

PARTNERSHIP AGREEMENT

Between

Wisconsin's Eleven Federally Recognized Tribes

Bad River Band of Lake Superior Chippewa Indians, Forest County Potawatomi Community, Ho-Chunk Nation, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac Du Flambeau Band of Lake Superior Chippewa Indians, Menominee Indian Tribe of Wisconsin, Oneida Nation, Red Cliff Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community, St. Croix Band of Chippewa Indians, Stockbridge-Munsee Band of Mohican [Indians](#)[1];

And

Wisconsin Division-Federal Highway Administration;

And

Wisconsin Department of Transportation

~~Tuesday, October 26, 2010~~ [\[INSERT DATE\], 2017](#)

Partnership Agreement

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Partnership Agreement

Introduction and Purpose [MAYBE RESTRUCTURE TO DECLARATIONS/WHEREAS...]

~~Brainstorm facts to support the 2017 Agreement [include factual history that clearly shows direction to get buy in to future administrations]~~

~~Success of 2005~~

~~Successes of 2010 Agreement~~

~~BIA transportation structure— seeking increased input on how transportation funds are spent, we have a very real partnership between agencies~~

~~Include graphical chronological at a glance snapshot of accomplishments (seek input from tribes as to detailed projects or impacts from the PAs for this purpose)~~

~~quantify and illustrate results (possible illustration of building blocks of 2005, 2010 and what 2017 will do to build off old PAs)~~

DECLARATIONS AND PURPOSE

Whereas, ~~t~~the United States government has a unique legal relationship with federally-recognized Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions;

Whereas, ~~t~~The federal government recognizes the right of self-determination for Indian tribal governments and the obligation to work with Indian tribal governments in a government-to-government relationship. ~~As an executive agency;~~

Whereas, the U.S. Department of Transportation (“USDOT”) has a responsibility and is committed to working with Indian tribal governments in this unique relationship, respecting tribal sovereignty and self-determination; ~~[Samantha to add modern federal statutory language to properly exhibit federal trust responsibility to tribes.]~~

Whereas, the USDOT seeks to foster and facilitate positive government-to-government relations between the Department and all Federally-recognized Indian tribes;

Whereas, on November 5, 2009, President Obama issued a Memorandum on Tribal Consultation that reaffirms the unique legal and political relationship with Indian tribal governments and tasked executive departments and agencies to create detailed plans of action to implement policies and directives of Executive Order 13175 (November 6, 2000);

Whereas, Executive Order 13175 recognizes the unique legal relationship between the Federal government and Indian tribes, sets forth criteria for agencies to follow in formulating and implementing policies that have tribal implications, and requires agencies to establish a consultation process for interactions with Indian tribes in the development of regulatory policies that have tribal implications;

Whereas, similarly, Wisconsin Governor Jim Doyle issued Executive Order #39 on February 27, 2004 entitled ~~This Partnership Agreement is a document first created in 2005 as a result of Executive Order 39,~~ ***“Relating to an Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin.”*** ~~As amended in 2010,~~ which recognized 11 federally recognized Tribes within Wisconsin; recognized the unique status of Indian Tribes and their right to existence, self-government, and self-determination; and

1. Directs cabinet agencies to recognize the unique legal relationship between the State of Wisconsin and Indian Tribes, respect fundamental principles that establish and maintain this relationship and accord Tribal governments the same respect accorded other governments;
2. Directs cabinet agencies to recognize the unique government-to-government relationship between the State of Wisconsin and Indian Tribes when formulating and implementing policies or programs that directly affect Indian Tribes and their members, and whenever feasible and appropriate, consult the governments of the affected Tribe or Tribes regarding state action or proposed action that is anticipated to directly affect an Indian Tribe or its members;
3. In instances where the State of Wisconsin assumes control over formerly federal programs that directly affect Indian Tribes or their members, directs cabinet agencies, when feasible and appropriate, to consider Tribal needs and endeavor to ensure that Tribal interests are taken into account by the cabinet agency administering the formerly federal program; and
4. Directs cabinet agencies to work cooperatively to accomplish the goals of this order; and

Whereas, the Wisconsin Department of Transportation (“WisDOT”), a cabinet agency of Wisconsin, executed a Partnership Agreement on May 24, 2005, consistent with Executive Order #39 in order to~~Its purpose is to continue to create and define the processes by which the Wisconsin Department of Transportation (WisDOT) and the Wisconsin Division-Federal Highway Administration (“FHWA”) and the Bureau of Indian Affairs (BIA), Midwest Regional Office (“BIA”), will work in collaboration with the eleven federally recognized tribes (hereinafter the “Eleven Tribes”) of Wisconsin, collectively, “the Partners”;~~ ~~[NOTE: Fond du Lac TRIBE NOW HAS TRUST LAND IN WISCONSIN, WisDOT will reach out to tribe[3]). Samantha will propose options to the purpose. This document’s~~

Whereas, the 2005 Partnership Agreement’s purpose ~~was was to solidify and grow~~ ~~ies opportunities for tribes to exercise their inherent sovereignty when working and building government to government relationships with federal and state agencies. This mutually beneficial relationship continues to grow~~ ~~[4]; to acknowledge and support the government-to-government relationship between Tribes and State and Federal Agencies and to support American Indian sovereignty~~ ~~[5];~~

Whereas, after signage of the 2005 Partnership Agreement, the WisDOT established the Wisconsin Inter-Tribal (Transportation) Task Force (“ITTF”) which consists of representatives designated by the tribal leaders and the WisDOT staff to carry out the Partnership Agreement;

Whereas, the 2005 Partnership Agreement served as a successful tool to forge and enhance government-to-government relationships between Wisconsin’s 11 federally recognized tribes and state and federal transportation agencies, such as [INSERT EXAMPLES OF 2005-2010 SUCCESSES];

- I-94 and 25th Street near the Potawatomi Casino project
- Ho-Chunk and Highway 12

Whereas, the Partners desired to reaffirm and expand the 2005 Partnership Agreement and executed a new Partnership Agreement on October 26, 2010 to add to the Agreement certain Emphasis Areas and set Measurable Achievements;

Whereas, the 2010 Partnership Agreement [INSERT REFERENCE AND EXAMPLES OF 2010-PRESENT SUCCESSES]:

Whereas, the Partners continue to agree that:

—Transportation systems play a vital role in the economic health and vitality of all Wisconsin communities;

Whereas, 2. Wisconsin’s tribal governments continue to face distinct challenges in meeting the transportation related needs of their communities, such as equitable access to transportation programs;

