

STP-Freight Pilot Program (206) Standard SMA Template



STATE / MUNICIPAL AGREEMENT FOR A STATE-LET STP-FREIGHT PILOT PROGRAM PROJECT

Program Name: STP-Freight Pilot
Population Group: over 200,000
Sub-program #: 206

Revised Date:

Date: October 3, 2013

I.D.: 2070-10-00/20/70

Road Name: E Layton Ave

Limits: STH 38 to Pennsylvania Ave

County: Milwaukee

Roadway Length: 1.53

Functional Classification: Principal Arterial

Project Sponsor: Milwaukee County

Urbanized Area Milwaukee

The signatory, Milwaukee County, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: Roadway is urban, divided and has a pavement type of concrete. The pavement was last improved in 1987 and has a current pavement rating of 4. There is partial existing sidewalk and no bike accommodations.

Proposed Improvement - Nature of work: Pavement reconditioning. Bike and pedestrian accommodations will be implemented consistent with Trans 75 requirements.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable Federal requirements: **Aesthetics and other elements as determined by design.**

The Municipality agrees to the following 2014-2015 STP-Freight Pilot project funding conditions:

Project design, real estate, and construction costs are funded with 80% federal funding up to a maximum of \$2,780,000 for all federally-funded project phases when the municipality agrees to provide the remaining 20% and all funds in excess of the \$2,780,000 federal funding maximum. Non-participating costs are 100% the responsibility of the municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2015. **In accordance with the 2014-2015 STP-Freight Pilot Program guidelines, the subject improvement must be let no later than June 30, 2015.**

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The dollar amounts shown in the Summary Funding Table below are federal maximum amounts unless explicitly identified otherwise. The final Municipal share is dependent on the final Federal participation, and actual costs will be used in the final division of cost for billing and reimbursement.

| PHASE | SUMMARY OF COSTS | | | | |
|-------------------------------------|--------------------|--------------------|-----------------|------------------|-----------------|
| | Total Est. Cost | Federal Funds | % | Municipal Funds | % |
| ID 2070-10-00 | | | | | |
| Design | \$280,000 | \$224,000 | 80% | \$56,000 | 20% + BAL |
| State Review for Design | \$95,000 | \$76,000 | 80% | \$19,000 | 20% + BAL |
| ID 2070-10-20 | | | | | |
| Real Estate | \$45,000 | \$36,000 | 80% | \$9,000 | 20% + BAL |
| State Review for Real Estate | \$5,000 | \$4,000 | 80% | \$1,000 | 20% + BAL |
| ID 2070-10-70 | | | | | |
| Participating Construction | \$2,750,000 | \$2,200,000 | 80% | \$550,000 | 20% + BAL |
| Non-Participating Construction | \$50,000 | \$0 | 0% | \$50,000 | 100% |
| State Review for Construction | \$300,000 | \$240,000 | 80% | \$60,000 | 20% + BAL |
| Total Est. Cost Distribution | \$3,525,000 | \$2,780,000 | %VARIES* | \$745,000 | %VARIES* |

*The percentage of project costs covered by federal funding at approval, 80%, is based on the STP-Freight Pilot Program guidelines. Due to the federal funding cap, which is \$2,780,000 for all federally-funded project phases, the overall improvement funding percentages may vary over the life of the project.

This request is subject to the terms and conditions that follow (pages 3 – 7) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of Milwaukee County: (please sign in blue ink.)

| | | |
|------|-------|------|
| Name | Title | Date |
|------|-------|------|

Signed for and in behalf of the State:

| | | |
|------|-------|------|
| Name | Title | Date |
|------|-------|------|

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding.
3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
 - a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)

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- b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
- c. Prevailing wage requirements, including but not limited to 23 U.S.C 113 and Wis. Stat. 103.50.
- d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
- e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.
- f. All DBE requirements that the State specifies.
- g. Federal Statutes that govern the Surface Transportation Program, including but not limited to 23 U.S.C. 133.
- h. General requirements for administering federal and state aid set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

- 4. Funding of each project phase is subject to inclusion in Wisconsin's approved 2014-2015 STP-Freight Pilot Program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
 - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
 - b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - f. Signing and pavement marking.
 - g. Real estate for the improvement.
 - h. New installations or alteration of street lighting and traffic signals or devices.
 - i. Landscaping.
 - j. Preliminary Engineering and design.
 - k. Management Consultant and State Review Services.
 - l. Other eligible roadway items.

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m. Other eligible items.

5. The work will be administered by the State and may include items not eligible for Federal participation.
6. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to Federal funds. Upon completion of the project, a final audit will be made to determine the final division of costs. If reviews or audits show any of the work to be ineligible for Federal funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2014-2015 STP-Freight Pilot Program project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
 - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
 - c. Detour routes and haul roads. The municipality is responsible for determining the detour route.
 - d. Conditioning, if required and maintenance of detour routes.
 - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
 - f. All work related to underground storage tanks and contaminated soils.
 - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
 - h. Other 100% Municipally funded items.
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by WisDOT prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
9. Work to be performed by the Municipality without Federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.
10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality will include in all contracts executed by them a provision obligating the contractor 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 as defined in s. 111.32 (13m), or national origin.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.

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13. In accordance with the 2014-2015 STP-Freight Pilot Program guidelines, the subject improvement must be let no later than June 30, 2015.
14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
15. The Municipality will at its own cost and expense:
 - a. Maintain all portions of the project that lie within its jurisdiction [to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes (including snow and ice removal)] for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
 - b. Regulate (or prohibit) parking at all times in the vicinity of the proposed improvements during their construction.
 - c. Regulate (or prohibit) all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
 - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.
 - e. Provide complete plans, specifications, and estimates.
 - f. Provide relocation orders and real estate plats.
 - g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
 - h. Provide maintenance and energy for lighting.
 - i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.
16. It is further agreed by the Municipality that:
 - a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.
 - b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
 - c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
 - d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such "Manual of Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
 - e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters,

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billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.
20. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.
21. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. The Municipality agrees to the following 2014-2015 STP-Urban Freight Pilot project funding conditions:
 - a. ID 2070-10-00: Design is funded with 80% federal funding, when the municipality agrees to provide the remaining 20%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d) This phase includes Plan Development, Management Consultant Review, and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality.
 - b. ID 2070-10-20: Real Estate is funded with 80% federal funding when the municipality agrees to provide the remaining 20%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d). Real estate acquisition is 100% the responsibility of the municipality.
 - c. ID 2070-10-70: Construction:
 - i. Costs for roadway reconditioning and associated items are funded with 80% federal funding when the municipality agrees to provide the remaining 20%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).

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- ii. Non-participating Costs are funded 100% by the Municipality. Costs include construction delivery.
- iii. Costs for this phase include an estimated amount for state review activities, to be funded 80% with federal funding and 20% by the Municipality. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).
- d. Project Cap: In accordance with STP-Freight Pilot Program guidelines for projects in urbanized areas, State action and TIP Committee action, this project has a federal funding cap of **\$2,780,000**. This federal funding cap applies to all federally funded project phases.

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