Memorandum

DATE: September 17, 2015

TO: Menasha Common Council

FROM: Mark Radtke, Director of Public Works MR

RE: First Revision to State/Municipal Agreement for a State-Let Local Bridge Project (Third Street Bridge)

WisDOT recently notified the City of Menasha regarding the need to revise the existing State/Municipal Agreement (SMA) for the Third Street Bridge Project. Due to increased project costs and extended time delays involved with the Environmental Report submittal, WisDOT has extended the bid letting date to July 12, 2016 and provided a revised agreement increasing the federal funds commitment (enclosed).

The revised agreement increases the federal/state funding commitment from $198,000 to $428,000. Along with the funding increase, the SMA stipulates the federal funds are capped at that level, although this does not prevent the City from requesting additional funds in the future, dependent on availability.

Because the City would be responsible for project costs exceeding the cap, we contacted the design engineering firm, Ayres Associates, to gauge our level of confidence with the capped amount. Ayres indicated the estimated costs in the revised SMA were generated from their preliminary project estimate which included cost factors for the staged construction and the later bid letting. So, at this time, we are fairly confident the project cap will be sufficient, but the Council needs to be aware of the possibility of the cap being exceeded in which case the City could be responsible for the project cost overruns. Despite that possibility, I recommend the approval of the revised SMA because it increases federal/state funding commitments and allows for the completion of this structurally deficient bridge by July, 2017 at a substantially lower local cost than what would be possible without the shared funding.

Enclosure

M:\word\CC memo re Third St Bridge SMA Revision No. 1_9-17-15.docx

1st REVISION

STATE/MUNICIPAL AGREEMENT FOR A STATE- LET LOCAL BRIDGE PROJECT

This agreement supersedes the agreement signed by the Municipality on August 14, 2011 and signed by DOT on January 12, 2012.

Program Name: Local Bridge

Sub-program #: 205

Revised Date: August 27, 2015

Date: April 20, 2011

I.D.: 4992-01-00/71

Road Name: 3rd Street

Bridge ID: P-70-0702

Location: Lake Winnebago Slough

Limits: Kargus Drive – Brighton Drive

County: Winnebago

Project Length: 0.01 miles

Facility Owner: City of Menasha

Project Sponsor: City of Menasha

The signatory, City of Menasha, hereinafter called the Municipality, 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 highway or street improvement hereinafter described.

The authority for the Municipality 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 Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: The existing structure is a single span concrete deck girder bridge. There are numerous cracks in the concrete deck, extensive cracking and delamination of the concrete girders, extensive cracking, delamination and exposed rebar in the wingwalls. The bridge is 22.3 feet wide and 35 feet long and was originally constructed in 1925. The sufficiency rating is 30.1 with an NBI of 3 on the deck and superstructure and 4 on the substructure. The bridge is considered to be both structurally deficient and functionally obsolete with an inventory rating of HS20 and an operating rating of HS35. There are no sidewalks and the structure is not part of a regional bicycle/pedestrian system. This structure serves as the only access for a number of residences in the area.

Proposed Improvement - Nature of work: The proposed improvement will replace the existing structure with a single span structure that is 24 feet wide and 40 feet long. The asphalt approaches will extend 120 LF to the east and 120 LF to the west of the new structure. There will be some minor right of way acquisitions and temporary easement required to accommodate the construction of the new bridge. The road will be open during and construction and a temporary structure used to detour traffic.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. 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: None

The Municipality agrees to the following 2011-2014 Local Bridge program project funding conditions:

Project design costs are funded with 80% federal/state funding when the Municipality agrees to provide the remaining 20% according to the Local Bridge Program guidelines. Project construction costs are funded with 80% federal/state funding when the Municipality agrees to provide the remaining 20% according to the Local Bridge Program guidelines. Real estate costs will be funded 100% by the Municipality. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2017. **In accordance with the State's sunset policy for Local Bridge Program projects, the subject 2011-2014 Local Bridge Program improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2012, or by June 30, 2017.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary Funding Table below are estimates unless explicitly identified as maximum amounts. The final Municipal share is dependent on the final Federal and State participation, and actual costs will be used in the final division of cost for billing and reimbursement.

	SUMMARY OF COSTS				
PHASE	Total Est. Cost	Federal/State Funds	%	Municipal Funds	%
ID 4992-01-00					
Design	$60,000	$48,000	80%	$12,000	20%
State Review	$15,000	$12,000	80%	$3,000	20%
Design ID Subtotal	$75,000	$60,000	80%	$15,000	20%
ID 4992-01-71					
Structure					
Participating Construction	$360,500	$288,400	80%	$72,100	20%
Non-Participating Construction	$0	$0	0%	$0	100%
State Review	$73,150	$58,520	80%	$14,630	20%
Approach					
Participating Construction	$75,000	$60,000	80%	$15,000	20%
Non-Participating Construction	$0	$0	0%	$0	100%
State Review	$26,350	$21,080	80%	$5,270	20%
Construction ID Subtotal	$535,000	$428,000	80%	$107,000	20%
Total Est. Cost Distribution	**$685,000**	**$548,000**		**$137,000**	

Project ID 4992-01-71 has a federal funding cap of $428,000.

