

**GRANT AGREEMENT**

**Identification Number: 0495-19-03 (GO Bond)**

**Wisconsin Harbor Assistance Program**

**By and Between**

**Port Milwaukee, WI**

**and**

**The Wisconsin Department of Transportation**

**Dated the \_\_\_\_ of \_\_\_\_\_, 2019**

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## **INTRODUCTION**

THIS GRANT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between Port Milwaukee (hereinafter called PORT) and the Wisconsin Department of Transportation (hereinafter called WisDOT).

### **WITNESSETH**

WHEREAS, PORT seeks to rehabilitate the Lake Express Ferry Terminal Building, including floors, walls, and utilities serving the facility; and

WHEREAS, the Lake Express Ferry carries passengers and vehicles across Lake Michigan, providing an alternative to automobile travel around the bottom of Lake Michigan, through Chicago; and

WHEREAS, without said maintenance, the Lake Express Ferry Building will be unable to perform its intended function within a period of two (2) years; and

WHEREAS, maintenance of commercial harbor activity in Milwaukee, Wisconsin is an integral part of the PORT's Three-Year Harbor Development Statement of Intentions; and

WHEREAS, PORT applied to WisDOT for an emergency Harbor Assistance Program grant under Section 85.095, Wis. Stats., 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 PORT 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 PORT and WisDOT.

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

“PORT” means description of Port Milwaukee.

“Project Location” means the structure and real property located at Port Milwaukee Lake Express Ferry Terminal Building, Milwaukee, WI 53207 and more specifically described in the certified survey map 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) Architectural contract for field work, plans and specs
- (b) Temporary relocation of staff, as needed, during construction
- (c) Rehabilitation of building, floors, walls and utilities
- (d) The performance of project management functions:
  - (1) Contractor selection: Bid preparation and advertising
  - (2) Project inspection and supervision to accomplish all above elements.

### **Section 2.2 Scope of Work**

PORT 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 project elements above.
- (b) Complete the construction 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 PORT an amount equal to a maximum of **\$240,000** or an amount equal to 80 percent of eligible costs (described in Section 3.3), whichever is the lesser, for completion of the Approved Project work as set forth in Section 2.2, Scope of Work, and in Attachment II.

(b) PORT agrees to pay an amount which is no less than 20 percent of eligible costs as described in Section 3.3. PORT shall provide 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 PORT fails on or before **June 30, 2020** 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 grant Agreement shall cease. PORT, 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), PORT 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. PORT shall notify WisDOT when changes are made to the estimated budget line amounts set forth in Section 2.4(b).

(d) PORT hereby declares that it shall obtain its share of eligible costs (match) on or before **June 30, 2020**. In the event the PORT, for whatever reason, does not obtain all or any portion of the match and additional monies, the PORT remains obligated to provide match and additional monies for payment of eligible project costs approved by WisDOT. In the event the PORT terminates this grant 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 80 percent of any progress payment, but may, due to payment of retainage amounts, exceed 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 80 percent of eligible costs incurred by PORT under the terms of this Agreement, but in no event greater than **\$240,000**.

(b) The estimated budget line items are:

ITEM	ITEM TOTAL	HAP FUNDS	LOCAL FUNDS
<b>ADMINISTRATION</b>			
Architectural Plans and Specs	\$38,500	\$30,800	\$7,700
Bid Preparation & Advertising	\$5,000	\$4,000	\$1,000
Inspections/supervision of contract	\$4,500	\$3,600	\$900
ADMINISTRATION TOTAL			
<b>CONSTRUCTION</b>			
Temporary Relocate Staff	\$10,000	\$8,000	\$2,000
Rehabilitation of building	\$242,000	\$193,600	\$48,400
CONSTRUCTION TOTAL			
<b>PROJECT TOTAL</b>	<b>\$300,000</b>	<b>\$240,000</b>	<b>\$60,000</b>

**Section 2.5 Project Monitoring and Inspection**

(a) PORT shall provide for qualified on-site inspection of the project work progress and quality by assignment of a PORT-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 PORT.