Whereas, 3. these inequities often result in negative impacts upon tribal and local economies, human and natural environments, and quality of life; and —

Whereas, 4. the goal of a government-to-government relationship is aimed at working with tribes as equal partners focused on economics, and natural and human environments to improve the quality of life for all; and

Whereas, the Partners further agree that [INSERT OTHER ADDITIONAL AGREEMENTS] additional Emphasis Areas must to include the development of Municipal partner Relationships and opportunities; training Communications and Public Relations; Identify and Work to Minimize Institutional Barriers Emergency or Unanticipated Emphasis Area; outreach;

~~Whereas, Partnerships defined by formal agreements are rare, and all parties~~ Partners herein acknowledge the significance of this effort; all Partners acknowledge the significant value of the history, origin and purpose of both the nationally recognized 2005 and 2010 Agreements;

~~Whereas, A WisDOT Tribal Task Force was established after the original 2005 Partnership Agreement was signed. This group consists of representatives designated by the tribal leaders and WisDOT;~~

~~[PARKING LOT OF ADDITIONAL GOALS: — Develop municipal partnerships and opportunities — counties and tribes, initially, perhaps a conference or other outreach and include the BIA]~~

NOW THEREFORE BE IT RESOLVED, that the WisDOT, FHWA, BIA, 11 Federally Recognized the Eleven Tribes of Wisconsin and the WisDOT hereby enter into the 2017 Partnership Agreement in good faith;

BE IT FURTHER RESOLVED, that all parties-Partners place significant value in working as equal partners;

BE IT FURTHER RESOLVED, that all parties-Partners agree that Government-to-Government relationships are best served when they are guided by moral, ethical and professional principles, not limited to rights and interests specified by law.

BE IT FURTHER RESOLVED, that this Agreement codifies the desire of the WisDOT, FHWA, BIA, and the 11 Tribes and the WisDOT—to fully adhere to the Guiding Principles of Government-to-Government Relations as set forth below;

1. Agreement

As ~~Partners~~ under this Agreement, all ~~parties~~ Partners agree to:

~~A.~~ a.—Work together under the framework of the Guiding Principles in Section 2 by providing the transportation related programs and services to better serve their communities.

~~B.~~—

~~b.~~—Follow protocols to enhance collaboration, a timeline for measurable results and specific contact staff for timely communication. Addendum 1 is a map of statewide and regional tribal liaison contacts who are the essential key points of communication with WisDOT to facilitate the successful implementation of partnership projects and action items.

~~c.~~ C. Utilize the WisDOT Inter-Tribal Task Force (the “ITTF”) as the primary forum to address immediate and long-standing transportation issues that may impact tribal communities.

~~d.~~ D. Recognize that administration and financial support is essential to the success of the WisDOT Inter-Tribal Task Force, ITTF programs, partnership projects, and action items This agreement does not determine specific individual tribal funding issues or state or federal funding formulas.

~~e.~~ D. Be bound to act in good faith for any dispute resolution processes relating to transportation issues that may impact tribal communities.

[13]

2. Guiding Principles [14]

~~In order to solidify opportunities for tribes to exercise their inherent sovereignty when working and building government-to-government relationships and [add benefits to WisDOT, FHWA and BIA], All Partners~~ parties hereby agree to [15] the following Guiding Principles:

A. Foster meaningful government-to-government relations by [16]:

B. Improve existing tribal programs by:

C. Ensure meaningful tribal input into future tribal transportation programs by:

D. Ensure the WisDOT's uniform and effective delivery of tribal programs throughout the country by:

E. Assist in implementing tribal infrastructure projects by:

F. Assist tribal members in developing transportation capacities by:

G. Assist efforts to coordinate national tribal infrastructure policy and programs within the Federal government by:

- Prioritize and utilize the government-to-government relationship among the 11 Tribes, federal and state government [17].
- Recognize the importance of collaborative partnerships and respect the knowledge, experience, perspectives, and needs of the other partners.
- Move forward the shared goals of their stakeholders and constituents through improved working relationships and partnership building.
- Work together to develop an effective and efficient consultation framework, ensuring the long-term

prosperity of this agreement.

- Agree to dedicate the appropriate level of resources to achieve success.
- Recognize and support the need to engage the shared strength, skills, and expertise in a collaborative effort to achieve success in transportation related activities.
- Pledge to work together in a proactive and cooperative manner.

3. Government-to-Government Communications in Emphasis Areas^[18]

A. Communications Initiated by Tribes to WisDOT.

When initiating contact, a tribe should first contact their regional liaison. Individual tribes should designate a main point of contact for agency staff to reach (Tribal Chair, ITTF representative or Tribal Historic Preservation Officer). At any time, a Tribe may request federal agency involvement in any matter. When an issue is identified that impacts multiple tribes, the issue may be addressed through the Statewide Tribal Liaison, ITTF or other applicable tribal transportation program/s.

B. Communications Initiated by WisDOT to Tribes.

WisDOT Tribal Regional Liaison shall contact, in writing, the ITTF Tribal Representative, ^[19] and applicable federal agencies, including, if necessary, the WisDOT Statewide Tribal Liaison. The Regional Tribal Liaison shall monitor and facilitate the communication process through resolution.

C. Communications Initiated by Federal Agencies.

As federal agencies, the FHWA and BIA shall comply with ~~federally mandated~~ tribal consultation ~~requirements~~policies. Consultation obligations under this Agreement shall not disturb or replace any federal agency consultation efforts and obligations with tribes directly. The Partners shall seek to appropriately consult with tribes to fulfill their obligations under this Agreement and applicable federal law.

4. Emphasis Areas ~~and Measurable Achievements~~

~~The Emphasis Areas and Measurable Achievements of this Agreement shall be~~The purpose of this section is to identify areas of partnership emphasis with the goal of defining means to measure partnership achievements. The following specific emphasis areas are established by both the tribes and transportation agencies working together through the annual ~~Tribal Task Force~~ITTF strategic planning process. These shared emphasis areas and implementing activities promote the partnership's core values of quality, opportunity, engagement, and sustainability, and ~~are intended to~~shall lead to means of measuring successful engagement and achievements. The core emphasis areas identified by tribes and acknowledged by the transportation agencies are as follows:

A. Partnership. ~~The Tribal Task Force~~ITTF ~~shall~~will develop and distribute to each ~~P~~partner an annual work plan that ~~lays out~~sets forth the goals under the Partnership Agreement. The annual work plan ~~shall~~will include objective means to measure achievement of these goals.

