

GRANT AGREEMENT

IDENTIFICATION NUMBER 0495-13-03

WISCONSIN HARBOR ASSISTANCE PROGRAM

BY AND BETWEEN

THE TOWN OF WASHINGTON

AND

THE WISCONSIN DEPARTMENT OF TRANSPORTATION

DATE: NOVEMBER _____, 2012

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INTRODUCTION

THIS GRANT AGREEMENT (the "Agreement") is made and entered into this _____ day of November, 2012 by and between the Town of Washington, Wisconsin (hereinafter called the "Town") and the Wisconsin Department of Transportation (hereinafter called "WisDOT").

WITNESSETH

WHEREAS, the Town seeks to complete final engineering plans for deepening and widening the Federal navigation channel into Detroit Harbor to ensure year-round safe passage for waterborne transportation; and

WHEREAS, the maintenance of commercial harbor activity in the Federal navigation channel is an integral part of the Town's Three-Year Harbor Development Statement of Intentions; and

WHEREAS, the Town has applied to WisDOT for a Harbor Assistance Program grant under Wisconsin Statutes section 85.095, for reimbursement of funds expended for the work described herein.

NOW, THEREFORE, the parties do hereby mutually agree that WisDOT shall provide financial assistance and the Town shall accept financial assistance in accordance with all applicable statutes and administrative rules, and with the following terms and conditions:

ARTICLE 1.0 DEFINITIONS

"Agreement" means this Grant Agreement between the Town and WisDOT.

"Approved Project" means the performance of the work described in Section 2.1 of this Agreement.

"Town" means the Town of Washington.

"Federal navigation channel" means the channel between Northport and Detroit Harbor, and more specifically described in the certified survey made part of this Agreement by reference as Attachment I.

"Secretary" means the Secretary of the Wisconsin Department of Transportation.

"WisDOT" means the Wisconsin Department of Transportation.

ARTICLE 2.0 APPROVED PROJECT

Section 2.1 Project Description. The Approved Project consists of the following elements:

- (a) Sediment characterization, including sampling and lab analysis.
- (b) Final engineering design and detailed cost estimates, including final design for dredge and disposal, prioritizing beneficial reuse potential over upland disposal.
- (c) For any portion of dredge that cannot be disposed of by beneficial use, road repair final engineering with detailed cost estimates.
- (d) Preparation of construction documents, including plans and specs for bidding, bidding document preparation, bidding and contract award.
- (e) The performance of project management functions:
 - (1) Contractor selection; and
 - (2) Project supervision to accomplish all elements

Section 2.2 Scope of Work. The Town shall perform the following Approved Project work:

- (a) Prepare final Approved Project plans and specifications to WisDOT's satisfaction for the letting of competitive bids for the completion of Approved Project elements (a) through (e).
- (b) Complete the Approved Project in accordance with plans and specifications prepared under task 2.2(a) above which plans and specifications will be made part of this Agreement by reference as Attachment II.
- (c) Perform or provide for the performance of scheduled and as-needed special technical inspections of all contractors' work to assure contract, plans and specification compliance, and issue orders or arrange for remedial action as may be necessary to complete the Approved Project.

Section 2.3 Grant Amount.

- (a) WisDOT grants to the Town an amount equal to a maximum of one hundred eighty-two thousand seven hundred dollars (\$182,700) or an amount equal to eighty (80) percent of eligible costs (described in Section 3.3), whichever is the lesser, for the completion of the Approved Project work as set forth in Section 2.2, Scope of Work, and in Attachment II.
- (b) The Town agrees to pay an amount which is no less than twenty (20) percent of eligible costs as described in Section 3.3. The Town shall provide one hundred (100) percent of

payment for any additional costs exceeding the grant amount (additional monies) that may be required to complete the scope of work under this Agreement according to the plans and specifications in Attachment II. If the Town fails on or before December 31, 2013 to complete to WisDOT's satisfaction any Approved Project element as set forth in Section 2.1 and any work as set forth in Section 2.2 and in Attachment II for which grant funds are expended, WisDOT's obligation to advance funds under this Agreement shall cease. The Town, however, shall thereafter complete the project at no additional WisDOT expense as required under this Agreement.