This request is subject to the terms and conditions that follow (pages 3 – 7) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the 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 or state funding.

3. The Municipality, 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 the 23 U.S.C. 139 and 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 municipality 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 Municipality 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 Municipality 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. Prevailing wage requirements, including but not limited to 23 U.S.C 113 and Wis. Stat. 103.50.

    d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.

    e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.

    f. All DBE requirements that the State specifies.

    g. Federal statutes that govern the Highway Bridge Replacement and Rehabilitation Program, including but not limited to 23 U.S.C. 144.

    h. State Statutes that govern the Local Bridge Program, including but not limited to Wis. Stat 84.18.

    i. Bridge Approaches Funding Policy. FHWA limits bridge approach costs to only those approach costs that are necessary to render the bridge serviceable (to reach the attainable touchdown points using current standards). On a program level, FHWA has determined that, on average, bridge approach costs should amount to no more than 10% of the cost for constructing the bridge, and the municipality should be prepared to offer a justification of costs for any bridge project where the approach costs exceed that percentage.

    j. State administrative rule that implements Local Bridge Program: Ch. Trans 213.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved 2011-2014 Local Bridge program. Federal /State financing 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. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.

c. Storm sewer mains necessary for the surface water drainage.

d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

f. Signing and pavement marking.

g. New installations or alteration of street lighting and traffic signals or devices.

h. Landscaping.

i. Preliminary Engineering and design.

j. Management Consultant and State Review Services.

5. WisDOT is authorized by Wis. Stat. 84.18(6) to exercise whole supervision and control over the construction of the Project. The work will be administered by the State and may include items not eligible for Federal/State participation.

6. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to Federal/State funds. Upon completion of the project, a final audit will be made to determine the final division of costs. 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.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2011-2014 Local Bridge program improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.

   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. Real estate for the improvement.

   c. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.

   d. Detour routes and haul roads. The municipality is responsible for determining the detour route.

   e. Conditioning, if required and maintenance of detour routes.

   f. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.

   g. All work related to underground storage tanks and contaminated soils.

   h. Street and bridge width in excess of standards.

8. FHWA limits bridge approach costs to only those approach costs that are necessary to render the bridge serviceable (to reach the attainable touchdown points using current standards). On a program level, FHWA has determined that, on average, bridge approach costs should amount to no more than 10% of the cost for constructing the bridge, and the Municipality should be prepared to offer a justification of costs for any bridge project where the approach costs exceed that percentage.

9. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by WisDOT prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.

10. Work to be performed by the Municipality without Federal/State 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 Municipality but must be coordinated with all other work undertaken during construction.

11. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.

12. The Municipality 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.

13. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal/State financing commitments or are ineligible for Federal/State financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.

14. **In accordance with the State's sunset policy for Local Bridge Program projects, the subject 2011-2014 Local Bridge program improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2012, or by June 30, 2017.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

15. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.

16. The Municipality 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, sidewalks and parking lanes including snow and ice removal) for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.

    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 complete plans, specifications, and estimates.

    f. Provide relocation orders and real estate plats.

    g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.

h. Provide maintenance and energy for lighting.

i. 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.

17. It is further agreed by the Municipality that:

a. The Municipality 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 agreement.

b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT 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 Municipality 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 Municipality 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.

e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

18. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.

19. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.

20. Contract Modification: This State/Municipal Agreement can only 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.

21. 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 enforcement rights.

22. 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.

PROJECT FUNDING CONDITIONS

23. The Municipality agrees to the following 2011-2014 Local Bridge Program project funding conditions:

    a. ID 4992-01-00: Design is funded with 80% federal/state funding when the Municipality agrees to provide the remaining 20%. This phase includes Plan Development, Management Consultant Review, and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.

    b. Real estate is funded 100% by the Municipality. Real estate acquisition is 100% the responsibility of the Municipality.

    c. ID 4992-01-71: Construction:

        i. Costs for structure and approach reconstruction are funded with 80% federal/state funding, when the Municipality agrees to provide the remaining 20%. This portion of the project is subject to the project federal funding cap (see sub-item d).

        ii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal/state funding and 20% by the Municipality. This portion of the project is subject to the project federal funding cap (see sub-item d).

    d. Project Cap: Project ID 4992-01-71 has a federal funding cap of $428,000.

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