



TO: City of Menasha Common Council

FROM: Kara Homan, AICP, Principal Planner, Community Development Department

DATE: October 13, 2011

RE: WisDOT Transportation Enhancement (TE) Grant Award & Next Steps

Project Overview:

In March, the Wisconsin Department of Transportation (WisDOT) notified the City of Menasha of its intentions to award \$314,608 in federal "Transportation Enhancement – TE" funds to fund up to 80 percent of the proposed Province Terrace Trail costs (see attached WisDOT Project Agreement). The total estimated cost of the WisDOT funded project is estimated at \$393,260, which equals a required local share of \$78,652 (20%). It is expected the bulk of this match will be in the form of force account labor. Cash match, if any, will most likely be from TID #9. Additional expenditures outside of the project will likely be required to acquire non-city owned property adjacent to the Menasha Conservancy and to conduct preliminary design and environmental assessment work.

The project consists of construction of a trail connecting existing trails along Province Terrace and Midway Road through the Menasha Conservancy to the eastern terminus of the State Friendship Trail (see attached map). The proposed trail will be comprised of the following:

- Appx. 1,900 linear feet of 12 foot wide Asphalt Trail
- Appx. 1,200 linear feet of 14 foot wide Composite Material Boardwalk (through wetland segments)

Note: Actual lengths and alignment will depend on land acquisition and environmental conditions.

Construction of this segment of the Province Terrance Trail will help provide a critical link for a north-south connector between Appleton and Menasha, and provide many City residents in Calumet County an option for safe bike and pedestrian access to other parts of the City via the Friendship Trail.

Immediate Action Needed:

Given that the award was offered in March, WisDOT is requesting that the City execute the project agreement as soon as possible to ensure the funds remain obligated to the City of Menasha. Staff recommends that the Menasha Common Council approve executing the project agreement with WisDOT. This recommendation is supported by the proposed trail extension's inclusion in the *City of Menasha Year 2030 Comprehensive Plan*, adopted by Ordinance O-16-08 (see Map 4-2; page 4-21; a paper copy of this map is included in your packet with the Memorandum from Director Tungate on the Update on New Eastside Park).

Future Steps:

If approved by the Menasha Common Council, the executed project agreement will be submitted to WisDOT. Should the project proceed, future steps will include: coordination with private property owners for environmental assessment, preliminary design, and property acquisition; securing engineering services via a qualification based process; and acquiring construction services via competitive bid.

Proposed Province Terrace Trail Segment



Legend

- Existing Trail
 - Future Trail
- Proposed Province Terrace Trail Segment
 - TID #9



Division of Transportation
System Development
Northeast Regional Office
944 Vanderperren Way
Green Bay, WI 54304

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet web site: www.dot.wisconsin.gov

Telephone: (920)492-5643
Facsimile (FAX): (920)492-5640
E-mail: greenbay.dtsd@dot.wi.gov

April 5, 2011

Subject: Fiscal Year 2011 -2013
Local Transportation Enhancements (TE) Program

Dear Sponsor,

Attached is a copy of the "State/Municipal Agreement for a Highway Improvement Project" (SMA) for your project. Please review the proposed agreement and if it is satisfactory, please make 4 copies, sign in blue ink, and return 3 signed hard copies to:

Kathleen Drews
Northeast Region
944 Vanderperren Way
Green Bay, WI 54304

The costs in this agreement are estimated costs. Design engineering costs will be based on the actual costs to complete the projects, plus engineering costs to administer the contract. The SMA template has been updated to address new policy information and process.

In order for your project to be eligible for federal funding, specific guidelines must be followed. Please contact Jeff Saxby of Short Elliot Hendrickson (SEH) in the Appleton office. SEH is the Northeast Region Consultant that will help you to begin the design/project bid letting process. His number is: 920-380-2805.

NOTE: Beginning with the projects awarded in 2010, local sponsors constructing projects requiring a LLC must attend a one-day training session. The training session instructs sponsors on the local letting process and results in certification to administer and deliver these projects. A training session was held in the Green Bay office on February 10, 2011. The certification must be completed and sent to Brian Edwards at the above address. **The project will not be authorized for charging until the sponsor is certified.**

The Sponsor's Guide to Non-Traditional Transportation Project Implementation is available online at: <http://www.dot.wisconsin.gov/localgov/aid/te.htm>

If you have any questions related to the TE program or the SMA, please contact me at 920-492-5704 or Glenn Landis at 920-492-4110.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Drews". The signature is written in a cursive, flowing style.

Kathleen Drews
Program Manager
NE Region – Green Bay

cc: Jeff Saxby, SEH
Encl.



**STATE/MUNICIPAL AGREEMENT
FOR A LOCAL LET
TRANSPORTATION
ENHANCEMENTS PROJECT**

Program Name: Transportation
Enhancements (TE)
Sub-program #: 214

Date: March 31, 2011
I.D.: 4992-02-00/71
Project Title: City of Menasha Province Terrace Trail
Location/Limits (as applicable): City of Menasha
County: Calumet
Project Length (if applicable): 3100 LF
Project Sponsor: City of Menasha
MPO Area: East Central Wisconsin RPC

The signatory, City of Menasha, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

Wisconsin Statute 85.026(1) authorizes the State to administer a program to award grants of assistance to any political subdivision or state agency for transportation enhancement activities consistent with federal regulations promulgated under 23 USC 133 (b) (8).

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this project consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project will construct a continuation of the existing Province Terrace Trail. The trail segment will consist of 1200 LF of a 14-foot wide composite material boardwalk in addition to 1900 LF of 12-foot wide asphaltic trail. The proposed trail will connect the north-south linkages near the Winnebago and Calumet County boundaries with the City of Menasha and Fox Valley area. This project will construct the southern-most segment beginning at Nature's Way, extending through a wetlands area and terminating at the intersection of STH 10/114 where it will connect with the existing State Freedom Trail. Portions of the proposed trail will extend through the Menasha Conservancy and easements will be required to continue the trail through four privately owned parcels.

