

**CORRESPONDENCE/MEMORANDUM**

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***PROJECT AGREEMENT ACCEPTANCE***

DATE: November 3, 2016

SUBJECT: **Revised #4** Project Agreement

5991-05-08/09  
City of La Crosse, Dairyland Power Trail  
Gillette Street to North Street

5991-05-93/95  
City of La Crosse, Northside Connector Trail  
North Street to Salem Road

5991-07-17/19  
La Crosse – Onalaska Oak Street Connection  
Salem Road to Enterprise Avenue

The Attached Agreement Is Recommended For Approval:

WISDOT PROGRAM: Local Transportation Enhancement

LEGISLATIVE SUBPROGRAM: 290 – Transportation Alternatives

CONCEPTS COVERED by this AGREEMENT: Design and Construction of a multi-use trail and multi-use bridge providing an inner-city connection between the Cities of La Crosse and Onalaska for non motorized traffic.

ESTIMATED COST: \$4,292,800

PARTICIPATION: BNSF Railway participation of \$231,000 split 50% City of La Crosse and 50% Federal funds. The project federal funding maximum of \$2,263,914 is cumulative for all federal funded project phases. The City of La Crosse is responsible for remaining costs.

NON-PARTICIPATION: Conduit HDPE 2-Duct 2-Inch with Tracer Wire items on project 5991-05-95.

EXECUTED BY: City of La Crosse

DATE: October 31, 2016

LET DATE: August 12, 2014

NOTES: The State Municipal Agreement is being revised to include funds contributed to the project by the BNSF Railway and transfer funds between projects to cover funding shortages.

REGION REVIEWER:

MARILYN DANIELS  
REGIONAL PROGRAM COORDINATOR

REGION: SW

NOVEMBER 3, 2016  
DATE



**REVISION #4**  
**STATE/MUNICIPAL AGREEMENT**  
**FOR A STATE LET**  
**TRANSPORTATION**  
**ENHANCEMENTS (TE) AND**  
**TRANSPORTATION ALTERNATIVES**  
**PROGRAM (TAP) PROJECT**

*This agreement supersedes the agreement signed by the Municipality on September 28, 2015 and signed by WisDOT on September 30, 2015. The agreement includes the funds contributed to the project by BNSF Railway and shifts funds between IDs to cover funding shortages.*

Program Name: Transportation  
 Enhancements (TE) and Transportation  
 Alternatives Program (TAP)  
 Sub-program #: 290

Revised Date #4: August 30, 2016  
 Revised Date #3: July 22, 2015  
 Revised Date: June 18, 2014  
 Date: June 26, 2012; July 29, 2009; July 15, 2003; March 14, 2002  
 I.D.: 5991-05-08/09; 5991-05-93/95; 5991-07-17/19  
 Project Title: City of La Crosse, Dairyland Power Trail; City of La Crosse, Northside Connector Trail; La Crosse – Onalaska Oak Street Connection  
 Location/Limits (as applicable): Gillette Street to North Street; North Street to Salem Road; Salem Road to Enterprise Avenue  
 County: La Crosse  
 Project Length (if applicable): 0.29 miles; 0.65 miles; 0.22 miles  
 Project Sponsor: City of La Crosse  
 MPO Area: La Crosse

The signatory, the City of La Crosse, 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 85.021 authorizes the State to administer a program to award grants of assistance to certain political subdivisions, state agencies, counties, local government units, Indian tribes, consistent with federal law 23 U.S.C. 213.

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 improvement 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 is a 0.94 mile multi-use trail from Gillette Street to Salem Road and a multi-use bridge from Salem Road to Enterprise Avenue in the City of La Crosse. The proposed trail roughly parallels the BNSF Railway rail yard on the west side and the bridge spans the BNSF Railway yard. The proposed project will require real estate transactions.

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

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project/contract are considered part of the overall project and will be subject to applicable Federal requirements:  
**Conduit HDPE 2-Duct 2-Inch with Tracer Wire**

The Project Sponsor agrees to the following FY 2009-2011 (ID 5991-05-08/09); FY 2004-2005 (ID 5991-05-93/95); FY 2002-2003 and FY 2011-2014 (ID 5991-07-17/19) Transportation Enhancements (TE) Program project funding conditions and State Fiscal Year 2014-2018 TAP project funding conditions:

The subject project is funded with 80% federal funding for ID 5991-05-08/09, 5991-05-93/95, and 5991-07-17; and 50% federal funding for ID 5991-07-19 up to a maximum of \$2,263,914 for all federally-funded project phases when the Municipality agrees to provide the remaining 20% for ID 5991-05-08/09, 5991-05-93/95, and 5991-07-17; and 50% for ID 5991-07-19; and all funds in excess of the \$2,263,914 federal funding maximum, in accordance with TE program guidelines. The design of ID 5991-05-08, railroad work, and real estate is locally funded. 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 that the project is authorized and available for charging.

