MMSD shall, at least three business days prior to DOT advertisement for bids, notify the City and DOT in writing of its intent to withdraw from the Overall Project in which case this ICA shall terminate.

(e) **Permits.** MMSD shall prepare applications and obtain, at its expense, all applicable permits and approvals from the State of Wisconsin Department of Natural Resources ("DNR") and the United States Army Corps of Engineers for the Overall Project; provided, however, that City agrees to cooperate in the permit-application process, including, if necessary, but at no out-of-pocket cost to City, the City becoming a sponsoring or co-sponsoring municipality and named permittee. MMSD shall obtain any necessary approvals and any necessary rights-of-entry for the Overall Project from Milwaukee County. The City will obtain the Conditional Letter of Map Revision (CLOMR) from the United States Federal Emergency Management Agency (FEMA), if required, for changes to the upstream or downstream 1% floodplain due to the replacement of the 6th Street Bridge; provided, however, that MMSD agrees to assist in hydrologic and hydraulic modeling efforts required by the permit. The contractor shall obtain all applicable construction permits for the Replacement 6th Street Bridge, and MMSD and City agree to cooperate in any permit-application process as necessary and appropriate.

4. Payment Responsibility.

(a) **MMSD Payment.** MMSD shall:

- (i) pay 100% of the design costs and the cost of design consultant's engineering services for each of the 30%, 90% and final plans, specifications, and cost estimates (including design costs associated with addressing DNR environmental issues associated with the Overall Project), and
- (ii) pay 100% of the design consultant's engineering **services** during construction associated with the Overall Project (total design and engineering services during construction currently estimated at \$260,600), and
- (iii) per City Invoices, pay the City for 100% of the actual MMSD-MIS

Sewer-Relocation Cost (currently estimated at \$919,263) subject to the conditions and reimbursement cap set out in par.4 (b) below, and

- (iv) per City Invoices, pay 100% of the actual City Water Main and Cable Relocation Cost (currently estimated at \$188,709) subject to the conditions and reimbursement cap set out in par.4 (b) below, and
- (v) per City Invoices, if the actual construction costs exceed the \$1,579,034 ARRA Funding, and any additional ARRA funding or other federal funding entitlement administered by the DOT for the Overall Project, pay 100% of the City Combined Sewer Relocation Cost (currently estimated at \$316,920) not funded by ARRA Funding or other federal funding entitlement administered by the DOT subject to and limited by the conditions set out in ¶ 4(b) below, and
- (vi) per City Invoices, and *only* in the event that actual incurred 6th Street Bridge Construction Costs exceed current ARRA funding of \$1,579,034, and exceed any additional ARRA or DOT funding which is available for the project, pay one-half of the 20% local share portion of any 6th Street Bridge Construction Costs that exceed \$1,579,034, subject to the conditions set out in par. 4(b) below. The City and MMSD intend that any excess costs incurred above the \$1,579,034 ARRA funding, in the event that ARRA funding is not available for the excess costs, will be paid by the City using the 80% federal-funding entitlement administered by DOT, with the remaining 20% (local share) being shared by City and MMSD on a 50-50 basis, subject to the limitations and conditions of ¶ 4(b) below and with the exception that costs for all items or changes requested by the City of Milwaukee Arts Board and adopted in the final plans shall be paid entirely by the City.

(b) MMSD Payment Conditions, Limitations, and MMSD Reimbursement Cap

As a precondition or limitation to each of the payment obligations stated in paragraph 4. (a) (ii) through (vi) above, MMSD shall:

- (i) be entitled to review and approve in writing (in the form of **EXHIBIT B** attached) the construction contract costs presented in contract bids after bid opening by DOT and prior to contract award by DOT, and after existence of 80/20 funding for the 6th Street Bridge Construction Costs exceeding the \$1,579,034 ARRA Funding has been confirmed in writing by DOT. MMSD shall

have the right under this ICA to object to the award of the contract by DOT (any such MMSD objection to be in a written notice to DOT and City specifying reasons for objection). MMSD shall have no more than five working days to review construction contract bid costs prior to signing and approving **EXHIBIT B** or signing and sending any written objection. In the event that DOT proceeds to award the contract despite timely MMSD objection to the award, MMSD shall have no obligation under this ICA to participate in funding of the Overall Project.

