



Office of the Comptroller

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May 4, 2006

The Honorable Members,  
Milwaukee Common Council  
City of Milwaukee  
200 E. Wells Street  
Milwaukee, WI 53202

SUBJECT: City – State DOT Funding Agreements

Dear Aldermen:

Common Council Files # 051663, 051664, 051503, 051477, 050892 and 051669 are before you at the May 9<sup>th</sup> meeting of the Common Council. These files relate to public works' projects partially financed by State aids and administered by the State DOT. Representatives of the City of Milwaukee have worked with the State's Department of Transportation (DOT) to change the contract language and eliminate the unlimited liability on the City that could result from overruns on State contracts. Although progress has been made to change contract language that allows me to countersign these contracts, there remains in current contract language no ceiling on future City liability for DOT contract change orders that result in cost overruns above the amount approved by the Common Council.

DOT has maintained they need the ability to execute change orders 100% funded by the City without City approval to "preserve the work in progress, prevent extraordinary damage, avoid unreasonable and costly delay, or other extraordinary condition of necessity, safety or emergency." For example, the DOT could be administering a \$1 million construction contract based on a funding agreement with the City of Milwaukee where DOT is to pay 90% (\$900,000) while the City is to pay 10% (\$100,000). Should a change order(s) add only 10% to project costs in this example, DOT approval of this change order would double the City's financial obligation.

It's important the Common Council recognize that should it approve such contracts, the City would be liable for the total cost of any subsequent change orders approved by the DOT irrespective of any potential City of Milwaukee issues. Such change orders may require the Common Council provide additional funding for these projects in the future. However, in the event City of Milwaukee funds are unavailable in the City budget, DOT indicated existing procedures give DOT the right to withhold future State Transportation aids from the City to reimburse DOT for such cost overruns.

We are working with the Department of Public Works to assure appropriate disclosure to the Common Council of each proposed State DOT funding agreement where this unilateral change order provision exists. We will also work with DPW to assure timely disclosure of all change orders on these State contracts and the fiscal impact of such change orders on the City.

This purpose of this letter is to provide full disclosure to you of the inherent risks associated with these agreements. Our purpose is not a request to hold these files because funding is available since DOT reserves the right to reduce future transportation aids. Please feel free to call me if you have any questions.

Very truly yours,



W. MARTIN MORICS  
Comptroller

Cc Mayor Tom Barrett  
City Attorney Grant F. Langley  
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