(c) In the event actual costs for all project work as set forth in Section 2.2, Scope of Work, and in Attachment II total less than the estimated costs for that work for the entire project as set forth in Section 2.4(b), the Town is not authorized to increase the scope of work or add any new work elements to the project for the purpose of utilizing surplus grant funds created by the difference between actual costs and the grant amount. The Town will notify WisDOT when changes are made to the estimated budget line amounts set forth in Section 2.4(b).

(d) In the event the Town, for whatever reason, does not obtain all or any portion of the match and additional monies, the Town remains obligated to provide match and additional monies for payment of eligible project costs approved by WisDOT. In the event the Town terminates this Agreement, it remains obligated to provide match and additional monies as may be accrued prior to termination.

Section 2.4 Project Budget.

(a) WisDOT grant funds shall not comprise more than eighty (80) percent of any progress payment, but may, due to payment of retainage amounts, exceed eighty (80) percent of the last payment. Reimbursement of eligible costs for the Approved Project shall be on an actual cost basis as documented by sealed bids and time records, up to the maximum amount of eighty (80) percent of eligible costs incurred by the Town under the terms of this Agreement, but in no event greater than one hundred eighty-two thousand seven hundred dollars (\$182,700).

(b) The estimated budget line items are:

	<u>Total</u>	<u>Grant</u>	<u>Town</u>
Sediment characterization	\$ 45,425	\$ 36,925	\$ 8,500
Final engineering design	\$ 113,950	\$ 83,575	\$ 30,375
Construction documents	\$ 69,000	\$ 62,200	\$ 6,800
Totals	\$ 228,375	\$ 182,700	\$ 45,675

Section 2.5 Project Monitoring and Inspection.

(a) The Town shall provide for qualified on-site inspection of the project work progress and quality by assignment of a Town-selected, WisDOT-approved engineer who will act as the project engineer.

(b) The project engineer shall have overall responsibility for the management of the engineering, construction and administration of the project including inspection, preparation of daily diaries and reports, and approval of change orders and contractors' invoices for submittal to the Town.

(c) The project engineer shall be specifically qualified in construction inspection and project management and have general knowledge of marine construction and specific experience in the design and construction of dredging projects. The project engineer shall provide for the daily monitoring of the project to assure compliance with the project contract, plans and specifications. The project engineer shall maintain accurate records, including photographs, indicating the quantity of work performed and materials used. These records shall show whether the work performed is in compliance with each applicable item of Attachment II. If work is unsatisfactory, the project engineer shall order corrective action. All costs of corrective action shall be paid by the Town and are not eligible for reimbursement under this Agreement. The project engineer shall report any instance of non-compliance with the terms of this Agreement or its Attachment II or any questionable work to the Town and shall immediately send a copy of the report directly to WisDOT. The Town itself shall assure that all reports of non-compliance are promptly provided to WisDOT.

(d) The project engineer shall maintain a daily project diary and sign the diary at the end of each day. The diary shall be used to record progress of work, compliance with the plans and specifications as set forth in Attachment II, and any unusual events.

(e) WisDOT or its designee may conduct inspections of the project site, project diaries, books, reports and other documents, as frequently as deemed necessary by WisDOT. The Town shall ensure direct access to the project site and documents to any WisDOT inspector or designee at any reasonable time subject to reasonable security measures.

ARTICLE 3.0 GRANT PAYMENT REQUIREMENTS AND PROCESS

Section 3.1 Payment Schedule.

(a) Invoices for payment shall be submitted to WisDOT no more frequently than monthly and no less frequently than quarterly other than for the single payment at the end of the project. No payments of any amount shall be made by WisDOT for eligible project costs incurred prior to the Town's compliance with all applicable conditions and requirements of this

Agreement including those set forth under Sections 2.2(a), 2.3(b), 3.3(a), (b) and (c), 4.1, 4.3, 9.2(a) and (b), 10.4(c) and Article 5.0 of this Agreement.

(b) Should any element of cost billed on the invoice be questioned by WisDOT as to its eligibility under this Agreement, WisDOT may except that cost item until questions concerning the cost item are resolved to the satisfaction of WisDOT. WisDOT shall pay any unquestioned cost reimbursement elements less any allowable retainages according to schedule except that WisDOT shall pay no amounts unless all monthly performance reports required under Section 4.3(a) of this Agreement have been submitted to and accepted by WisDOT.