B. Transportation Safety. ~~As a part of its ongoing function, t~~The WisDOT Tribal Task Force~~ITTF shall~~will work to identify and expand joint transportation related safety initiatives and opportunities involving education, enforcement, engineering, and emergency response that bring benefits to tribal communities and other partners, including ~~law enforcement initiatives such as tribal inclusion in state patrol data systems and training;~~

C. Economic Development. ~~T~~As a part of its ongoing function, the WisDOT Tribal Task Force ~~ITTF~~shall work with all appropriate groups, agencies, and committees to create-identify, assess and enhance infrastructure development, entrepreneurial assistance, and youth development programs meaningful to each ~~P~~partner.

D. Building Capacity of Tribally Owned and Tribal-Individual Owned Run Businesses.– The ~~Tribal Task Force and tribal leaders~~ ITTF ~~sh~~will work with the transportation agencies to ensure that tribes and tribal members receive ~~all the~~ employment, training, business, and economic opportunities for Indian-owned businesses afforded by law. This ~~sh~~will include support of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 *et seq.*) and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) and the related obligations imposed by Executive Order 11246 (requiring equal opportunity in employment). Efforts ~~sh~~will focus on training sessions for labor and tribal businesses; ~~on how to become successful into~~ reducing unemployment rates; enhancing tribal economies; ~~and performing and administering~~ ing contracts; and ~~related comply with contractor applicable~~ regulations.

E. Native American Labor Development.– The ITTF shall continue to work diligently with the Statewide Native American Labor Initiative ~~Work will focus on tribal and Transportation agency staff, to fulfill the following goals and initiatives:~~

1. Enhance the capacity of tribal employment offices to maintain information on their ready, willing and able work force and create a more efficient means of recruitment and referral for WisDOT projects;
2. Develop and create a centralized inter-tribal Native American employment database;
3. Establish a standard process by which contractors can recruit and/or receive referrals of qualified individuals that are ready, willing, and able to work on DOT construction projects;
4. Enhance the monitoring and reporting of Native American labor activities on WisDOT projects. Increase cultural awareness and understanding between tribal employment offices and the construction industry to foster the development of stronger partnerships;
5. Institutionalize a formal method of regular coordination and communication between tribal governments and the industry to ensure the Native American Labor Initiative is effectively and efficiently applied;
6. Establish outreach initiatives that promote communication between all stakeholders engaged in Native American labor activities;
7. Enhance communication and labor activities;
8. Ensure tribal members have an equitable opportunity to engage in WisDOT/FHWA training programs that support their introduction into the construction industry;
9. Ensure tribal employment offices have adequate training in TrANS and methods for successfully placing applicants into the work force;
10. Increase hiring and long term employment opportunities for Native American TrANS graduates and qualified individuals interested or working in the construction industry;
11. Utilize non-DOT training services to enhance tribal labor work force development opportunities;
12. Provide educational materials and reference tools to enhance tribal participation in training programs, union and non-union apprenticeships and training programs;

13. Increase incentives for utilizing Native American labor; and

14. Support the government-to-government relationship between the state and the tribes and enhance Native American labor employment opportunities for projects that are located on or partially on tribal or reservation lands.

F. Compliance with Tribal Labor and Indian Preference Codes. The ITTF shall continue to work diligently with the Tribal Labor Advisory Committee (“TLAC”) ^[to] achieve full compliance ensuring that all is done to cooperatively ensure that work in Indian Country complies with tribal labor and Indian preference codes to the extent applicable; promotes Tribal employment through training-based initiatives and joint partnerships; and sustains, promotes, and expands Native American hiring. [Note: WisDOT does not have statutory authority to impose and enforce TERO and other hiring preferences on WisDOT contracts.]

GF. Transportation Training. As a part of its ongoing function, ~~t~~The WisDOT Tribal Task Force^{ITTF} will ~~shall~~ work with the tribes, WisDOT, and FHWA, ~~Partners~~ to establish shared/identify mutually-beneficial transportation related training needs and ~~corresponding training schedules~~ provide such training that helps each partner achieve higher levels of success for their respective stakeholders.

HG.) Cultural Resources and Environmental Matters. As a part of its ongoing function, ~~t~~ The ~~Partners, in coordination with WisDOT/ Tribal Historic Preservation Officer/s or Tribal Representative/s, project,~~ tribal representatives, WisDOT, and FHWA ~~sha~~ will serve as a forum to network, develop policy, assess and develop data management system/s, develop policy, ~~and~~ deliver training to meet shared cultural resource goals and objectives, and support the development of inter-governmental/agency agreements for the same.

WisDOT shall adhere to its Facilities Development Manual (“FDM”) consultation process for federal cultural resources and environmental law is applied issues. WisDOT shall consult the Eleven Tribes with any updates or modifications to the FDM related to cultural resources and environmental matters pertinent to the tribe or tribes.

The Partners recognize that obligations extend beyond this Agreement such as those set forth in federal laws such as NEPA, NHPA, NAGPRA and other applicable law. Consultation obligations under this Agreement shall not disturb or replace any federal agency consultation efforts and obligations with tribes directly. The Partners shall seek to appropriately consult with tribes to fulfill their obligations under this Agreement and applicable federal law.

I. Building Municipal Relationships. The Partners recognize the need to build municipal partnerships and seize opportunities to maximize mutually-beneficial outcomes. If requested by any Partner, ~~t~~The WisDOT shall lead the facilitation of relationship building with each tribe and local cities, towns, villages, and counties for transportation-related matters, to include training or presentations, safety coordination, law enforcement, explore cost-share opportunities, reach agreements on jurisdictional concerns and encourage communications.

J. Communications and Public Relations. The Partners agree to seek collaborative support for and erect signage that credits the program, partners and funding at successful project sites. The Partners agree to promote and encourage participation in ITTF events, conferences, activities and public service announcements or

initiatives. The Partners agree to maintain and enhance the web-related resources available to accomplish the purpose, principles and Emphasis Areas of this Agreement.

K. Identify and Work to Minimize Institutional Barriers. Streamline and reduce bur????acy between the Partners in a true government-to-government relationship. [Samantha will research the Wisconsin Lean Government Initiative to see if ITTF can be involved or have a role in this program for October meeting].

L. Emergency or Unanticipated Emphasis Area. At the recommendation of any Partner, the ITTF shall assist in identifying areas of concern not listed above, propose solutions and assist in seeking funding to resolve emergency and unanticipated tribal transportation matters.