(c) The project engineer shall be specifically qualified in construction inspection and project management and have general knowledge of marine construction. 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 PORT and are not eligible for reimbursement under this Agreement. The project engineer shall report any instance of non-compliance with the terms of this grant Agreement or its Attachment II or any questionable work to PORT and shall immediately send a copy of the report directly to WisDOT. PORT 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. PORT 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 PORT's compliance with all applicable conditions and requirements of this grant Agreement including those set forth under Sections 2.2(a), 2.3(b), 3.3(a)(b)(c), 4.1, 4.3, 11.2(a) and (b), 12.4(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 retainage 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) PORT shall submit each invoice to WisDOT, Railroads and Harbors Section, Madison Yards Way, 6<sup>th</sup> Floor South, P. O. Box 7913, Madison, Wisconsin, 53707-7913, Attention: Harbors and Waterways Program, for reimbursement of Approved Project eligible costs incurred during the prior invoice period. With PORT's invoice to WisDOT, PORT shall attach copies of all invoices for eligible project costs incurred by PORT during the invoice period.

(b) WisDOT shall pay to PORT, subject to final project audit by WisDOT, an amount equal to 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 10 percent of WisDOT's share of the invoiced amounts until 50 percent of the work under each work task has been completed. After 50 percent Approved Project completion, WisDOT shall thereafter pay an amount equal to the full 80 percent of each amount invoiced for Approved Project eligible costs, unless the 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 PORT until final acceptance by WisDOT of all the work. At 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 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) PORT shall pay, as local matching funds, at least an amount equal to 20 percent of the invoiced amount. PORT shall provide 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 PORT 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 PORT fails to secure all necessary permits, licenses and authorizations, and fails to deliver signed copies thereof to WisDOT;
- (3) If PORT 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 11.2(a) and (b);
- (4) If PORT fails to secure WisDOT written approval of the contracts let for work for the Approved Project;
- (5) If PORT 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 PORT fails to meet all applicable requirements in this Agreement or in the law.

(b) PORT 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. PORT 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, PORT shall require the replacement of whatever materials or the correction of whatever work is necessary to cure the deficiency. PORT shall not use any WisDOT grant or PORT matching funds to pay for the replacement or correction required.

(d) All materials delivered to PORT 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 PORT 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 PORT'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 PORT and before it becomes effective be approved by WisDOT in writing.

### **Section 3.4 Financial Management, Audit and Records**

(a) PORT shall maintain, whether in the form of contracts, subcontracts or other documents, the following until the expiration of three 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 PORT pertaining to the Approved Project. (These accounting documents shall be clearly identified and readily accessible to WisDOT and its designees. PORT 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 PORT has received or is or may be

entitled to receive assistance under this Agreement. PORT 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) PORT 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 PORT 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. PORT 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 PORT shall be subject to a claim for refund by WisDOT based upon the final project audit.

(f) The grantee 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-133, Section 4).

(g) The audit specified in Section 3.4(f) shall be performed in accordance with federal Circular A-133 issued by the federal Office of Management and Budget and state single audit guidelines issued by the Wisconsin Department of Administration. 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), PORT 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**

PORT 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) PORT's ability to pursue any aspect of the Approved Project in accordance with the provisions of this Agreement, or

(b) PORT's continuing eligibility for financial assistance under this Agreement.

### **Section 4.3 Routine Reporting**

(a) If during any month, a PORT contractor or subcontractor has performed work on the Approved Project, PORT 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 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 PORT'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**

PORT 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 Grant Agreement. No payment of grant funds for eligible costs incurred for performance of any work shall be made by WisDOT prior to PORT's having secured all necessary permits, licenses, and other authorizations and having delivered executed copies of each to WisDOT. PORT shall file with WisDOT one executed copy of each required permit, license or other authorization upon execution of this Agreement or within 15 days following the acquisition of the permit, license, or other authorization documents by the PORT. Failure to obtain and deliver to WisDOT all necessary permits, licenses or other authorizations on or before **June 30, 2020** shall terminate this Agreement under the terms of Article 8.0 herein. If at some date after **June 30, 2020** 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 project, PORT shall, within 180 days from the date of notice to PORT 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 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 NON-EXCLUSIVE LEASE AGREEMENT WITH DOCK OPERATOR**

PORT shall be responsible for the provision of operation and maintenance at this harbor facility. The Approved Project property shall be available for use by the public for commercial activity, to the extent possible, subject to appropriate wharfage and dockage fees which shall not exceed the dock operator’s cost. The PORT remains subject to HAP requirements during the terms of any lease agreement involving the subject property and improvements. The dock may not be used for recreational purposes that in any way interfere with its commercial activity.

