

**Memorandum of Understanding Between the
Forest County Potawatomi Community and
City of Milwaukee, Wisconsin
16th Street Bridge over the Menomonee River**

This Memorandum of Understanding (“MOU”) is made and entered into this _____ day of _____, 20__ (“Effective Date”) by and between the **Forest County Potawatomi Community** (“FCPC”) and the **City of Milwaukee**, a Wisconsin municipal corporation (“City”). FCPC and City are each a “Party”; together, they are the “Parties.”

A. Purpose

The purpose of this MOU is to provide a basic framework to enhance funding cooperation between the FCPC and City regarding the 16th Street Bridge rehabilitation project, formally known as Wisconsin DOT I.D. 2615-15-03/73 (the “Project”).

B. Statement of Mutual Benefits and Interests

The Parties share the goal of enhancing transportation safety and functionality. The Parties acknowledge the unique territorial and jurisdictional issues between the FCPC lands and the City’s road system. The Parties recognize the increasing financial challenges and practical matters associated with transportation activities.

The Parties endeavor to collaborate on other activities of mutual benefit and interest regarding road improvements.

The Parties affirm in this MOU the principles of tribal sovereignty, self-determination, self-governance, and the unique government-to-government relationship that exists between the United States and federally recognized Tribes. The United States recognizes and acknowledges that the FCPC has “the immunities and privileges available to federally recognized Indian tribes by the United States.” 89 Fed. Reg. 944, 945 (January 8, 2024). The FCPC’s General Council delegated to the FCPC Executive Council the authority to enter into agreements with local governments; Article V, Section 1(a) FCPC Constitution (1982).

The Parties further affirm that the FCPC enjoys a government-to-government relationship with the State of Wisconsin. *See* Wisconsin Executive Order 39, Relating to the Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin, February 27, 2004; *see also* Wisconsin Executive Order 18, Relating to the Affirmation of the Intergovernmental Relationships Among the State of Wisconsin and Tribal Nations Located Within the State, April 9, 2019.

The Parties affirm that the City is a First Class City organized in accordance with the laws of the State of Wisconsin and is authorized to enter into agreements with tribal governments in accordance with Wis. Stat. § 66.0301(2).

C. 16th Street Bridge over the Menomonee River Rehabilitation

1. Existing Facility & Project Goals

16th Street is a City road that is generally a south-north local roadway and has a structure crossing the Menomonee River (hereinafter, the structure is the “16th Street Bridge”). At all times, the 16th Street Bridge is and will be owned by the City. The City is planning to rehabilitate Unit 14 of the 16th Street Bridge over the Menomonee River (Structure B-40-550-14). Project goals include (i) rehabilitating the existing 16th Street Bridge structure and (ii) making travel safe and comfortable for all 16th Street Bridge users by providing a solid surface across the deck.

2. Proposed Improvements

The Project includes improvements to the existing structural components of the 16th Street Bridge. The original bascule bridge will be converted to a fixed bridge and the Project will remove the original electrical and mechanical equipment. The work will meet all State of Wisconsin and federal requirements, and maintain the unique, historically-significant aspects of the structure. All necessary real estate has been acquired for the Project. City will coordinate with FCPC’s Potawatomi Casino Hotel’s Facilities Department regarding road detours that might affect its employee and customer vehicular traffic.

3. Project Sponsor and Funding

The City is the Project Sponsor with the State of Wisconsin-Department of Transportation for the Project. In accordance with the Wisconsin DOT I.D. 2615-15-03/73 State/Municipal Agreement for the Project costs for the Project, the City’s financial obligation are as follows:

Construction Costs and Funding

The Project’s estimated construction costs are \$21,575,369.78, with 80% federal funding up to \$10,578,160.00. The City is responsible to provide the remaining funds in excess of the \$10,578,160.00 federal funding, and the City’s administrative cost of \$100,000.00.

The City’s financial obligation includes City administrative costs of \$100,000.00.

4. FCPC Contribution to the Project

If the FCPC receives grant funding from the Tribal Transportation Facilities Bridge Program for the Project, such funding shall be applied toward the City’s financial obligation for the Project, not to exceed \$11,097,209.78, subject to the terms of any and every subsequent funding agreement executed between the Parties regarding the Project.

D. Principal Authorities

Each Party shall designate an individual as its point of contact for any and all matters related to this MOU. Those persons shall be empowered to communicate on all issues related to the Project and shall be authorized to make and enforce decisions relating to the same. Any notice provided for herein or given pursuant to this MOU, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, electronic mail (“email”), or by receipted personal delivery to the below listed “lead contacts” for the Parties.