The subject project must be commenced within four (4) years of the project award date or the grant is rescinded. Sec. 85.021, Wis. Stats.

- 1) For construction projects, a project is commenced when construction is begun.
- 2) For planning projects, a planning project is commenced when the planning study is begun.
- 3) For non-infrastructure projects that do not fall within any of the above categories, a project is considered commenced on the date that WisDOT receives the first reimbursement request from the project sponsor, as noted on form DT1713 in the 'Date Received' field.

**Project Award date:** Miscellaneous  
**Commencement deadline:** 7/1/2014  
**Completion deadline:** 7/1/2021

**The project commencement deadline is fixed by statute, and may not be extended.**

In accordance with the State's sunset policy for Transportation Alternatives Program projects, the subject Transportation Alternatives Program improvement must be constructed and in final acceptance by July 1, 2021. WisDOT will not permit future requests to extend the project completion deadline, and failure to finish the project within the revised timeline will likely result in loss of project funding.

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	BNSF Railway Funds	Federal Funds	%	Municipal Funds	%
<b>ID 5991-05-08</b>						
Design				0%		100%
Design Review	\$ 33,919		\$ 27,135	80%*	\$ 6,784	20%*
<b>ID 5991-05-09</b>						
Participating Construction	\$ 181,413		\$ 145,130	80%*	\$ 36,283	20%*
Participating Construction Review	\$ 15,765		\$ 12,612	80%*	\$ 3,153	20%*
Non-Participating Construction				0%		100%
<b>ID 5991-05-93</b>						
Design	\$ 24,864		\$ 19,891	80%*	\$ 4,973	20%*
Design Review	\$ 12,727		\$ 10,182	80%*	\$ 2,545	20%*
<b>ID 5991-05-95</b>						
Participating Construction	\$ 210,747		\$ 168,598	80%*	\$ 42,149	20%*
Participating Construction Review	\$ 26,178		\$ 20,942	80%*	\$ 5,236	20%*
Non-Participating Construction (Includes E&C)	\$ 108,036		\$ -	0%	\$ 108,036	100%
<b>ID 5991-07-17</b>						
Design	\$ 74,296		\$ 59,437	80%*	\$ 14,859	20%*
Design Review	\$ 26,843		\$ 21,474	80%*	\$ 5,369	20%*
<b>ID 5991-07-19</b>						
Participating Construction	\$ 231,000	\$231,000**				
Participating Construction	\$ 3,012,930		\$ 1,506,465	50%*	\$ 1,506,465	50%*
Participating Construction Review	\$ 334,082		\$ 167,041	50%*	\$ 167,041	50%*
Non-Participating Construction				0%		100%
<b>Total Est. Cost Distribution</b>	<b>\$ 4,292,800</b>	<b>\$ 231,000</b>	<b>\$ 2,158,907</b>	<b>MAX</b>	<b>\$ 1,902,893</b>	<b>N/A</b>

\*This project has a Transportation Enhancements federal/earmark funding maximum of **\$2,263,914**. This maximum is cumulative for all federally funded project phases.

\*\*BNSF Railway funding is a Lump Sum payment to the project construction costs

This request is subject to the terms and conditions that follow (pages 4 – 8) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State and delivery to the Project Sponsor shall constitute agreement between the Project Sponsor 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 La Crosse** (please sign in blue ink.)

Name *Trinity Kelt* Title *MAYOR* Date *10/31/2016*

Name *Jill Lehrke* Title *City Clerk* Date *10/31/16*

Signed for and in behalf of the State:

Name *Stephen Holtz* Title *WisDOT SW Region Planning Chief* Date *11/3/16*

**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.
3. 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 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 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. 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 Transportation Alternatives Program, including but not limited to 23 U.S.C. 213 and Wis. Stat. 85.021.