WisDOT acknowledges that the facility is leased by the Port of Milwaukee under the provision of Chapter 30 of the Wisconsin Statutes and that the leaseholder (Lake Express) must operate in accordance with U. S. Coast Guard and other security regulations for passenger ferries

## **ARTICLE 7.0 OWNERSHIP OF HARBOR FACILITY**

### **Section 7.1 Transfer of Ownership or Lease Interest**

(a) Without WisDOT’s prior written consent, which consent shall not be withheld unreasonably, PORT shall not sell, give, or convey in any manner whatsoever, its ownership or lease interest of the dock structure at the Approved Project within 25 years from the date of completion of the Approved Project. Transfer of ownership or lease interest by any means by PORT shall require PORT to repay to WisDOT the full amount of grant funds paid to PORT under this Agreement. Payment to WisDOT by PORT shall be made within 30 days after the transfer of ownership by PORT is closed. PORT may grant a present interest to purchase the dock walls after 25 years in the form of a right-of-first-refusal or other interest approved by WisDOT.

(b) With WisDOT’s prior written consent, the PORT may sell, give, or convey in any manner whatsoever, its ownership or lease interest of the dock structure at the Approved Project within the 25 years from the date of completion of the Approved Project, if the party acquiring PORT’s interest accepts all terms and conditions of this Agreement. Lease agreements should specify who will be responsible for the leased property and refer to the grant agreement.

## **ARTICLE 8.0 TERMINATION**

In the event PORT fails to perform any of its obligations under this Agreement, WisDOT may, at its option, give 10 days written notice thereof to PORT. Upon failure of PORT to correct the breach within 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 PORT. Notwithstanding the foregoing, if the default for which notice is given is not capable of being cured within 10

days following written notice and if PORT has taken reasonable steps to initiate a cure of said default within the 10 day period, then at the sole discretion of the WisDOT, communicated to PORT in writing, PORT 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 PORT. This Agreement may be terminated by mutual agreement of the parties at any time. If this Agreement is terminated for any reason whatsoever, PORT 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 PORT under this Agreement. PORT shall bear all expenses of termination, if this Agreement is terminated at the request of PORT, or a PORT contractor or a PORT contractor's subcontractor, defaults on any term or provision of this Agreement.

## **ARTICLE 9.0 CONTRACT PERIOD**

This Agreement shall be in effect upon the date set forth on page one of this Grant Agreement and shall continue in effect for 25 years from the completion of the Approved Project work or until terminated under Article 8.0. The Approved Project **work shall be completed in accordance with this Grant Agreement before June 30, 2020**. If it is not so completed by June 30, 2020, PORT 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 of transferring commercial waterborne cargoes, 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 grant Agreement during the 25 year period set forth above, or if this grant Agreement is cancelled or terminated for any reason whatsoever, WisDOT shall require full repayment of all funds advanced to PORT, and PORT shall promptly pay all such funds to WisDOT upon demand by WisDOT.

## **ARTICLE 10.0 REPRESENTATIONS AND WARRANTIES**

### **Section 10.1 WisDOT**

WisDOT represents and warrants that it has the power and authority to enter into this Agreement under Section 85.095, Wis. Stats.

### **Section 10.2 PORT**

PORT 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.