- (ii) be entitled to review and approve all construction contract modifications that will increase or decrease the 6th St. Bridge Construction Cost, the MMSD-MIS Sewer-Relocation Cost, the City Combined Sewer Relocation Cost, the City Water Main and City Cable Relocation Cost prior to City approval of such contract modifications in accord with the terms of paragraph 5(e) below.

MMSD shall not be obligated to reimburse the City for any contract modification costs that have not been jointly approved in writing by MMSD and City (MMSD and City approval, in any event, not to be unreasonably withheld, conditioned or delayed).

- (iii) MMSD approval of construction contract bid amounts and contract modification amounts shall be obtained by the City by forwarding the necessary information in writing to Patrick Elliott, MMSD Project Manager, or his successor.
- (iv) In the event the actual 6th Street Bridge Construction Cost does not exceed the ARRA Funding amount of \$1,579,034, as increased by any available ARRA or DOT funding, MMSD shall have no duty to reimburse the City for any portion of the 6th Street Bridge Construction Cost. In the event the actual 6th Street Bridge Construction Cost exceeds the ARRA Funding amount of \$1,579,034, as increased by any available ARRA or DOT funding, the MMSD payment of unfunded excess Overall Project Cost to the City shall be capped and subject to the maximum cost reimbursement cap set out in paragraph 4 (b)(v) below.
- (v) Regardless of the reason for any cost overrun (i.e., any cost which exceeds current estimate or actual bid amount), and regardless of availability or non-availability of ARRA or other DOT administered funding for the Overall Project Cost, MMSD obligation to share or reimburse the City for costs of or associated with the Overall Project shall not exceed \$1,690,140 in total (i.e. the Culvert Alternative Cost). City agrees that MMSD shall not be required, for any reason, to reimburse to City any funds in excess

of this amount, and further, the City agrees that it will pay all costs of the Overall Project which remain after MMSD has reimbursed City for its costs or share of costs under this Agreement, up to but not exceeding this reimbursement cap amount of \$1,690,140.

(c) **Timing of MMSD Reimbursement Payments.** MMSD reimbursement payments to City shall be coordinated with City payments to DOT required under the City-DOT Contract so that MMSD payments to City precede City payments to DOT. Whenever City is invoiced by DOT under the City-DOT Contract (a "DOT Invoice"), City will promptly email or fax a copy of the DOT Invoice to MMSD together with a City invoice to MMSD (a "City Invoice") for MMSD's payment duties which shall be determined under the provisions of this Agreement, and based upon what is being invoiced under the DOT Invoice. MMSD shall pay the City Invoice within **20 days** of the date that City faxed or emailed the City Invoice, understanding that City will need MMSD funds in hand in order for City to pay the DOT Invoice.

5. City-DOT Contract.

(a) **Cooperation in Good Faith.** Recognizing that the City received the ARRA Funding to construct the Replacement 6th Street Bridge, and that that funding will be spent per the City-DOT Contract, MMSD and City agree to cooperate with one another in good faith so that the work contemplated under the City-DOT Contract and under this Agreement may be completed efficiently and as envisioned. City and MMSD also agree to cooperate in good faith with DOT.

(b) **City Request to DOT.** The City will request DOT: (i) to bid and award the construction contract for the Replacement 6th Street Bridge (using the **EXHIBIT B** document attached hereto), including the replacement of the City Water Main, City Cables, and City Combined Sewer, and the replacement of the MMSD MIS Sewers.; (ii) to administer the construction contract; (iii) to provide inspection and resident engineering for the work under the construction contract, excluding the relocation of MMSD MIS Sewers, City Cables and City Water Main; and (iv) to demolish and remove the existing 6th Street Bridge, and complete the construction of the Replacement 6th Street Bridge, all in accordance with the terms of the City-DOT Contract.

(c) **City Water Main.** The City will provide resident engineering, inspection, Milwaukee Water Works crew mobilization, and all required sampling and testing for the relocation of the City Water Main.