(c) Until final acceptance by WisDOT of all the work on the Approved Project and until delivery of lien waivers from all contractors, subcontractors, material providers and suppliers involved with the Approved Project, WisDOT shall withhold payment of the final grant amount. The withheld amount shall be paid only upon replacement or correction to WisDOT's reasonable satisfaction of any and all deficiencies in work or project management cited by WisDOT in its final inspection of the Approved Project and only after receipt by WisDOT of all the required lien waivers.

Section 3.2 Payment Process

(a) The Town shall submit each invoice to WisDOT, Railroads and Harbors Section, Room 701, P.O. Box 7914, Madison, Wisconsin, 53707, Attention: Harbors and Waterways Program, for reimbursement of Approved Project eligible costs incurred during the prior invoice period. With the Town's invoice to WisDOT, the Town shall attach copies of all invoices for eligible costs of the Approved Project incurred by the Town during the invoice period.

(b) WisDOT shall pay to the Town, subject to final project audit by WisDOT, an amount equal to eighty (80) percent of the amount appropriately invoiced in accordance with this Agreement for Approved Project eligible costs, except that WisDOT shall withhold from each payment as a completion retainage an amount equal to ten (10) percent of WisDOT's share of the invoiced amounts until fifty (50) percent of the work under each work task has been completed. After fifty (50) percent Approved Project completion, WisDOT shall thereafter pay an amount equal to the full eighty (80) percent of each amount invoiced for Approved Project eligible costs, unless the Approved Project is not proceeding satisfactorily pursuant to the plans and specifications and to the schedules prepared under Section 4.1; but amounts previously withheld by WisDOT shall not be paid to the Town until final acceptance by WisDOT of all the work. At fifty (50) percent Approved Project completion or any time thereafter, if the progress of work is not satisfactory pursuant to the plans and specifications and to the schedules prepared under Section 4.1, additional completion retainage amounts may be withheld by WisDOT, but in no event shall the amount withheld by WisDOT exceed ten (10) percent of the WisDOT grant share of the invoiced amounts for the work satisfactorily completed pursuant to the plans and specifications for each work task.

(c) The Town shall pay, as local matching funds, at least an amount equal to twenty (20) percent of the invoiced amount. The Town shall provide one hundred (100) percent of payment for additional costs exceeding the grant amount.

Section 3.3 Eligible Costs.

(a) Costs, subject to the maximum grant amount allowable under this Agreement, incurred by the Town in the completion of any work under Section 2.2(a), (b), or (c), are eligible for reimbursement by WisDOT except:

(1) if incurred prior to the effective date of this Agreement, unless incurring of costs is approved in writing by WisDOT;

(2) if the Town fails to secure all necessary permits, licenses and authorizations, and fails to deliver signed copies thereof to WisDOT;

(3) if the Town fails to submit to WisDOT a copy of its or its contractor's general liability, worker's compensation, comprehensive business vehicle and other applicable insurance policies satisfactory to WisDOT, as required under Section 9.2(a) and (b);

(4) if the Town fails to secure WisDOT written approval of the contracts let for work for the Approved Project;

(5) if the Town fails to provide evidence to WisDOT that any and all contractors have obtained a performance and payment surety bond as required under Section 12.4(c); or

(6) if the Town fails to meet all applicable requirements in this Agreement or in the law.

(b) The Town shall, whenever available and consistent with the other provisions of this Agreement, take cash and trade discounts, tax exemptions, or other credits in connection with goods and services purchased or used on the Approved Project. The Town shall impose this requirement on any contractor or subcontractor when payment is based on costs incurred.

(c) If WisDOT or a federal or other state agency having jurisdiction determines that any material or work is deficient for whatever reason, the Town shall require the replacement of whatever materials or the correction of whatever work is necessary to cure the deficiency. The Town shall not use any WisDOT grant or the Town matching funds to pay for the replacement or correction required.

(d) All materials delivered to the Town or its contractors or subcontractors for use in performing the work set forth in the Scope of Work in Section 2.2 shall be appropriately accounted for upon delivery and protected from theft or damage by the Town at its expense. Replacement of damaged or stolen material is not an eligible cost under this Agreement. Damage to or theft of material is not an acceptable reason for non-performance of the Town's obligations under this Agreement. If WisDOT agrees, damage or theft may be an acceptable reason for an extension of the completion dates under this Agreement. Any extension of

completion date shall be requested by the Town and before it becomes effective be approved by WisDOT in writing.

Section 3.4 Financial Management, Audit and Records.