## **ARTICLE 11.0 LIABILITY AND INSURANCE**

### **Section 11.1 Hold Harmless**

PORT shall save and hold WisDOT, its officers, employees and agents, harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of PORT, its officers, employees or agents, its contractors, or its contractors' agents, servants, subcontractors or employees, or which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation which happens, or is alleged to have happened, in or about a place where such act, omission or operation is performed or should be performed or in the vicinity thereof (1) while a PORT contractor or subcontractor is performing its work on the Approved Project, or (2) during the period this Agreement between WisDOT and PORT is in effect, or (3) while any of PORT's contractor's or subcontractor's property, equipment, or personnel, are in or about such place or the vicinity thereof by reason of or as a result of the performance of PORT's contractor's or subcontractor's operations including, without limiting the applicability of the foregoing the following: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, contractors, subcontractors or frequenters, or to any other person or legal entity whether based upon, or claimed to be based upon, contract or tort or having its basis in worker's compensation under federal or state statutes or having any other code or statutory basis or based upon administrative rules or other provisions or other liability of WisDOT, PORT, or any other persons, and whether or not caused or claimed to have been caused by the negligence or other breach of duty by WisDOT, its officers, employees, agents, contractors, subcontractors or frequenters, PORT, its officers, employees, agents, contractors, subcontractors or frequenters, or any other person or legal entity. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trade-mark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever. PORT shall cause its contractors to, at its or their own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claim, demand or action identified in this section.

### **Section 11.2 Insurance**

(a) During the entire construction of the Approved Project and covering all claims arising out of any action or inactions connected in any way to the Approved Project or to any work on the Approved Project, regardless of when first asserted, the PORT or its contractors shall maintain, at its or their own cost and expense, a comprehensive general liability insurance policy, with per occurrence limits of not less than \$2,000,000, providing that WisDOT and its officers, employees and agents are named as additional insureds under the policy or policies. PORT shall cause to be furnished to WisDOT evidence satisfactory to WisDOT of the comprehensive general liability policy providing coverage satisfactory to WisDOT. In the event of suspended coverage, any modification in terms of this coverage or insurance cancellation, both the insurance carrier and PORT shall provide WisDOT with written notification of such suspension, modification or cancellation no less than 10 days prior to the suspension, modification, or

cancellation. If, upon receipt of such notice, PORT shall desire to continue this Agreement in effect, PORT or its contractors shall purchase, at its own cost and expense, such insurance as WisDOT shall deem necessary in its reasonable judgment. Failure to have and to maintain the requisite insurance coverage in full accord with this section is grounds for the immediate termination of this Agreement by WisDOT. Such termination, however, shall not impair any other right of action of WisDOT against PORT under this Agreement or as otherwise provided by law.

(b) During the entire construction of the Approved Project and covering all claims arising out of any actions or inactions connected in any way to the Approved Project or to any work on the Approved Project, regardless of when first asserted, PORT and its contractors, as appropriate shall also maintain, at its or their own cost and expense, the types and amounts of insurance coverage shown below:

KIND OF INSURANCE	MINIMUM OF LIABILITY
Worker's Compensation (Including Employer's Liability)	Statutory (\$500,000)
Comprehensive Business Vehicle (Including owned and non-owned) Combined Single Limit Liability	\$1,000,000 each occurrence
Longshoreman's and Harbor Worker's Compensation (as applicable under 33 U.S.C. 901, et seq.)	Statutory
Merchant Marine Compensation (as applicable under 46 U.S.C. 30104)	Statutory
Contractor's Pollution Liability	\$1,000,000 each occurrence
Truckers/Haulers Commercial Auto Liability Endorsed for Pollution	\$1,000,000 each occurrence

(c) PORT shall cause to be furnished to WisDOT evidence satisfactory to WisDOT of the worker's compensation, comprehensive business vehicle and all other applicable policies providing coverage satisfactory to WisDOT. In the event of suspended coverage, any modification in terms of this coverage or insurance cancellation, both the insurance carrier and PORT shall provide WisDOT with written notification of such suspension, modification or cancellation no less than 10 days prior to the suspension, modification, or cancellation. If, upon receipt of such notice, PORT shall desire to continue this Agreement in effect, PORT or its contractors shall purchase, at its own cost and expense, such insurance as WisDOT shall deem necessary in its reasonable judgment. Failure to have and to maintain the requisite insurance coverage in full accord with this section is grounds for the immediate termination of this Agreement by WisDOT. Such termination, however, shall not impair any other right of action of WisDOT against PORT under this Agreement or as otherwise provided by law.