#### **STATE RESPONSIBILITIES AND REQUIREMENTS:**

4. Funding of each project phase is subject to inclusion in Wisconsin's approved FY 2009-2011 (ID 5991-05-08/09); FY 2004-2005 (ID 5991-05-93/95); FY 2002-2003 and FY 2011-2014 (ID 5991-07-17/19) Transportation Enhancements (TE) Program and State Fiscal Year 2014-2018 Transportation Alternatives 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. 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, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
  - g. New installations or alteration of street lighting and traffic signals or devices.
  - h. Landscaping.
  - i. Preliminary Engineering and design for ID 5991-05-93 prior to June 30, 2004 and ID 5991-07-17 prior to January 30, 2005.
  - j. Management Consultant and State Review Services.
5. The work will be administered by the State and may include items not eligible for Federal participation.
6. As the work progresses, the State will bill the Project Sponsor for work completed which is not chargeable to Federal 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 Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

7. Work necessary to complete the Transportation Enhancements (TE) and State Fiscal Year 2014-2018 TAP improvement project to be financed entirely by the Project Sponsor 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. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement. This agreement documents the cancellation of ID 5991-05-94 and ID 5991-07-18 at the direction of the Project Sponsor.
  - i. Preliminary Engineering for ID 5991-05-93 after June 30, 2004 and ID 5991-07-17 after January 30, 2005.
  - j. Management Consultant and State Review Services.
  - k. Other 100% Project Sponsor funded items: **Conduit HDPE 2-Duct 2-Inch with Tracer Wire**

8. 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 Project Sponsor unless such exception is granted. The project sponsor is an eligible recipient of these grant funds pursuant to Wisconsin Statute 85.021 and federal law at 23 U.S.C. 213.

9. 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.
10. The Project Sponsor is responsible for financing administrative expenses related to Municipal project responsibilities.
11. 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.
12. The Project Sponsor will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Project Sponsor's foregoing agreements to pay the State, the Project Sponsor, 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 Project Sponsor.
13. The subject project must be constructed and in final acceptance by July 1, 2021. WisDOT will not permit future requests to extend the project completion deadline, and failure to finish the project within the revised timeline will likely result in loss of project funding.
14. 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.
15. Sponsors of TAP projects within the Safe Routes to School eligibility category are required to conduct pre and post-project/activity surveys using the SRTS Parent Survey and Student Tally Sheets. The results will be provided to the State at the conclusion of the project.
16. 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, 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. The 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 project.
  - 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 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 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 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 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 of 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 Project Sponsor, 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 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.
- 19. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. 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 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 Project Sponsor or its sureties; or because of any claims or amounts recovered for any infringement by the Project Sponsor 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 Project Sponsor and its sureties; or any other law, ordinance, order or decree relating to the Project Sponsor's operations.



20. 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.
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 Project Sponsor agrees to the following FY 2009-2011 (ID 5991-05-08/09); FY 2004-2005 (ID 5991-05-93/95); FY 2002-2003 and FY 2011-2014 (ID 5991-07-17/19) Transportation Enhancements program project funding conditions and State Fiscal Year 2014-2018 TAP project funding conditions:
  - a. ID 5991-05-08: Design costs are funded 100% by the Municipality. Related review costs are funded with 80% federal funding when the Municipality agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
  - b. ID 5991-05-93: Design costs prior to June 30, 2004 and any related review costs are funded with 80% federal funding when the Municipality agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. Design costs after June 30, 2004 are funded 100% by the Municipality.
  - c. ID 5991-07-17: Design costs prior to January 30, 2005 and any related review costs are funded with 80% federal funding when the Municipality agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. Design costs after January 30, 2005 are funded 100% by the Municipality.
  - d. ID 5991-05-09: Construction: Costs for multi-use trail construction and any related review costs are funded with 80% federal funding, when the Municipality agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
  - e. ID 5991-05-95: Construction: Costs for multi-use trail construction and any related review costs are funded with 80% federal funding, when the Municipality agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. Non-participating items are funded 100% by the Municipality.
  - f. ID 5991-07-19: Construction: Costs for multi-use bridge construction and any related review costs are funded with 50% federal funding, when the Municipality agrees to provide the remaining 50%. These costs include a \$231,000 payment by BNSF Railway, and are subject to the cumulative project federal funding cap.
  - g. The maximum participation of federal/ earmark funding will be limited to 80% for ID 5991-05-08/09, 5991-05-93/95, and 5991-07-17; and 50% for ID 5991-07-19 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 **\$2,263,914** is cumulative for all federal funded project phases.

**[End of Document]**