

RESOLUTION NO. 2006-65

**RESOLUTION BY THE PUBLIC WORKS, PARKS AND FACILITIES COMMITTEE
AUTHORIZING AND APPROVING TERMS WITH THE WISCONSIN DEPARTMENT OF
TRANSPORTATION FOR A CONGESTION MITIGATION AIR QUALITY (CMAQ) PROGRAM
GRANT FOR THE FURTHER DEVELOPMENT AND CONSTRUCTION OF THE "MRK
BICYCLE AND PEDESTRIAN TRAIL"**

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED by the Racine County Board of Supervisors that the County is authorized to enter into a CMAQ Program Project Agreement in the amount of \$1,272,000, as identified in "Exhibit A" that is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that the Public Works Department, or their agent, is authorized to design and construct a bicycle/pedestrian bridge and trail as a continuation of the current MRK trail from Cliffside Park to the Seven Mile Road adjacent to the Union Pacific Rail corridor.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that the Public Works Department will comply with a Disadvantaged Business Enterprise (DBE) goal of 12% of total construction costs.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that Racine County Department of Public Works is hereby authorized to apply for any grants available from the Wisconsin Energy Corporation Inc. and others for funding toward the local match required for the construction of this bicycle/pedestrian trail.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that easement agreements, permits, licenses or other such agreements with WE Energies and the Union Pacific Railroad and other parties are authorized and approved in order to secure and accept permission to extend MRK Bicycle/Pedestrian Trail under the following conditions:

1. That the purpose of said agreements is to allow Racine County to locate and construct a bicycle/pedestrian trail on property owned by others through voluntary agreements.
2. That in return for the permission:
 - a) Racine County shall agree to indemnify, protect, save and hold harmless the parties who grant permission for any liability arising out of the use of said properties.
 - b) That Racine County shall agree to prevent erosion and restore the land to acceptable standards.
3. That the parties will give permission to Racine County for the use of some of their lands pursuant to said agreements the MRK Bicycle/Pedestrian Trail.
4. Such other terms and conditions as the Corporation Counsel and the Director of Public Works deems necessary and appropriate.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that this resolution does not authorize expenditure for the construction of the bicycle/pedestrian trail or bridge and that remainder of the actual allocation of said match monies necessary to carry out

5 the construction of the trail or bridge be authorized at a later date by the Racine County Budget
6 or subsequent resolution by the Racine County Board of Supervisors
7

8 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that any two
9 of the County Clerk, the County Executive and/or the County Board Chairman are authorized to
10 execute any contracts, agreements or other documents necessary to carry out the intent of this
11 resolution.

12 Respectfully submitted,

13
14 1st Reading _____

**PUBLIC WORKS, PARKS AND FACILITIES
COMMITTEE**

15
16 2nd Reading _____

17
18 **BOARD ACTION**

Gilbert Bakke, Chairman

19 Adopted _____

20 For _____

21 Against _____

22 Absent _____

Daniel F. Sharkozy, Vice-Chairman

23
24 **VOTE REQUIRED:** Majority

Mike Dawson, Secretary

25
26 Prepared by:
27 Corporation Counsel

Diane M. Lange

28
29
30 _____
Donnie Snow

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32 _____
Robert D. Grove

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35 _____
Kenneth Hall

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39 **INFORMATION ONLY**

40
41 **WHEREAS**, Racine County board Resolution 2006-29 adopted the Racine County Park
42 and Open Space Plan and Resolution 2001-12 adopted the Regional Bicycle and Pedestrian
43 Facilities System Plan; and
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45 **WHEREAS**, the adopted plans recommended that a recreational trail adjacent to the
46 Union Pacific Railroad's east corridor be completed from Layard Avenue in the City of Racine to
47 the Milwaukee County border; and
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5 **WHEREAS**, Racine County has constructed and opened a bicycle/pedestrian trail under
6 a License Agreement with WE Energies along the corridor from Layard Avenue northward
7 currently ending at Six Mile Road; and

8
9 **WHEREAS**, WE Energies has indicated that it will construct and continue the
10 bicycle/pedestrian trail through its property north of Seven Mile Road, connecting with a
11 Milwaukee County trail, as part of the current power plant expansion project; and

12
13 **WHEREAS**, The amount of the CMAQ Grant makes up 80% of the estimated
14 \$1,690,000 total cost of the project for planning, design and construction of a trail bridge over
15 the rail corridor and a trail segment between Cliffside Park and Seven Mile Road; and

16
17 **WHEREAS**, The project requires local matching funds of 20% for a schedule consisting
18 of design engineering and right-of-way acquisition in 2006-07 and construction in 2008; and

19
20 **WHEREAS**, Racine County Board of Supervisors has authorized and funded the 20%
21 local matching funds in the 2006 Annual Budget; and

22
23 **WHEREAS**, The Wisconsin Energies Corporation Foundation, Inc. provides grants with
24 a goal to foster mutually beneficial relationships between WE Energies subsidiaries and
25 community organizations and may assist with local match funding for this project; and

26
27 **WHEREAS**, Anticipated land or right-of-way acquisition for this project is eligible for
28 acquisition using Land and Water Conservation (LAWCON) funding available to Racine County
29 and will qualify as local matching funds for this project; and

30
31 **WHEREAS**, The implementation and construction of this trail segment is in keeping with
32 adopted plans, provides transportation, recreational and tourist activities for Racine County and
33 is good public policy.