(d) **Contingency About DOT Bid and Award Documents.** MMSD's and City's duties under this Agreement are contingent upon each of City and MMSD reviewing and approving in a written supplement to this Agreement (in form and substance of **EXHIBIT B** attached) the DOT-determined winning bid amount and contractor, and the DOT proposed Contract Award prior to the DOT actually awarding the Contract. The approval of MMSD and City shall not be unreasonably withheld, conditioned or delayed. City shall, after signing this Agreement, promptly provide a

copy of same to DOT.

(e) **DOT Contract Modifications; Change Orders.** When and if DOT asks City for approval to modify any construction contracts relating to the Overall Project (including any change order or modification that would increase cost), or if City otherwise wishes to approve any such modification or change order, then City shall, prior to granting approval, promptly solicit MMSD review and approval (which MMSD shall not unreasonably withhold, condition or delay), and City shall not grant approval to DOT until MMSD has approved same. MMSD shall review as quickly as possible but shall have up to (but no more than) **10 working days** to review and approve any such modification or change order. MMSD failure to respond by the 10-working-day deadline shall be deemed approval by MMSD. If MMSD provides notice of disapproval or otherwise conditions or qualifies its approval, then MMSD, City, DOT and Contractor shall meet to resolve the issue.

6. Notices. Notices required or desired to be given by one party to another party with respect to this Agreement shall be in writing and shall be:

- (i) delivered personally;
- (ii) sent by e-mail or facsimile - provided any e-mail or facsimile is sent during any Monday through Friday that Milwaukee's City Hall is open for business, and is sent during the hours between 8:30 A.M. and 4:30 P.M., and is sent successfully (for example, no error or inability to send message is generated as a result of any such e-mail or facsimile sent);
- (iii) sent by commercial overnight courier service, prepaid; or
- (iv) sent by United States registered or certified mail, return receipt requested, postage prepaid, and, in any event, notices shall be addressed as herein provided and shall be given to the following:

CITY

Jeff Polenske
City Engineer
City DPW – Infrastructure Services,
Administration
841 N. Broadway, Room 701
Milwaukee, WI 53202
Ph 414-286-2400
Fax 414-286-5994
Jeffrey.polenske@milwaukee.gov

with a copy to

Gregg Hagopian
Asst. City Attorney
841 N. Broadway, 7th Floor
Milwaukee, WI 53202
Ph 414-286-2620
Fax 414-286-8550
ghagop@milwaukee.gov

MMSD

Patrick Elliott
MMSD – Project Manager
260 W. Seeboth Street
Milwaukee, WI 53204-1446
Ph. 414-225-2168
Fax 414-221-6801
pelliott@mmsd.com

with a copy to

Susan Anthony
Sr. Staff Attorney, MMSD
260 W. Seeboth Street
Milwaukee, WI 53204-1446
Ph. 414-225-2106
Fax 414-225-0167
santhony@mmsd.com

Recipient address information (such as change in facsimile number or e-mail address, or contact person) may, from time to time, be changed by notice duly sent hereunder.

7. Ownership and Maintenance. The City will continue to own and maintain the 6th Street Bridge, the City Water Main, the City Cables, and the City Combined Sewer. The City will continue to be responsible for maintenance and repair of all structural supports for the bridge, as well as the deck, sidewalks, and railings of the bridge. MMSD shall maintain the Stream Improvements so as to maintain their hydraulic and hydrology capabilities. MMSD shall continue to own and maintain the MMSD MIS Sewers.

8. Entire Agreement. This is the entire agreement between the parties hereto, and this Agreement may only be amended or modified by a written agreement signed by each of MMSD and City.

9. Counterparts. This Agreement may be signed in one or more counterparts each of which shall, when taken together, constitute one and the same document.

