

20-0666

Amendment Four (4) to Grant Agreement 0495-18-05 between The Wisconsin Department of Transportation and Lake Michigan Carferry Service/SS Badger and The City of Manitowoc Regarding the Wisconsin Harbor Assistance Program

This fourth amendment is made to that certain prior agreement between The Wisconsin Department of Transportation and Lake Michigan Carferry Service/SS Badger dated September 17th, 2018 (Grant) and as to prior amendments dated December 3, 2018, March 22, 2019 and June 4, 2019, and shall be known as the July 2020 Amendment (July 20 Amendment).

WHEREAS, Lake Michigan Carferry Service/SS Badger (Badger) entered into a Harbor Grant Agreement with the Wisconsin Department of Transportation (WisDOT) under Wis. Stat. s. 85.095 and TRANS 28 WI Admin. Code, in September of 2018 for purposes of reconstructing a berthing facility with a new sheet pile bulkhead and fender system with a maximum grant amount of \$1,016,500; and

WHEREAS, Badger is required under Article 6.0 of the Grant to maintain a lease agreement with the City of Manitowoc for the duration of the 0495-18-05 grant agreement for use of the property by the public for commercial activity subject to wharfage and dockage [sic] fees for the duration of the grant agreement (until 2043); and

WHEREAS, Badger is required under Article 7.0 of the Grant to obtain written approval from WisDOT for any change in ownership or lease interest for twenty-five (25) years from completion of the improvement and only in the case that the successor in interest accept all terms and conditions of the Grant; and

WHEREAS, amendment 1 was entered into on December 3, 2018, by Badger and WisDOT approving the City of Manitowoc (City) for reimbursement of grant related expenses as the City had been paying for the same; and

WHEREAS, a subsequent amendment, was entered into on March 22, 2019, by Badger and WisDOT regarding an increase in grant dollars for the planned work; and

WHEREAS, an additional subsequent amendment was entered into on June 4, 2019, by Badger and WisDOT regarding the addition of items restricted for sale, lease, or transfer by Badger and City; and

WHEREAS, notwithstanding the leasehold interest in the improved property held by Badger, City is fee owner of all land and improvements covered under the Grant; and

WHEREAS, Badger is bound under the Grant regarding repayment of the Grant in the event it divests by any manner its interest (leasehold or otherwise) for twenty-five (25) years after completion of the Grant improvements; and

WHEREAS, City desires to assume the obligation for repayment of Grant funds required under the Grant in the event of divestment by Badger.

NOW THEREFORE, the parties do mutually agree to the revisions and amendments as stated in this -July 20 Amendment as follows:

- I. This July 2020 Amendment shall be effective upon the latest signature date.
- II. City shall be made a party to the Grant by its signature on this July 2020 Amendment. City shall provide all required approvals, including any required resolutions, necessary to accept the Grant and its provisions including all prior and this Amendment and the same shall be attached to this Amendment as Attachment 1.
- III. In Article 1.0, the following shall be added:
 - a. "City" means the City of Manitowoc.
- IV. "and City" shall be added after "Company" in the following provisions of the Grant:
 - a. Article 1
Definition of "Agreement"
 - b. Article 2.0
In Section 2.3 (a) first sentence
 - c. Article 3.0
In Section 3.4 (a) first sentence and (4) first and third sentence and in (b) first and second sentence and (e) second and third sentence.
 - d. Article 8.0
All instances of Company. [However, replace "Company" with "City" in last sentence].
 - e. Section 10.2
All instances of Company.
 - f. Section 11.1
All instances of Company.
 - g. Section 12.7
All instances of Company.
 - h. Section 12.11
All instances of Company.
 - i. Section 12.12
All instances of Company.
 - j. Section 12.5
All instances of Company.
- V. Article 9.0
 - a. Replace Company with City.
- VI. Article 12.0
 - a. Add the following:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Attn: City Clerk

VII. Add to the end of section 12.2 the following:

a. The City officials authorized to execute any changes in the terms, conditions, or amounts herein on behalf of City are the Mayor and City Clerk.

VIII. Article 7 of the Grant and the amendments identified in this Amendment are deleted and replaced with the following:

7.1 Transfer of ownership or Lease Interest

(a) The Grant was provided by WisDOT via use of bonded funds. Use of bonded funds requires commitment to public benefit for the life of the bond, generally twenty-five (25) years. In order to ensure the public benefit inures to the life of the bond funds provided, a grantee of bonded funds shall ensure public benefit for an identified time period. City, as owner of the improved facilities is beneficiary of the bonded funds for the Grant.

(b) City, as owner of all improvements affected by this Grant, shall not without WisDOT's written consent, which shall not be unreasonably withheld so long as the principles of the Grant are met, sell, give, or convey, in any manner whatsoever, its ownership or any other interest in the improvements affected by the Grant or lands on which the improvements are located regarding the Approved Project within twenty-five (25) years of completion of the Approved Project. Transfer of ownership or interest by any means by City of the lands or improvements affected by the Grant shall require City to repay to WisDOT the full amount of grant funds paid to City under the Grant.

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

For Lake Michigan Carferry Service / SS Badger

By: _____

Title: _____

Date: _____

For WisDOT

By: _____

Title: _____

Date: _____

For the City of Manitowoc

By: _____

Title: _____

Date: _____

Resolution Reference: _____