(a) The Town shall maintain, whether in the form of contracts, subcontracts or other documents, the following until the expiration of three (3) years after the date of WisDOT acceptance of the final close out accounting which shall include:

(1) Records that identify the sources and applications of all funds for the Approved Project and that contain information pertaining to grant awards, draw downs, obligations, unobligated balances, assets, liabilities, outlays and income;

(2) Original invoices, employee time sheets and all other supporting source documents;

(3) Bid documents, contracts, subcontracts and all documentation underlying the preparation of the project financial reports and the grant budget; and

(4) All accounting documents of the Town pertaining to the Approved Project. (These accounting documents shall be clearly identified and readily accessible to WisDOT and its designees. The Town shall also impose this requirement upon each of its contractors and ensure that it is imposed on each subcontractor.)

(b) The Secretary of WisDOT and any duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients of funds under this Agreement which in the opinion of the Secretary or designee may be related or pertinent to the Approved Project for which the Town has received or is or may be entitled to receive assistance under this Agreement. The Town shall impose this requirement on each of its contractors and ensure that it is imposed on each subcontractor.

(c) All costs charged to this project shall be supported by documents evidencing in detail the nature and propriety of the charges. All accounting and other documents pertaining to the project shall be clearly identified and readily accessible to WisDOT representatives or designees.

(d) The Town shall establish a separate account showing receipts and disbursements of all funds provided under this Agreement. This system of accounts shall permit the clear differentiation of charges to the project from expenditures made by the Town for non-project work. Contractors and subcontractors shall be required to maintain accounts that differentiate receipts and disbursements in a similar manner.

(e) WisDOT may conduct and prepare a final project audit of the use of WisDOT provided funds. The Town shall fully cooperate with WisDOT and its representatives in the conducting and preparing of such a final project audit and shall also require its contractors and

subcontractors to do so. All payments to the Town shall be subject to a claim for refund by WisDOT based upon the final Approved Project audit.

(f) The Town shall have a single, organization-wide financial and compliance audit performed by a qualified independent auditor if required to do so under federal law and regulations (see federal Circular No. A-128, Section 4).

(g) The audit specified in Section 3.4(f) shall be performed in accordance with federal Circular A-128 issued by the federal Office of Management and Budget (OMB) and state single audit guidelines issued by the Wisconsin Department of Administration (DOA). State programs will be included in the scope of the single organization-wide financial and compliance audit.

ARTICLE 4.0 REPORTING

Section 4.1 Work Task Scheduling. Prior to starting the work described in Section 2.2(b), the Town shall provide WisDOT with a schedule of anticipated work progress by month for each Approved Project work item. The schedule shall follow a format acceptable to WisDOT. The schedule shall be updated monthly to show anticipated work to be done both during the next month and during the following months through project completion. The updated schedule shall be submitted to WisDOT with the monthly performance report required by Section 4.3(a).

Section 4.2 Immediate Reporting.

The Town shall report to WisDOT immediately in writing whenever there is any condition under federal, state or local law or there is any other circumstance that may significantly affect:

- (a) The Town's ability to pursue any aspect of the Approved Project in accordance with the provisions of this Agreement, or
- (b) The Town's continuing eligibility for financial assistance under this Agreement.

Section 4.3 Routine Reporting.

(a) If during any month, a Town contractor or subcontractor has performed work on the Approved Project, the Town shall file a monthly performance report with the next invoice for payment from WisDOT. The report shall include the following information:

- (1) The total accumulated, Approved Project costs incurred to the end of the month and the estimated costs remaining to complete the project;
- (2) Unit costs of materials, labor and equipment charged to the Approved Project for the period covered by the report;

(3) The percentage of completion of each work item of the Approved Project and the estimated date of completion of each work item;

(4) A narrative describing all work completed during the past month;

(5) A narrative description of any difficulties or delays encountered, including an explanation of any cost overruns or higher than budgeted unit costs and any corrective action taken or to be taken to address the difficulties, or delays, or cost overruns;

(6) An explanation of any anticipated difficulties or delays until the end of the project and the action to be taken in an effort to avoid such difficulties or delays; and

(7) Any additional narrative necessary to explain any major change that has been made during the past month to the monthly schedule of anticipated work progress.

(b) All financial reports shall be prepared on the same basis as the Town's accounting records unless WisDOT shall direct otherwise in writing. All records and reports shall be kept in accord with generally accepted accounting principles.