The following individuals serve as the "principals" for this MOU:

City of Milwaukee	Forest County Potawatomi Community
Jerrel Kruschke Commissioner of Public Works City of Milwaukee Department of Public Works 841 N. Broadway Milwaukee, WI 53202 jkrusc@milwaukee.gov (414) 286-3301	Chairman P.O. Box 340 Crandon, WI 54520 Phone: 715-478-4806 Fax: 715-478-5280

The following individuals serve as the lead contact for the administration of this MOU:

City of Milwaukee	Forest County Potawatomi Community
Jerrel Kruschke Commissioner of Public Works City of Milwaukee Department of Public Works 841 N. Broadway Milwaukee, WI 53202 jkrusc@milwaukee.gov (414) 286-3301	Roads Program Manager P.O. Box 340 Crandon, WI 54520 Phone: 715-478-7392 Fax: 715-200-5764 Email: todd.mulvey@fcp-nsn.gov

E. Miscellaneous

It is mutually understood that:

1. Limitations on Scope

The scope of this MOU is to establish the basic framework to enhance cooperation between the Parties regarding funding for the 16th Street Bridge Project. Nothing within this MOU shall be interpreted as the establishment of a new organization, agency, or department.

Nothing within this MOU shall be interpreted as an obligation of any Party to release any of its funds or its source of funding to any other Party; provided, however, that the foregoing does not affect or negate any other agreement(s) that may now or hereafter exist between or among any of the Parties relating to funding sources or obligations.

2. Participation in Similar Activities

This MOU in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, and individuals.

3. Term

This MOU takes effect upon the signatures of the Parties and shall remain in effect until the completion of the 16th Street Bridge rehabilitation work. Either Party may terminate this MOU at any time with a 60-day written notice to the other Party.

4. Governing Law

This MOU shall be governed by and construed according to the laws of the State of Wisconsin.

5. Amendments

This MOU may be amended upon written agreement of the Parties. Such amendments may include changes to any attachments to this MOU, and/or may include additional agreements and/or MOUs between the Parties.

6. Responsibilities of Parties

The Parties, and their respective agencies and offices, will manage their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing the objectives of this MOU, except as provided hererin.

7. Tribal Sovereignty

Nothing in this MOU is intended to waive the sovereign immunity of the FCPC from suit.

8. Municipal Immunities

Nothing in this MOU is intended to nor shall be deemed or interpreted as a limitation, waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including (but not limited) to those contained within Wis. Stat. §§ 893.80, 895.52, and 345.05.

9. Hold Harmless

Neither Party is assuming any liability for the actions or omissions of the other Party.

10. No Employment Relationship

Neither employee of a Party nor any person employed or contracted by a Party in connection with the performance and function of this Agreement shall be considered, deemed or held as an employee of the other Party or of the United States of America. Any and all claims that arise or may at any time arise under the Workers Compensation Act of the State of Wisconsin by, for or on behalf of any employee or representative thereof associated with a Party for this Project and any and all claims made by or on behalf of any third party as a consequence of any act or omission on the part of any employee arising out of an

employment relationship related to the performance of any services associated with this Project shall not be interpreted, construed or deemed to be an obligation or responsibility of the non-employer Party.

11. Compliance

The Parties agree to follow applicable State of Wisconsin Department of Transportation standards for the design and construction of the Project.

The Parties agree to meet all requirements, as applicable, of the Tribal Transportation Facility Bridge Program as administered by the United States Department of Transportation's Federal Highway Administration.

12. Binding Effects

All terms of this MOU shall be binding upon and inure to the benefits of the legal representatives, successors, and executors. No rights under this MOU may be transferred to a third party. This MOU creates no third-party enforcement rights.

13. Authorized Representatives

By signature below, each Party certifies that the individuals listed in this document as representatives of the individual Parties are authorized to act in their respective areas for matters related to this MOU.

14. Force Majeure

Except as otherwise specifically provided herein, no Party shall be considered to be in default in the performance of any of its obligations under this MOU, when there is the occurrence of an event of Force Majeure, as defined below, and the result is a delay or failure of performance of a Party, and in such case, no Party shall be liable for any loss or damage suffered by the other Party as a result thereof. Force Majeure, as used herein, shall mean any conditions affecting a Party in connection with the MOU, which condition is beyond the reasonable control of the Party, including, without limitation: acts of God, acts of public enemy, wars, blockages, insurrections, riots, epidemics, pandemics, public health emergencies, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, or explosions.

15. Public Records

FCPC understands that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this MOU are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. FCPC acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this MOU. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after execution of this MOU.

16. Counterparts

This MOU may be signed and executed in any number of counterparts, each of which shall constitute and all of which shall constitute one and the same MOU.

17. Severability

If any term or provision of this MOU is held invalid or unenforceable, then the remaining terms and provisions of this MOU shall be affected thereby, but each remaining term and provision shall be valid.

18. Waiver

One or more waivers of any covenant or condition by a Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition. No breach of a covenant or condition of this MOU shall be deemed to have been waived by a Party unless such waiver is in writing signed by both Parties. Wherever in this MOU a Party's consent is required, such consent shall not be unreasonably withheld or delayed.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the Effective Date.

Forest County Potawatomi Community

_____ Brooks Boyd, Sr., Chairman, Or Kenneth L. George, Jr., Vice Chairman	_____ Date
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City of Milwaukee

_____ Jerrel Kruschke, Commissioner of Public Works	_____ Date
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