Need for or Benefits of Project – summarize reasons for request: Currently there is no north-south bicycle/pedestrian route connecting the City of Appleton with the Cities of Neenah/Menasha. The City of Menasha has adopted a Year 2030 Comprehensive Plan under the Wisconsin Growth Management Legislation in addition to an Open Space and Recreation Facilities Plan for 2007-2011. The plans have sections on bicycle and pedestrian facilities, the proposed trail project was identified in both plans.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: Project design will be funded 100% by the project sponsor.

The Project Sponsor agrees to the following Calendar Year 2010 [FY 2011-2013] Transportation Enhancements (TE) Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$314,608 for all federally-funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$314,608 federal funding maximum, in accordance with TE program guidelines. Project design will be funded 100% by the Project Sponsor. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or project ID is authorized and available for charging.

This project is subject to a DBE goal assessment of 0% of the construction project cost. The DBE goal is waived if the Project Sponsor constructs the project under an approved Local Force Account (LFA) Agreement. The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

In the summary funding table below, the federal share of the total estimated cost distribution indicates the maximum amount of federal funding available to the project, to be distributed across federally-funded project phases. The final Project Sponsor share is dependent on the final federal participation, and the actual costs will be used in the final division of costs for billing and reimbursement.

PHASE	SUMMARY OF COSTS				
	Total Est. Cost	Federal Funds	%	Project Sponsor Funds	%
ID 4992-02-00					
Design	N/A	N/A	0%	N/A	100%
Design Review #	\$13,400	\$10,720	80%*	\$2,680	20%*
ID 4992-02-71					
Participating Construction	\$377,360	\$301,888	80%*	\$75,472	20%*
Participating Construction Review #	\$2,500	\$2,000	80%*	\$500	20%*
Non-Participating Construction	\$0	\$0	0%	\$0	100%
Total Est. Cost Distribution	\$393,260	\$314,608	MAX.	\$78,652	N/A

*This project has a Transportation Enhancements federal funding maximum of \$314,608. This maximum is cumulative for all federally funded project phases.

Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 4 – 10) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State-Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of: City of Menasha (please sign in blue ink.)		
Name	Title	Date
Signed for and in behalf of the State:		
Name	Title	Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase is authorized and available for charging.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
 - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
 - c. All DBE requirements that the State specifies.
 - d. Federal and state statutes that govern the Transportation Enhancements Program, including but not limited to 23 U.S.C. 133 and Wis. Stat. 85.026.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
 - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
 - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.
5. The project is one of the transportation enhancement activities consistent with federal regulations promulgated under 23 USC 133 (b) (8).

STATE RESPONSIBILITIES AND REQUIREMENTS:

6. Funding of the project is subject to inclusion in Wisconsin's approved Transportation Enhancements program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.

- b. Storm sewer mains necessary for the surface water drainage.
- c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Management Consultant and State Review Services.

7. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:

- 8. Work necessary to complete the subject Transportation Enhancements project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
 - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Preliminary Engineering.
 - d. Real estate for the improvement.
 - e. Removal of snow from the trail.
 - f. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
 - g. Conditioning, if required and maintenance of detour routes.
 - h. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
 - i. All work related to underground storage tanks and contaminated soils.

j. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).

9. The work eligible for Federal and State participation will be administered by the Project Sponsor.
10. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.
11. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
12. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
13. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
14. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
15. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
16. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
17. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
18. The Project Sponsor will assume all responsibility for complying with the applicable Disadvantaged Business Enterprise (DBE) goal assigned to this project. This project is subject to a DBE goal assessment of 0% of the construction project cost. The DBE goal is waived if the Project Sponsor constructs the project under an approved Local Force Account (LFA) Agreement.
19. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
20. If reviews or audits show any of the work to be ineligible for federal funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

21. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
22. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
23. Federal Single Audits of the Project Sponsor:
 - a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. A-133).
 - b. This audit shall be performed in accordance with federal OMB Circular No. A-133 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
 - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
24. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in S. 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
25. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
26. When applicable to the project, the Project Sponsor will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure) for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year. The Project Sponsor will ensure that facilities are available in all weather conditions, including clearing snow from sidewalks and multi-use trails.
 - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.

- c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
- d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
- e. Provide relocation orders and real estate plats and easements, as required by the project.
- f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- g. Provide maintenance and energy for lighting.
- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

27. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

28. The project must be authorized for construction within three years from the date of approval of the State/Municipal Agreement by the State. Extensions are available upon the State's approval of a written request made by the Project Sponsor. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

LEGAL RELATIONSHIPS:

29. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by

virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
- b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

30. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
- b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
- d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
- e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 – Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have

voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.

31. **Contract Modification:** This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.
32. **Binding Effects:** All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.
33. **Choice of Law and Forum:** This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.
34. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

PROJECT FUNDING CONDITIONS

35. The Project Sponsor agrees to the following Calendar Year 2010 {FY 2011-2013} Transportation Enhancements program project funding conditions:
 - a. ID 4992-02-00: Design costs are funded 100% by the Project Sponsor this includes Plan Development. Management Consultant Review and State Review are funded 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
 - b. Real estate and any related review costs are funded 100% by the Project Sponsor. Real estate acquisition is 100% the responsibility of the Project Sponsor.
 - c. ID 4992-02-71: Construction:
 - i. Costs for {construct of the bicycle/pedestrian trail} and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal/earmark funding cap
 - d. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of Transportation Enhancements program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal/earmark funding maximum of \$314,608 is cumulative for all federal funded project phases.

[End of Document]