

BIKE PATH PERMIT APPLICATION

MARSH VIEW PATH

NEAR HIGHWAY 30

Wisconsin Department of Transportation
PO Box 7914
Madison, WI 53707

City of Madison
Martin Luther King Jr. Blvd.
Madison, WI 53703

**City
WisDOT
Premises**

On this _____ day of December, 2011, the City of Madison (“City”) submits to the Wisconsin Department of Transportation (“WisDOT”), this Bike Path Permit Application to occupy and use certain rail property (“Premises”) currently owned by WisDOT. The Premises are in the City and are described with greater particularity at paragraph 3. below.

**Effect of Acceptance
Permit**

1. Upon WisDOT’s acceptance of this Application by Execution of the last page of this Application at the appropriate place, the provisions herein shall be deemed to be the provisions of a permit (“Permit”) issued by WisDOT to the City. The Permit shall be binding on both the City and WisDOT.

Term of the Permit

2. The term of the Permit will commence upon WisDOT’s execution of the last page of this Application as described at paragraph 1. above and the term will continue until the Permit is terminated by the City or by WisDOT pursuant to the provisions of paragraph 9., paragraph 10., or paragraph 11. below.

Premises

3. The real property that constitutes the Premises is described on Exhibit A attached hereto.

Use for Bike Path

4. The Premises may be used by the City as a public way for bicycle, pedestrian, and related uses including, without limitation, a path for bicycles and pedestrians, one or more retaining walls, one or more fences, and storm water and drainage facilities, or for one or more such uses, and for all uses related to the survey, design, construction, operation, use, inspection, maintenance, repair, replacement and removal or each such use or for one or more of each such uses. (Throughout this document all of the above-described uses are collectively called the “Bike Path”). These improvements will be constructed substantially as set forth in project plans that have been prepared by the City and have been approved by WisDOT.

Motorized Vehicles Prohibited; Exceptions Railroad Operator

- 5. Motorized vehicles will be prohibited on the Premises except for:
 - a. Emergency vehicles and vehicles belonging to the City, the City’s agents, WisDOT or any railroad operator authorized to use the adjoining railroad tracks (“Railroad Operator”) if such vehicles are used to survey, design, construct, operate, use, inspect, maintain, repair, replace, and remove the Bike Path, adjoining railroad facilities, and railroad equipment, or are used for one or more such purposes.
 - b. Any device described in sec. 340.01(43), Stats., for pedestrian use by disabled persons.

City Obligations

- 6. The City will do the following:

Permits

- a. The City will obtain any necessary permits relating to construction of the Bike Path.

Plan Approval

- b. The City will consult with WisDOT and the Railroad Operator regarding final plans relating to the Bike Path.

Drainage

- c. The City will maintain the Premises as needed to provide adequate drainage for the railroad facilities on the Premises.

Snow Removal

- d. The City will not cause snow removed from the bike path to be stored or piled upon the railroad tracks or ballast.

Comply with Laws

- e. The City will maintain and use the Premises and structures thereon in accordance with the requirements of all local ordinances, state laws, and federal laws in effect during the term of the permit.

Construct Crossing

- f. The City will provide for the crossing of the Premises pursuant to the OCR Docket #9170-RX-179.

Maintenance

- g. The City will at all times keep the Premises and the structure thereon in good condition and repair.

Indemnification of the Railroad Operator By the City

- h. The City will indemnify one Railroad Operator under the terms and conditions described in this paragraph.
 - i. The one Railroad Operator that the City will indemnify under the terms and conditions described in this paragraph (“Named Railroad Operator”) will

be named by WisDOT. WisDOT may change the identity of the Named Railroad Operator by giving notice to the City. WisDOT hereby names the Wisconsin & Southern Railroad Co. as the Named Railroad Operator.

- ii. WisDOT will require the Named Railroad Operator to maintain a commercial general liability policy.
- iii. WisDOT will require the Named Railroad Operator to provide a complete copy of its commercial general liability policy to the City upon commencement of the Permit and upon the commencement of each insurance policy term thereafter. Such copies will be provided to the City as soon as practicable after they are available to the Named Railroad Operator, but in any case no later than within 60 days of the effective date of the policy.
- iv. While the Permit is in effect, the City will indemnify the Named Railroad Operator for any loss or any actual and reasonable expense the Named Railroad Operator incurs (a) that would have been covered and insured against by the Named Railroad Operator's commercial general liability policy if that policy had no self-insured retention or deductible, (b) that, as additional conditions arises out of an event that occurred while the Permit is in effect and while the claimant was using the bike path within the Premises at a place other than at an "at-grade" crossing, (c) up to a limit per occurrence equal to the amount of the Named Railroad Operator's self-insured retention, or deductible, on Named Railroad Operator's commercial general liability policy or \$75,000.00, whichever amount is the lower amount.
- v. The City may, at its option, provide the above-described indemnification to the Named Railroad Operator by doing one of the following: (a) by purchasing an insurance policy for the benefit of the City and of the Named Railroad Operator; or (b) by allowing the Named Railroad Operator, if it wishes to do so, to complete the claim investigation and claim handling for each claim, by reimbursing the Named Railroad Operator for its actual and reasonable expenses, and by then paying for any reasonable settlement amount that disposes of the claim or by paying for any claim disposition by

litigation, it being understood that the total sum paid by the City for expenses and claim disposition will not exceed, under any circumstance, the limit per occurrence described in paragraph 6.h.iv. above; or (c) by hiring a qualified contractor to complete the claim investigation and claim handling for each claim and by then paying for any reasonable settlement amount that disposes of the claim or by paying for any claim disposition by litigation, it being understood that the total sum paid by the City for the qualified contractor and claim disposition will not exceed, under any circumstance, the limit per occurrence described in paragraph 6.h.iv. above.