To facilitate a common background starting point for the Partnership Agreement, Addendum 3 provides a historic overview. For convenience and to assist partnership communication, Addendum 4 provides a list of commonly used key reference terms.

5 Measurable Achievements The Partnership Agreement Work Plan in Addendum —4 shall be evaluated by the ITTF and provided to all Partners on an annual basis.

64. Dispute Resolution Process

From time to time, disagreements and disputes will occur. The key to forging lasting relationships is the manner in which differences are resolved.

Formal Process for Dispute Resolution. At any time prior to or during the dispute resolution process, anythe Partnerparties have the option may to request the FHWA, BIA or any other agencies or groups at any levelany other Partner to participate in the dispute resolution process. If a tribal party requests signatory agency participation, the agency must participate.

~~Addendum 2 is a formal process for the WisDOT dispute resolution.~~ The goal of the resolution process is to have Partners continue working together seeking mutual solutions. This resolution process is specificapplies to the communication between WisDOT and the tribes of WisconsinPartners of this Agreement. The process is meant to lend assistance in the resolution of any issue. Tribes can contact WisDOT's Statewide Tribal Liaison directly with any issue if they feel issue resolution is more effective outside this process.

As a good faith effort on the part of WisDOT, this dispute resolution process shawill be honored for any tribe even if that tribe did not choose to sign this formal agreement. ~~The process is meant to lend assistance in the resolution of any issue. Tribes can contact WisDOT's Statewide Tribal Liaison directly with any issue if they feel issue resolution is more effective outside this process.~~

Step 1: Reporting a Dispute

The dispute resolution process is initiated when a Partner submits a completed Dispute Resolution Form which is attached as Addendum in writing or online to any other Partner/s and the WisDOT Statewide Tribal Liaison who shall monitor the entire process to full resolution. .

Step 2: Providing Notice

The initiating Partner must deliver the Dispute Resolution Form to the WisDOT Statewide Tribal Liaison and the

Regional Liaison via fax, email (receipt/read response preferred), and/or U.S. Mail. The Statewide Tribal Liaison shall acknowledge receipt of the dispute within ten (10) business days of actual receipt, unless emergency expedited review is requested and/or warranted^[21] at the discretion of the Statewide Tribal Liaison or his/her delegate.

Step 3: WisDOT Response

Up to but not more than thirty (30) calendar days, the State Tribal Liaison shall commence due diligence, draft a detailed Dispute Resolution Plan and issue a response in writing to all involved Partners, which may include a determination that such dispute is outside the scope of this Agreement, via fax, email (receipt/read response preferred), and/or U.S. Mail. If the WisDOT Dispute Resolution Process is applicable, the Dispute Resolution Plan shall include:

1. The appropriate level in the transportation agencies and Tribe/s for resolution;
2. The applicable federal agency dispute resolution process or WisDOT Dispute Resolution Process herein;
3. The liaison shall facilitate contact with the appropriate internal staff or management;
4. Identification of the issue/s and options for resolution;
5. The appropriate method of communication such as face-to-face meetings, teleconference calls, etc.; and
6. A timeline.

Step 4: Responding and Finalizing the Dispute Resolution Plan

All involved Partners shall respond to the Statewide Tribal Liaison with detailed edits, comments or concerns about the draft Dispute Resolution Plan within thirty (30) calendar days (“the comment period”), unless emergency expedited review is requested and/or warranted at the discretion of the Statewide Tribal Liaison or his/her delegate. If any Partner does not submit input on the draft Dispute Resolution Plan within the prescribed comment period, then said Partner has waived their opportunity to do so. The Statewide Tribal Liaison or his/her delegate shall consider all comments submitted within the prescribed comment period and issue a final Dispute Resolution Plan for implementation to all involved Partners.

Step 5. Implement the DR Plan or Determine Elevated Resolution is Necessary

The Statewide Tribal Liaison shall monitor the implementation of the final Dispute Resolution Plan. The Partner/s hereby acknowledge that some disputes may not be able to be resolved to the satisfaction of all. After reasonable good faith efforts to implement the final Dispute Resolution Plan and if any involved Partner/s or the Statewide Tribal Liaison determines that the final Dispute Resolution Plan is ineffective or inappropriate, only then can any Partner request Elevated Dispute Resolution and justification thereof, in accordance with Step 6 as follows.

Step 6: Elevated Dispute Resolution, When Necessary

If any Partner requests an Elevated Dispute Resolution, then the State Tribal Liaison shall initiate consultation with each Partner on the following levels as follows:

1. BIA – Regional Director;
2. FHWA – Division Administrator;
3. WisDOT – Secretary of Transportation; and
4. Tribes – Tribal Chair or President.

Elevated Dispute Resolution consultation shall include a review of the Dispute Resolution Form, the final Dispute Resolution Plan and any substantive documents related to the dispute resolution.

The Partners shall then make good faith efforts to work together to resolve the founding dispute.

[INSERT AMENDMENT AND SUNSET PROVISION HERE]

[SIGNATURE PAGES FOLLOW]^[22]

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~~**G.) Cultural Resources** As a part of its ongoing function, the WisDOT/Tribal Historic Preservation Officer project, tribal representatives, WisDOT, and FHWA will serve as a forum to network, develop policy, and deliver training to meet shared cultural resource goals and objectives. WisDOT shall adhere to its Facilities Development Manual consultation process for federal cultural resource and environmental law is applied.~~

~~To facilitate a common background starting point for the Partnership Agreement, Addendum 3 provides a historic overview. For convenience and to assist partnership communication, Addendum 4 provides a list of commonly used key reference terms.~~

**Wisconsin Department of Transportation
Tribal Partnership Agreement
Tuesday, October 26, 2010
Signatories**

The following signatories hereby agree to the 1) Overall Objectives, 2) Guiding Principles, and 3) Resolution Process, and 4) Emphasis Areas and Measurable Achievements



Bad River Band of Lake Superior Chippewa
Tribal Chairman – Michael Wiggins, Jr.