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**Federal/State/Project Sponsor
Transportation
CMAQ Program
Project Agreement**

Date: July 17, 2006
 Project ID: 1693-35-00/50/70
 Project Name: MRK Trail Extension & Bridge
 Limits (if applicable): Six Mile Road to Seven Mile Road
 County: Racine
 Municipality: Racine County

The signatory Project Sponsor, through its undersigned duly authorized officers or officials, and WisDOT enter into this agreement to accomplish the described project.

The authority for the Project Sponsor and WisDOT to enter into this agreement is provided by Section 86.25 of the Wisconsin State Statutes.

The payment period for each project phase (e.g. design, real estate, construction) shall begin with written authorization by WisDOT to the Project Sponsor.

NEEDS AND ESTIMATE SUMMARY: Approved for funding in the CMAQ Program.

DESCRIPTION OF THE PROJECT: A bicycle and pedestrian bridge over the Union Pacific Railroad (East Line) approximately 2,200 feet north of Six Mile Road. The bridge will need to span the three main lines and a service drive (span of approximately 215 feet). On the west side of the tracks the ten-foot asphalt path and boardwalk will extend the trail approximately 3,450 feet north to Seven Mile Road.

Estimated Cost					
	Total Estimated Cost	CMAQ Funds	%	Project Sponsor Funds	%
Design	\$160,000	\$128,000	80%	\$32,000	20%
Construction	\$1,380,000	\$1,104,000	80%	\$276,000	20%
Real Estate	\$100,000	\$0	0%	\$100,000	100%
Railroad	\$50,000	\$40,000	80%	\$10,000	20%
Total Cost Distribution	\$1,690,000	\$1,272,000		\$418,000	
Federal participation shall be limited to the lesser of 80% of actual project costs or \$1,272,000					

This request is subject to the terms and conditions that follow (see pages 2-4) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon acceptance by WisDOT shall constitute agreement between the Project Sponsor, WisDOT and the Federal Government.

This project is subject to a DBE goal assessment of 12% of the total construction cost. A discretionary DBE goal is assigned to the Design cost.

Signed for and on behalf of the County of Racine:

Signature	Title
Name (Written Clearly)	Date

-Terms and Conditions Begin on the Next Page-

TERMS AND CONDITIONS

1. The initiation and accomplishment of the improvement will be subject to the applicable State and Federal laws, rules, and regulations, as referenced in the document *A Local Sponsor's Guide to Non-Traditional Transportation Project Implementation*.
2. The construction of the CMAQ project will be in accordance with the appropriate standards unless an exception to standards is granted by the Federal Government or 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.
3. The project sponsor will assume all responsibility for complying with germane environmental requirements for the CMAQ project.
4. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder.
5. The work eligible for Federal and State participation will be administered by the Project Sponsor and/or WisDOT. The authority for the Federal Government and the State to delegate this responsibility is described in ISYEA of 1991, P.L. 102-240, as amended by the Transportation Equity Act for the 21st Century (TEA-21) or any subsequent federal law.
6. The Project Sponsor will assume all responsibility for complying with the applicable Disadvantaged Business Enterprise (DBE) goal assigned to this project. The DBE goal is waived if the Project Sponsor constructs the project with its own permanent staff and if the project is not subcontracted out.
7. The maximum participation of Federal financing will be limited to 80% of the actual eligible project cost or the Total Cost Distribution of CMAQ funds, as shown on page 1 of this agreement, whichever is less.
8. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and WisDOT submittals and approvals contained in these instructions and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and WisDOT and will furnish copies thereof when requested.
9. Federal Single Audits of the Project Sponsor:
 - a) The Project Sponsor shall have a single organization 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.)
 - b) This audit 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).
 - c) The Project Sponsor will keep records of costs of construction, inspection tests and maintenance done by it to enable the federal government and the state to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be subject to an audit as directed by the Department within eight years.

10. State Disbursements:
 - a) Payment by WisDOT to the Project Sponsor shall be made on a quarterly basis upon presentation of vouchers for expenditures incurred during prior quarterly periods of the project duration subject to the allowable maximum payment, as referenced above in Section 7.
 - b) A final adjustment of state payments will be made upon completion of WisDOT's audit of the project. If WisDOT's audit establishes that WisDOT paid more than its share of the eligible project costs, the Project Sponsor shall refund to WisDOT upon demand a sum equal to the overpayment.
11. The Project Sponsor will maintain, at its own costs and expense, all portions of the project that lie within its jurisdiction.
12. In connection with the performance of work under this Project Agreement, the Project Sponsor 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 S. 51.01(5), 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 the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the non-discrimination clause.
13. Responsibility for Damage and Tort Claims: 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; 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 because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance or order of decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the Department for such purposes, may be retained for the use of the State; or, in case no money or insufficient money retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Department; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, municipality in which the improvement is made and each of them separately or jointly and officers and employees.

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.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

- a) The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats.
 - b) Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.
14. No term or provision of the Project Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing signed by both parties to the Project Agreement.
15. The project must be completed within three years from the acceptance date of the Project Agreement by WisDOT central office. Extensions are available upon approval of a written request by the Project Sponsor to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
16. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
 - b) Have not, within a three year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
 - d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
 - e) That all grantees or contractors, also know as lower tier participant as that term is used in 49 CFR Part 29, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment have been declared ineligible, or have voluntarily been excluded from participation in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.

** End of Document**