WisDOT acknowledges that including these provisions in all construction contracts will satisfy this provision and that the City of Milwaukee is Self-insured

## **ARTICLE 12.0 GENERAL PROVISIONS.**

### **Section 12.1 Notice**

Any notice required or permitted under this Agreement shall be personally served in writing upon the other party by the party giving notice or shall be served by certified mail, return receipt requested, to the following addresses:

Chief of Railroads and Harbors Section	Port Administrator
Wisconsin Department of Transportation	Port Milwaukee
P.O. Box 7913	2323 S. Lincoln Memorial Drive
Madison, WI 53705-7913	Milwaukee, WI 53207

### **Section 12.2 Designation of Officials**

The WisDOT officials authorized to execute any changes in the terms, conditions, or amounts herein on behalf of WisDOT are the Secretary or Deputy Secretary of WisDOT or the Administrator of the Division of Transportation Infrastructure Management of WisDOT or designee. The PORT official authorized to execute any changes in the terms, conditions, or amounts herein on behalf of PORT is the Port Administrator or Port Director.

### **Section 12.3 Choice of Law**

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and of the State of Wisconsin.

### **Section 12.4 Contracts**

(a) WisDOT has the right to review the contracting and procurement system of PORT, and PORT shall assure that WisDOT has the right to review the contracting and procurement system of each contractor. These purchasing and contracting procedures of PORT and its contractors to obtain goods and services for use in connection with the Approved Project are subject to review by WisDOT upon reasonable notice. PORT's contracting procedures shall comply with Section 30.32, Wis. Stats.

(b) PORT shall provide for WisDOT review and written approval of all contracts to be paid in whole or in part with funds provided under this Agreement. PORT shall obtain WisDOT written approval prior to executing any contract pertaining in any way to the Approved Project. Failure to obtain prior written approval from WisDOT for a contract shall result in no reimbursement with grant funds for costs incurred under that contract.

(c) PORT shall require each successful bidder, at the time a written contract between PORT and the contractor is signed, to submit to PORT a good and sufficient surety bond for the full amount of the contract. The surety bond shall be conditioned upon the faithful performance of the contract and upon the payment of all claims for labor performed and materials furnished under the contract. PORT shall immediately upon signing a contract submit to WisDOT evidence that a good and sufficient surety bond is in effect. All contracts and surety bonds shall comply with all applicable provisions of Sections 30.32 and 779.14, Wis. Stats. WisDOT shall not pay PORT any amount due under a construction contract until after WisDOT has received

satisfactory evidence that a good and sufficient bond complying with Sections 30.32 and 779.14, Wis. Stats., is in effect for at least the amount of that contract.

### **Section 12.5 Competitive Bidding**

Except as otherwise provided in Section 30.32, Wis. Stats., all work to be let relative to the construction, repair or maintenance of a harbor or harbor facility and all purchases of equipment, supplies or materials relative to carrying out the purposes of the statutes relating to harbors shall be by contract awarded to the lowest competent and reliable bidder with reference to the letting of public work in accordance with both local ordinances and the laws of this state, specifically §16.70-16.78, Wis. Stats which applies to all general purchasing of goods and services, and ADM 5-11 and 50, Wisconsin Administrative Code which define purchasing and competitive bidding policies. As requested by the Department, PORT will provide to the Department written documentation of the solicitation process. Upon review, the Department will issue written approval to the PORT to make the award.

### **Section 12.6 Status of Port's Contractor**

Any contractor or subcontractor with PORT, whether acting through its officers, directors, employees, agents or representatives or otherwise, is an independent contractor and in no way shall be deemed an affiliate, partner, joint venturer, or associated in any manner whatsoever with WisDOT.

### **Section 12.7 Assignment**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. PORT's rights hereunder shall not, however, be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without WisDOT's prior written consent.

### **Section 12.8 Severability**

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, condition or provision (or remainder thereof) to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

### **Section 12.9 Amendment**

No term or provision of this Agreement or any of its attachments may be changed, waived, or terminated orally but only by an instrument in writing signed by both parties to this Agreement.

### **Section 12.10 Force Majeure**

The parties hereto shall be excused from the scheduled performance of their respective obligations hereunder occasioned by an event beyond their respective control (not due to their own fault, actions, or inactions), which shall include, without limitation: acts of God; strikes or other labor troubles; explosions, fires, vandalism, or malicious mischief; or other causes beyond the reasonable control of the parties. Such excuse shall remain, however, only so long as the event excusing performance shall continue and shall not excuse continued non-performance thereafter.