10. Hold Harmless Agreement. In the event that, the ownership or maintenance by the City of the existing 6th Street Bridge or the replacement 6th Street Bridge, including the need to repair or replace such structure or any part thereof, is a cause, in whole or in part, for any claim against the MMSD or in the case of any alleged violation of any applicable law or regulations related in any way to the existing or the replacement 6th Street Bridge, including but not limited to regulations of the Wisconsin Department of Natural Resources, the City will defend and hold harmless the MMSD against any and all liability, claim, need to remediate, demand, judgment, or settlement. In the event that the ownership or maintenance by MMSD of the MMSD owned MIS Sewers, or the maintenance (or failure to maintain) by MMSD of the Stream Improvements, is a cause, in whole or in part, for any claim against the City, or in the case of any claim against the City based on any alleged violation of any applicable law or regulations related in any way to the MMSD MIS Sewers or the Stream Improvements including but not limited to, any such claim based upon regulations of the Wisconsin Department of Natural Resources, MMSD will defend and hold harmless the City against any and all liability, claim, need to remediate, demand, judgment, or settlement. The City and MMSD agree and acknowledge that City is a third party beneficiary to the contract between MMSD and the firm of Short Elliott Hendrickson, Inc. for the design of the replacement 6th Street Bridge, which design has been fully funded by MMSD. MMSD and City shall each be responsible to each other for claims and liabilities caused solely by their respective conduct, and MMSD and City will hold each other harmless concerning the same.

11. MMSD Permanent Easement to City. MMSD, at its expense and within a reasonable period of time, shall secure fee simple title to, and grant to City a permanent easement in, the real estate from 6th Street to 8th Street necessary to relocate the City Combined Sewer. The Permanent Easement shall be in form and substance meeting City's reasonable approval and shall be consistent with typical permanent easements running to City for City combined sewers. The Permanent Easement shall be subject to review and approval by the City's and MMSD's legal staff, as well as necessary approvals by governing bodies.

IN WITNESS WHEREOF, MMSD and City have caused this Agreement to be executed by their duly authorized signatories.

Dated as of this _____ day of _____, 2010.

CITY: CITY OF MILWAUKEE

MMSD: MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

By: _____
Jeff Mantes, DPW Commissioner
Per Common Council File
No. 090779. See also File No. 081603
concerning City-DOT Contract.

By: _____
Kevin L. Shafer, P.E., *Executive Director*
Per Resolutions No. 09-086-7 adopted
July 27, 2009 and No. _____ adopted
_____, 2010, by the Milwaukee
Metropolitan Sewerage Commission.

CITY CLERK

Approved by MMSD Division of Legal Services:

Ronald Leonhardt

By: _____

Countersigned:

Susan Anthony
Senior Staff Attorney
State Bar No. 1017288

By: _____
Michael J. Daun, *Deputy Comptroller*

**Milwaukee City Attorney
Approval**

By: _____
Gregg C. Hagopian
Assistant City Attorney
State Bar No. 1007373

Date: _____

EXHIBIT B

MMSD AND CITY APPROVE DOT CONTRACT AWARD

**SUPPLEMENT TO INTERGOVERNMENTAL COOPERATION AGREEMENT
CONCERNING THE 6th STREET BRIDGE OVER THE KINNICKINNIC RIVER**

The CITY OF MILWAUKEE (“City”) and the METROPOLITAN MILWAUKEE SEWERAGE DISTRICT (“MMSD”) hereby enter this document, as envisioned and required by ¶4(b)(i) and ¶5(d) of that certain “Intergovernmental Cooperation Agreement” between City and MMSD (the “ICA”) concerning the replacement of the 6th Street Bridge over the Kinnickinnic River (the “KK River”).

Each of City and MMSD understand that, based on the FINAL PLANS approved by each of City, MMSD, and DOT (any term not defined herein shall have the meaning ascribed to it in the ICA), DOT solicited bids for the construction work for the Overall Project. DOT has informed City, and City has informed MMSD, that DOT believes that: _____ (“Contractor”) is the entity that submitted the winning bid for the Overall Project work, and \$ _____ is the overall amount bid by Contractor for the work (the “Bid Amount”).

City and MMSD have each conferred with one another and with DOT regarding the Overall Project, the Contractor, the Bid Amount, and 80/20 funding for 6th Street Bridge Construction Costs exceeding the \$1,579,034 ARRA Funding.

City and MMSD, after review, hereby approve the Contractor and Bid Amount, and City and MMSD approve and consent to DOT award of a contract to Contractor based on Contractor’s Bid and the Bid Amount.

City and MMSD waive the contingency set forth in ¶5(d) of the ICA. The parties understand that City will provide a copy of this signed document to DOT.

Dated as of this _____ day of _____, 2010.

CITY: CITY OF MILWAUKEE

**MMSD: MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

By: _____
Jeffrey S. Polenske, P.E., City Engineer

By: _____
Kevin L. Shafer, P.E., Executive Director