Red Cliff Band of Lake Superior Chippewa
Tribal Chairwoman – Rose Soulier

Rose Soulier



Lac du Flambeau Band of Lake Superior Chippewa
Tribal President - Tom Maulson

Tom Maulson



Ho-Chunk Nation
Tribal President – Wilfrid Cleveland

Wilfrid Cleveland



Oneida Tribe of Indians of Wisconsin
Tribal Chairman – Richard Hill

Richard B. Hill



Lac Courte Oreilles Band of Lake Superior Chippewa
Tribal Chairman – Louis Taylor

Russell Barber



Stockbridge-Munsee Band of Mohican Indians

Tribal President – Kimberly Vele

Kimberly Vele



Sokaogon Chippewa Community

Tribal Chairman – Garland McGeshick

Garland McGeshick



Forest County Potawatomi Community

Tribal Chairman – Harold "Gus" Frank

Harold "Gus" Frank



St. Croix Chippewa Community

Tribal Chairman – Lewis Taylor

Lewis Taylor



Menominee Indian Tribe of Wisconsin

Tribal Chairwoman – Laurie Boivin

Laurie Boivin

Wisconsin Division-Federal Highway Administration



Division Administrator

George Poirier

George Poirier

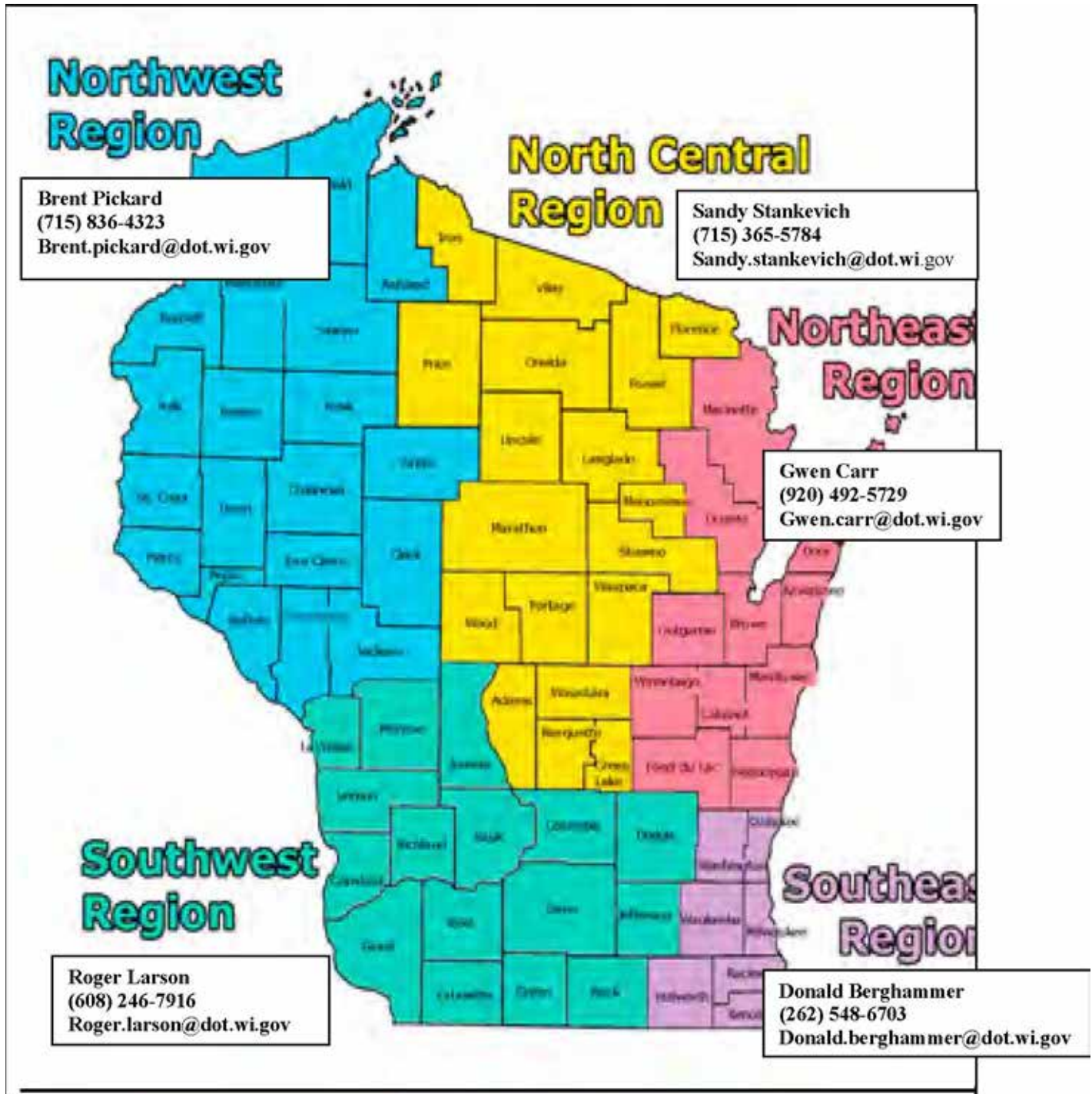
Wisconsin Department of Transportation



Secretary

Frank Busalacchi

Frank J. Busalacchi



Addendum 1 Map of Statewide and Regional Liaison Contacts

Statewide Contact: Kelly Jackson (608) 266-3761 Kelly.jackson@dot.wi.gov

Addendum 2

Step 1: Reporting a Dispute

The dispute resolution process is initiated when an authorized representative of a tribe or WisDOT reports a dispute in writing to the designated representative of the parties involved (see Addendum 1), with a copy to the Statewide and Regional Tribal Liaison who shall monitor the entire process to full resolution. Any party initiating a dispute must complete the dispute form attached as Addendum.

Step 2: Providing Notice

The initiating party must deliver the Dispute Form to all involved parties, the Statewide Tribal Liaison and the Regional Liaison via fax, email (receipt/read response preferred), and/or U.S. Mail.

Step 3: WisDOT Response

Up to but not more than 30 calendar days, the Statewide Tribal Liaison shall acknowledge receipt of the dispute, commence due diligence on the issue, draft a detailed Dispute Resolution Plan and issue a response in writing, which may include a determination that such dispute is outside the scope of this Agreement^[24], via fax, email (receipt/read response preferred), and/or U.S. Mail.

Step 4: Responding and Finalizing the Dispute Resolution Plan

All parties shall respond to the Statewide Tribal Liaison with detailed edits, comments or concerns about the draft Dispute Resolution Plan within 30 days. The Dispute Resolution Plan shall include the appropriate federal agency dispute resolution process or WisDOT Dispute Resolution Process herein. If the WisDOT Dispute Resolution Process is applicable, the Dispute Resolution Plan shall be implemented and must include:

1. The appropriate level in the transportation agencies and Tribe/s for resolution;
 2. The liaison shall facilitate contact with the appropriate internal staff or management;
 3. The appropriate method of communication such as face to face meetings, teleconference calls, etc.
- A timeline.