### **Section 12.11 Disabled**

PORT agrees that no otherwise qualified disabled individual in the United States, as defined in Section 706(8) of Title 29 U.S.C, or as specifically provided for in subchapter II of Section 111, Wis. Stats., or in Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111, et seq., shall, solely by reason of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

### **Section 12.12 Environmental Protection**

(a) PORT agrees that facilities or equipment shall not be acquired, constructed, or improved as a part of this Approved Project unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations.

(b) PORT agrees to conduct all aspects of the Approved Project in compliance with all the requirements of Section 114 of the Clean Air Act, 42 U.S.C 7414, and of Section 308 of the Federal Water Pollution Control Act, 33 U.S.C 1318, and of all applicable regulations issued under those Acts.

(c) PORT agrees that the environmental impact of the Approved Project has been assessed in accordance with the requirements of the Wisconsin Environmental Policy Act, Section 1.11, Wis. Stats.

(d) PORT agrees to include, or cause to be included, the criteria and requirements contained in this section in any contract or subcontract under which any of the financial obligations incurred are to be paid from funds provided under this Agreement.

(e) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials, may be used for this Approved Project without the prior written concurrence of the Secretary of the Wisconsin Department of Natural Resources, the State Historical Preservation Officer, and required federal authorities.

### **Section 12.13 Prohibited Interests in the Proceeds of Approved Project**

(a) Neither PORT nor any of its contractors shall enter into any contract, subcontract, or agreement in connection with the Approved Project or any property included or planned to be included in the Approved Project in which any official, officer or employee of the PORT during his or her tenure or for one year thereafter has any interest, direct or indirect, except as permitted under Section 946.13(2), Wis. Stats.

(b) PORT shall insert in all agreements entered into by it in connection with the Approved Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

“No official, officer or employee of the GRANTEE during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or in the proceeds thereof except as permitted under Section 946.13(2), Wis. Stats.”

(c) No member of or delegate to Congress or to the Wisconsin State Legislature shall share any benefit that may arise from this Agreement.

### **Section 12.14 Nondiscrimination**

(a) In connection with the performance of work under this Agreement, PORT 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 Section 51.01(5), Wis. Stats., 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, PORT further agrees to take affirmative action to ensure equal employment opportunities. PORT agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by WisDOT setting forth the provisions of this nondiscrimination clause.

(b) Pursuant to Section 16.765, Wis. Stats., PORT shall insert into all agreements entered into by it in connection with the Approved Project, and shall require its contractors to insert in each of their subcontracts, the provision in paragraph (a), of this Section, except that the word “PORT” shall be stricken and replaced by the word “contractor” and the word “WisDOT” shall be stricken and replaced by “PORT.”

(c) PORT shall comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require its contractors and subcontractors through contractual agreement to similarly comply:

(1) Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d et seq.

(2) Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq.

(3) Subchapter II of Section 111, Wis. Stats.

(4) Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(5) Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 653, et seq., and any other applicable occupational safety and health laws or regulations.

### **Section 12.15 Assurances**

(a) PORT assures WisDOT that funds received under this Agreement will be used solely for the purposes for which the assistance is granted and in conformance with any limitations on any allowable expenditures set forth under the federal or state laws applicable to the funds granted.

(b) PORT hereby accepts all attendant responsibilities and liabilities associated with its use of WisDOT grant funds including, if applicable, liability for accidents and responsibility for erection and maintenance of fencing and other safety and protective devices.

### **Section 12.16 Entire Agreement**

This Agreement and the attachments hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

**ARTICLE 13.0 SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

For GRANTEE

For WisDOT

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Lisa Stern, P.E.

Title: City of Milwaukee Comptroller

Title: Chief of Railroads and Harbors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved by City of Milwaukee as to Form, Content and Execution

By: \_\_\_\_\_

City Attorney, City of Milwaukee

**ATTACHMENT I – Certified Survey Map of Approved Project Area**

*(To be supplied at a later date)*

**ATTACHMENT II – Plans and Specifications for Construction of the Approved Project**

*(To be supplied at a later date)*