ARTICLE 5.0 PERMITS AND LICENSES

The Town shall obtain all necessary valid permits, licenses and authorizations required for the completion of the Approved Project. Costs associated with the acquisition of permits, licenses and authorizations are not eligible for reimbursement under this Agreement. No payment of grant funds for eligible costs incurred for performance of any work shall be made by WisDOT prior to the Town's having secured all necessary permits, licenses, and other authorizations and having delivered executed copies of each to WisDOT. The Town shall file with WisDOT one executed copy of each required permit, license or other authorization upon execution of this Agreement or within fifteen days following the acquisition of the permit, license, or other authorization documents by the Town. Failure to obtain and deliver to WisDOT all necessary permits, licenses or other authorizations on or before June 1, 2013, shall terminate this Agreement under the terms of Article 6.0 herein. If at some date after June 1, 2013, it is determined by a court of competent jurisdiction that a permit, license, or authorization other than those submitted to WisDOT under this Article is necessary to complete the Approved Project, the Town shall, within one hundred eighty (180) days from the date of notice to the Town by WisDOT, either obtain such permit, license or authorization or return to WisDOT all amounts paid by WisDOT under the terms of this Agreement.

Permits and licenses referred to in the above paragraph are "major" permits and licenses required for authorization of the Approved Project. Minor permits and licenses required during the course of the work, and normally only issued to the contractor at the time of the work, will not be an eligible cost and will be obtained as the project work progresses.

ARTICLE 6.0 TERMINATION

In the event the Town fails to perform any of its obligations under this Agreement, WisDOT may, at its option, give ten (10) days' written notice thereof to the Town. Upon failure

of the Town to correct the breach within ten (10) days following written notice, WisDOT shall have the right, at its option, to terminate this Agreement by giving written notice by certified mail to the Town. Notwithstanding the foregoing, if the default for which notice is given is not capable of being cured within ten (10) days following written notice and if the Town has taken reasonable steps to initiate a cure of said default within the ten (10) day period, then at the sole discretion of the WisDOT, communicated to the Town in writing, the Town may have a reasonable period to cure the default. WisDOT's exercise of the right to terminate shall not impair any other rights of action or claims under this Agreement or under the law against the Town. This Agreement may be terminated by mutual written agreement of the parties at any time. If this Agreement is terminated for any reason whatsoever, the Town shall take, at its sole cost and expense, any and all appropriate action to permanently maintain the Approved Project site in a condition that poses no threat or hazard to navigation or the public and that complies with all applicable laws and regulations and with any conditions set forth in the permits, licenses and authorizations secured by the Town under this Agreement. The Town shall bear all expenses of termination, if this Agreement is terminated at the request of the Town, or a Town contractor or a Town contractor's subcontractor, defaults on any term or provision of this Agreement.

ARTICLE 7.0 CONTRACT PERIOD

This Agreement shall be in effect upon the date set forth on page one of this Agreement and shall continue in effect for twenty-five (25) years from the completion of the Approved Project work or until terminated under Article 6.0. The Approved Project work shall be completed in accordance with this Agreement before December 31, 2013. If it is not so completed by December 31, 2013, the Town shall repay all the grant funds advanced to it as required under Section Trans. 28.08(5) (intro.) and (a), Wis. Admin. Code. If the Approved Project is not operated and adequately maintained for the purpose as a commercial transportation facility, as defined in Section Trans. 28.02(1), Wis. Admin. Code, or if the Approved Project is converted to a use inconsistent with the purposes of the Harbor Assistance Program, or if the Approved Project is inconsistent with the terms of this Agreement during the 25 year period set forth above, or if this Agreement is cancelled or terminated for any reason whatsoever, WisDOT shall require full repayment of all funds advanced to the Town, and the Town shall promptly pay all such funds to WisDOT upon demand by WisDOT.

ARTICLE 8.0 REPRESENTATIONS AND WARRANTIES

Section 8.1 WisDOT. WisDOT represents and warrants that it has the power and authority to enter into this Agreement under Wisconsin Statutes section 85.095.

Section 8.2 The Town of Washington.

The Town represents and warrants that it has the power and authority to enter into this Agreement and that entering into this Agreement does not violate any statute, rule or regulation and does not violate any order, writ, injunction or decree of any court, administrative agency or other governmental body.