5. Implement the DR Plan or refer to Step 5 below.

4. —

The parties acknowledge that some issues may not be able to be resolved to the satisfaction of all parties.

Step 5: Elevated Dispute Resolution, When If Necessary^[25]

[26]

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Addendum __-: Dispute Resolution Form[27]

- ~~• a concise statement describing the dispute;~~
 - ~~• identify the parties or offices involved;~~
 - ~~• identify the desired solution, including pertinent timelines.~~
- ~~-[INSERT FINAL FORM]~~

Addendum 23 -- Historic Overview Problem Identification

Work toward the initial partnership agreement began in 2000, when the Wisconsin Division-Federal Highways Administration (FHWA) recognized and responded to a shortfall in Native American participation in transportation programs and services in Wisconsin. FHWA then began a process to first understand what was causing the shortfall, and then seek solutions to increase that level of participation. Under the initial leadership of William Fung, FHWA Division Administrator, the agency began visiting each tribe in Wisconsin. When Bruce Matzke replaced Mr. Fung in 2002, he continued on with that initiative. Together with Mary Williams, the FHWA Civil Rights Program Manager, he continued visiting Wisconsin's tribes seeking to understand tribal needs, and identify solutions to meet those needs. Few other agency leaders have demonstrated that level of commitment by visiting each and every tribal community in Wisconsin.

One of the solutions the agency determined necessary was a higher level of partnership and collaboration between Wisconsin's tribes and transportation agencies. In 2003, WisDOT received funding from FHWA and secured a contract with the College of Menominee Nation (CMN) to develop the framework for government-to-government relationship building between the tribes and the agencies.

Methodology

CMN first sought to clarify information gaps by designing a needs assessment survey. The assessment process had two goals. First, CMN needed to understand the full scope of needs in each individual tribal community. Second, CMN leveraged its successful outreach programs by involving key stakeholders in the needs assessment and solution seeking strategies based upon their self-identified needs, goals, and solutions. The activity is more successful if it has need, relevancy and support of the community through the full participation of key stakeholder and constituent groups.

On May 4, 2004, CMN staff mailed the needs assessment to all Wisconsin tribal leaders. Staff then engaged in follow-up activities until June 23, 2004 to secure the greatest number of responses. Follow-up consisted of additional mailings, telephone calls, and personal visits.

CMN achieved a response rate of 80 percent. Bad River Band of Lake Superior Chippewa, Forest County Potawatomi, Ho-Chunk, Lac Du Flambeau Band of Lake Superior Chippewa, Menominee, Oneida, Red Cliff Band of Lake Superior Chippewa, Sokaogon Band of Lake Superior Chippewa, and Stockbridge-Munsee all provided information. Only St. Croix Band of Lake Superior Chippewa, and Lac Courte Oreilles Band of Lake Superior Chippewa did not respond to the needs assessment or subsequent follow-up.

Key Findings

CMN was forced to qualify the data rather than quantify it, due to the complex organizational structure and sheer volume of programs and services of the agency. The results of the assessment process showed that overall the tribes were concerned with three issues:

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- Communication- tribes did not feel there is adequate consultation or inclusion in transportation related activities.
- Economic Development/Capacity Building- the majority of tribes were not aware of the full scope of programs and services.
- Sustainability - many of the tribal staff doubted that such an agreement would be sustained over the long term.

Based upon these findings, CMN assembled an agreement grounded in the basic core values of quality, opportunity, engagement, and sustainability.

Key Participants

~~1.~~ The 11 federally recognized tribes of Wisconsin:

- Bad River Band of Lake Superior Chippewa Indians
- Forest County Potawatomi Community
- Ho-Chunk Nation
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- Lac Du Flambeau Band of Lake Superior Chippewa Indians
- Menominee Indian Tribe of Wisconsin
- Oneida Tribe of Indians of Wisconsin
- Red Cliff Band of Lake Superior Chippewa Indians
- Sokaogon Chippewa Community
- St. Croix Band of Lake Superior Chippewa Indians
- Stockbridge-Munsee Band of Mohican Indians

~~2.~~

~~1~~ Wisconsin Department of Transportation (WisDOT)

~~21~~ Wisconsin Division-Federal Highway Administration (FHWA^[28])

Addendum 34 -- Key Reference Terms *Limit to terms that are in the agreement [29]

American Association of State Highway and Transportation Officials (AASHTO): An interest group based in Washington, D.C., involved in research, advocacy and technical assistance.

Apportionment: A federal budgetary term that refers to a statutorily prescribed division or assignment of funds. It is based on prescribed formulas in the law and consists of dividing authorized obligation authority for a specific program among transportation systems.

Appropriation: A federal budgetary term that refers to an act of Congress that permits federal agencies to incur obligations and make payments out of the Treasury for specified purposes. An appropriation act is the most common means of providing budget authority, but in some cases the authorization legislation itself provides the budget authority.

BIA: Bureau of Indian Affairs (U.S. Department of the Interior)

BIA Classification of Roads: An identification of specific roads or trails that takes into account current and future traffic generators, and relationships to connecting or adjacent BIA, state, county, federal, and/or local roads.

BIA/FHWA Memorandum of Agreement: An agreement between the BIA and the FHWA that contains mutually agreeable roles and responsibilities for the administration of the IRR (Indian Reservation Road) and Highway Bridge Replacement and Rehabilitation programs.

BIA Roads System: Those existing and proposed roads for which the BIA has obtained or plans to obtain legal right(s)-of-way. This includes only roads for which the BIA has the primary responsibility to construct, improve, and maintain. Any additions or deletions to this system must be supported by resolution from the ITG (Indian Tribal Government).

Bridge Rehabilitation: The repair, restoration or replacement of the components of existing structures, including asphaltic surfacing or concrete overlays that, and work to correct safety defects. Additional right-of-way typically will not be required, except minimal acquisitions may be necessary to accommodate ancillary improvements for drainage or for the construction of an abutment or pier.

Additional Criteria

- Includes widening of superstructure and substructure components
- Includes replacement of any superstructure component
- May include replacement of portions of abutments or piers

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Bridge Replacement: Building a new bridge at the location of the existing structure or at a new location usually contiguous to the existing structure. A minor acquisition of additional right-of-way may be required.

Additional Criteria

- Includes replacement bridges with wider lanes and shoulders or additional lanes
- Includes eliminating grade separations and replacing with at-grade crossings
- Includes box culverts or a series of pipes wide enough to be classified as a bridge
- A bridge of any length or type may be replaced by any other

Consultation: The process of seeking, discussing, and considering the views of others and, where feasible, seeking agreement with them^{[30][31]}.

Consultation and Coordination with Indian Tribal Governments: This is the title of Executive Order 13084, signed by the President on May 14, 1998, amended in May 6, 2000 Executive Order 13175 that requires federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities whenever they formulate policies that affect Indian tribal governments in a unique and significant way.

Cooperative Agreement -An agreement between the BIA and another agency(ies) used to reimburse that agency for goods or services provided to the BIA.

Deterioration: of a highway is measured by:

1. Pavement Serviceability Index (PSI): describes how smooth the pavement rides.
2. Pavement Distress Index (PDI): describes how cracked the pavement is.
3. Pavement rutting: describes the potential for hydroplaning.

Safety is a top concern: Safety problems can often be addressed by adding or upgrading traffic signals, installing beam guards, adding turn lanes or upgrading railroad crossing warning devices. The road may also be widened and curves may be flattened to increase sight distances for motorists.

Disadvantaged Business Enterprise (DBE): A business owned and operated by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals include African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans or Asian Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act.

Emphasis Areas: (TBD)

Environmental Impact Report/Environmental Impact Statement (EA/EIS): An analysis of the environmental impacts of proposed land development and transportation projects; it's an Environmental Impact Report (EIR) when conducted in response to Wisconsin Environmental Policy Act or approved projects pursuant to the National Environmental Policy Act (NEPA). A draft EIR or draft EIS (DEI or DEIS) is circulated to the public and agencies with authority for comment. A Final Environmental Impact Report or Statement (FEIR or FEIS) contains responses to public comments and ways to mitigate adverse impacts. ***UPDATE WITH CORRECT TERMINOLOGY: EA/EIS/RECORD OF DECISION

Samantha will distinguish authorities and terms for next meeting.

Environmental Justice: The fair treatment and meaningful involvement of all people regardless of race, color, national origin or income, with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal programs and policies.

Expansion: The same type of work associated with reconstruction, but also involves the construction of additional through-travel lanes. In some cases, expansion may include construction of an entirely new street or highway on new alignment. Substantial land acquisitions may occur with these types of projects. Major projects are excluded from this definition.

Additional Criteria

- Same as reconstruction
- Additional travel lanes may be either on existing or new location, may or may not include rebuilding the existing roadway

FAA - Federal Aviation Administration: See U.S. DOT.

Federally-Recognized Tribes^[32] ~~{if needed}~~ or “Indian Tribe” or “Tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior recognizes as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

FHWA - Federal Highway Administration: See U.S. DOT.

FTA - Federal Transit Administration: See U.S. DOT.

Government-to-Government Relationship: Relationship that exists between federally recognized tribes and the federal government. Implicit in the relationship is recognition of tribal sovereignty as individual nations within the U.S., and the U.S. government's obligation to protect tribal lands. The relationship between tribal and state governments should also be characterized as government-to-government.

Indian Country: As defined by federal law, Indian country includes all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including right-of-ways running through the reservation. In addition, Indian country also includes all dependent Indian communities as well as all Indian allotments to which Indian titles have not been extinguished. [The term “Indian country” has become the controlling term of art for jurisdictional issues in Indian law. Even though 18 U.S.C. § 1151 *et seq.* deals primarily with crimes and criminal procedures, the U.S. Supreme Court has held that the definition given by § 1151 also applies to state *civil* jurisdiction. The principle that section 1151 defines Indian country for both civil and criminal jurisdiction purposes is firmly established. The Court has also held that a tribe may exercise civil authority over Indian country as defined by 18 U.S.C. § 1151.45. In addition, the Supreme Court has held that land held in trust by the United States for a tribe is Indian country subject to tribal control whether or not that land has reservation status.]

Indian Lands: Lands held in trust by the United States for individual Indians or tribes, or land titled to individual Indians or tribes subject to federal restrictions against alienation or encumbrance.

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Indian Reservation Roads (IRR): Public roads located within or that provide access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the federal government, or Indian and Alaska Native villages, group, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. Roads on the BIA Road System are also IRR roads.

Indian Sacred Sites: This is the title of Executive Order number 13007 signed on May 24, 1996 by the President that directs federal agencies that manage federal lands to accommodate access to and ceremonial use of Indian sacred sites and avoid adversely affecting the physical integrity of such sacred ties.

IRR Inventory: An inventory of roads that meet the following criteria: a) public roads strictly within reservation boundaries; b) public roads that provide access to lands, groups, villages, and communities in which the majority of residences are Indian; c) public roads that serve Indian lands not within reservation boundaries; and d) public roads that serve recognized Indian groups, villages, and isolated communities not located within a reservation.

IRR Program Stewardship Plan: The plan that details the roles and responsibilities of the BIA, FHWA and ITGs in the administration and operation of the IRR Program.

IRR Program Road/Bridge Inventory: An inventory of BIA owned IRR and bridges.

Intelligent Transportation Systems (ITS): The stated goal to "improve the way transportation is organized, managed and maintained." Projects cover transportation policy, new technology, safety, traffic management, infrastructure, and freight and logistics.

Intergovernmental Agreement (IGA): An agreement between two or more governments for accomplishing common goals, providing a service or solving a mutual problem.

Long-Range Transportation Plan: A plan that establishes strategies for transportation improvements to meet identified community needs.

Minority Business Enterprise (MBE): A business owned and operated by one or more individuals who are defined as minorities under certain federal and state regulations and statutes. See also "disadvantaged business enterprise."

Memorandum of Agreement (MOA): A document describing in detail the specific responsibilities of, and actions to be taken by, each of the parties so that their goals may be accomplished. An MOA may also indicate the goals of the parties, to help explain their actions and responsibilities.

Memorandum of Understanding (MOU): A document that describes very broad concepts of mutual understanding, goals and plans shared by the parties.

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Native Americans: This term broadly describes the people considered indigenous to North America who lived here prior to European colonization. The term includes "American Indians," "Indians," "Alaska Natives," "Eskimos," "Aleuts," and "Native Hawaiians."

Native American: A member of any of the indigenous cultural groups of the western hemisphere, including American Indians, Alaska Natives, Native Hawaiians, and other indigenous peoples.

NEPA - National Environmental Policy Act of 1969. [42 U.S.C. § 4321 et seq.](#) ~~See EIS Correct citation/date~~^[33]

National Transportation System (NTS): Called for in the Intermodal Surface Transportation Efficiency Act, the NTS to date is a proposal by the U.S. Transportation Secretary to integrate all aspects and modes of the transportation system into a single national system. The National Highway System is expected to be a subset of the larger, multimodal NTS.

Obligation: A federal budgetary term that refers to a binding agreement that will result in an outlay; an agreement by the federal government to pay for goods or services immediately or at some future time when the goods or services are delivered. Also known as a "commitment."

Obligation Limitation: A federal budgetary term that refers to a limit placed in appropriations bills on the amount of federal assistance that may be obligated during a specified time period. It does not affect the scheduled apportionment or allocation of funds; it just controls the rate at which these funds may be used.

Park and Ride Lot: Designated parking areas for automobile drivers who then board transit vehicles from these locations.

Pavement Replacement: Structural improvement to the pavement or removal of the total thickness of all paving layers from an existing roadway and providing a new paved surface without changing the subgrade. It may include restoration of the base aggregate by adding more material before repaving, or adding base aggregate open-graded with drainage system. It generally involves no improvement in capacity or geometrics and no increase in roadbed width. Pavement replacement may include some elimination or shielding of roadside obstacles, culvert replacement, signals, pavement marking, signing and intersection improvements. Additional right-of-way typically is not required.

Additional Criteria

- "Paving layers" as used above means existing asphalt and concrete
- No change to subgrade means location of the shoulder points is not changed
- May include curb and gutter replacement to same line and grade
- Does not include storm sewer construction
- May include transfer of width between pavement and shoulders
- May include shoulder paving

Public Transportation: Transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service on a regular and continuing basis. Also known as "mass transportation," "mass transit" and "transit."

Reconditioning: Work in addition to resurfacing or pavement replacement. Reconditioning includes improving an isolated grade, curve, intersection or sight distance problem to increase safety, or changing the subgrade to widen shoulders or to correct a structural problem. Reconditioning projects may require additional right-of-way.

Additional Criteria

- Does not include increasing the number of driving lanes
- May include replacing or expanding existing storm sewer systems
- May include continuous shoulder, pavement or subgrade widening
- Does not include adding continuous lanes
- May include reconstruction not to exceed 50 percent of the length of the project
- May include replacement of curb and gutter in urban areas with up to 50 percent of new curb & gutter on new horizontal or vertical alignment

Reconstruction: Total rebuilding of both the pavement and subgrade of an existing highway to improve maintainability, safety, geometrics and traffic service. It is accomplished basically on existing location, and major elements may include flattening hills and grades, improving curves, widening the roadbed, and eliminating or shielding roadside obstacles. It includes minor widening of urban streets to widen lanes or to add parking, bicycle accommodations or auxiliary lanes. Removing parking and pavement replacement are in this category because the traffic carrying capacity of the roadway is increased without actually constructing new through-travel lanes. Normally, this type of reconstruction will require some additional right-of-way.

Additional Criteria

- Work that either changes the location of the existing subgrade shoulder points or removes all of the existing pavement and base course for at least 50 percent of the length of the project.

Regional Planning Commission (RPC): An association of local governments that is statutorily charged with the responsibility of planning for the physical, social, and economic development of the region. To accomplish this mission, the commission conducts area-wide planning and provides technical assistance to local governments.

Reservation: Lands reserved by a tribe during treaty negotiations with the federal government for tribal use. Indian reservations are held in trust for the tribe by the federal government.

Resurfacing: Resurfacing means placing a new surface on an existing roadway to provide a better riding surface, and to extend or renew the pavement life. It includes pavement widening and shoulder paving (without changing the subgrade shoulder points). Generally, it involves no improvement in capacity or geometrics. Resurfacing may include some elimination or shielding of roadside obstacles, culvert replacements, signals, marking, signing and intersection improvements. Usually, no additional right-of-way is required, except possible minor acquisition for drainage and intersection improvements.

Additional Criteria

- Overlay must be placed directly on top of existing pavement
- May include spot replacement of curb and gutter in urban areas

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Sovereignty: The status, dominion, rule, or power of a sovereign. Tribes have the power to make and enforce laws for their tribe and reservation, and to establish courts and other forums for the resolution of disputes.

State/Tribal Agreement (STA): A project-specific agreement that describes the improvements to be made during a highway project and provides estimated cost and governmental responsibility for said costs.

Tribal Historic Preservation Officer (THPO): In 1992, the U.S. Congress adopted amendments to the National Historic Preservation Act (P.L. 102-575) that allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. Tribes that have designated THPO's formally assume the role of the state historic preservation officer (SHPO) on their tribal lands.

Transportation Alliance for New Solutions (TrANS): A WisDOT driven training program that provides 120 to 160 hours of training focused on entry level positions in road construction. The program encourages women and minorities to seek long term careers in road construction.

Transportation Development Act: State law enacted in 1971. TDA funds are generated from a tax of one-quarter of one percent on all retail sales in each county. They are used for transit, paratransit, bicycle and pedestrian purposes, are collected by the state and allocated by the metropolitan transportation commission (MTC) to projects and programs within the county of origin. In non-urban areas, TDA funds may be used for streets and roads in certain circumstances.

Transportation Improvement Program (TIP): This is primarily a spending plan for federal funding expected to flow to the region from all sources for transportation projects of all types. MTC prepares the three volume TIP annually with the cooperation of local governments, transit operators and WisDOT.

Tribal government refers to the recognized government of a [tribe](#)³⁴.

Tribal implications means substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power between the Federal government and Indian tribes.

Tribal member refers to a member of a tribe as determined by tribal membership rules.

Tribal officials means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Tribal Technical Assistance Program (TTAP) Center: These centers are responsible for providing transportation assistance to Native Americans that includes, but is not limited to, circuit rider programs, training on intergovernmental transportation planning and project selection, and tourism recreation travel.

Tribal TIP: A multi-year, financially constrained list of proposed transportation projects to be implemented within or providing access to Indian country during the next three to five years. It is developed from the tribal priority list.

U.S. DOT - United States Department of Transportation: The federal cabinet-level agency with responsibility

for highways, mass transit, railroads, aviation and ports; headed by the secretary of transportation. The U. S. DOT includes the Federal Highway Administration and the Federal Transit Administration, Federal Aviation Administration and Federal Railroad Administration, among others. There are also state DOTs (known as WisDOT in Wisconsin).

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WisDOT- Wisconsin Department of Transportation. The state cabinet-level agency with responsibility for highways, mass transit, aviation, railroad development and ports, headed by the secretary of transportation.

Women's Business Enterprise (WBE): A business owned and operated by one or more women.

Addendum 4: The Partnership Agreement Work Plan

[To be added]