**Pollutants
Contaminants**

- vi. i. The City will comply with all laws enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants; to proper disposal of refuse, solid wastes or liquid wastes, and to any other law relating to pollutants or contaminants that may be applicable to the City or to the City's activities on the Premises. The City shall bear all costs and expenses arising from compliance with such laws and shall indemnify and save harmless WisDOT from all liability for which the City is liable pursuant to such laws.

- ii. To the extent that it is liable, pursuant to such laws, for such a claim or a demand as described in paragraph 6.i.i. above, the City will: Investigate such claim or demand, attend to the settlement or other disposition of such claim or demand, defend any action on such claim or demand, and pay all charges of attorneys and all other costs and expenses arising from any such claim or demand.

Signs

- i. The City will not post, paint or place, or permit others to post, paint, or place, on the Premises, any advertisement or sign not directly related to the Bike Path.

Railroad Access

- j. The City will not interfere with the Railroad Operator's access to the railroad track and will not interfere with the Railroad Operator's reasonably necessary access to railroad structures now on the Premises, if any.

New Buildings

- k. The City will not erect a new building or facility of any type on the Premises except pursuant to the Bike Path project plans approved by WisDOT or except upon

written approval of WisDOT.

Obstructions

1. i. If the Premises encompass an industry track, then no buildings, structures, or obstruction of any kind shall be placed nearer than 8.5 feet on straight track, 9.0 feet on curved track of less than 6 degrees, or 9.5 feet on curved track of 6 degrees or more laterally of the track centerline. No building or structure on the Premises shall have a swinging door, window, or other device opening or swinging toward any railroad track, which, when open or extended toward the track, would be within said distances of the track.
- ii. No building, obstructions, cables, wires, or any other facilities or obstructions shall be placed or constructed within 23 feet vertically of the top of any railroad track, except as otherwise approved by WisDOT and any Railroad Operator.

Liens

- m. The City will not suffer or permit any lien of mechanics or material men to be placed upon the Premises, or any part thereof, and in case of any such lien attaching, it will immediately pay off and remove the same. It is further agreed by the parties hereto that the City has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of the City, operation of law, or otherwise, to attach to or to be placed upon WisDOT's title or interest in the Premises.

Hazards

7. a. The City and WisDOT will not create any hazard to safety for railroad operations or for persons using the bike path.
- b. The City will correct, as soon as practicable after the City is aware that a hazard exists, any hazard to safety for railroad operation or for persons using the bike path, except WisDOT will correct as soon as practicable any such hazard caused by WisDOT.
- c. The City or WisDOT may take any steps reasonably necessary to correct or remove any known safety hazard within the premises.
- d. The City or WisDOT may close the bike path as is reasonably necessary to accommodate railroad maintenance work or to correct or remove any known safety hazard within the Premises.

Damage to the Bike Path

8. WisDOT and the Railroad Operator continues to have the right to maintain or relocate existing track facilities, or to construct and thereafter maintain new facilities, on or in the vicinity of the Premises.

Other Recorded Rights

9. The City accepts the Premises subject to the existing recorded rights of any other party in the Premises. If it becomes necessary to relocate any facility that is now located within the Premises pursuant to rights recorded prior to the effective date of the Permit, and if the reason the facility must be relocated is that the City obtained the Permit, then the City shall, at its option, pay the cost of so relocating the facility, move its own facilities so that the other facility does not have to be moved, remove a portion of the Bike Path from the Premises, or terminate the Permit.

Termination of the Permit as a Consequence of a Default

10. a. In the event of a material default under, or material breach of, a provision herein, one party may serve on the other party a 30-day notice of the first party's intention to terminate this Permit as a consequence of the default or breach. The notice shall specify the manner in which the first party contends the second party is in default under, or has breached, a provision of the Permit, shall specify the precise Permit provision the first party contends the second party is in default under or has breached, and shall specify what corrective action the first party believes would cure the default. The Permit will terminate at the end of the 30-day period unless the described condition is not material default or material breach of the Permit or unless the described default or breach has been corrected prior to the expiration of the 30-day period.
- b. Upon termination of the Permit under this paragraph 10., the City shall, if so directed by WisDOT, remove, as soon as is reasonably practicable, all buildings, structures, foundations, footings, materials, signs, debris, articles, structures, or facilities that are a part of the Bike Path.
- c. No waiver of any default under, or breach of, a provision of the Permit shall be implied from an omission by the other party to take any action on account of such default or breach. No express waiver shall affect any default or breach other than the default or breach specified in the express waiver and that only for the time and to the extent therein stated.
- d. The erection of building or other improvements on the Premises shall not constitute a waiver or affect in any

way the right of either party to terminate the Permit.

Termination of the Permit for a Reason Other than Default

11. a. The City or WisDOT may terminate the Permit for any reason other than default under, or breach of, a provision of the Permit upon 180 days' notice. The parties may terminate the Permit as a consequence of a party's default only in accordance with the provisions of paragraph 10. above.
- b. Upon the termination of the Permit under this paragraph 11., the City shall, without further demand, deliver possession of the Premises to WisDOT.

Rights Cumulative

12. All rights and remedies of the parties shall be cumulative, and none shall exclude any other rights or remedies allowed by law.

Modification of Permit

13. All of the representations and obligations of the parties are contained herein. No modification, waiver, or amendment of the permit, or of any of its provisions, shall be binding upon either party unless it is in writing and is signed by a duly authorized office of each party.

No Assignment or Sale

14. There shall be no sale, assignment, subletting, or transfer of any kind by the City of the permit, of the Premises, or of any portion of the Permit or Premises except that the City may transfer its interest in the Permit to another governmental entity if the governmental entity agrees in writing to be bound by the provisions of the Permit, if WisDOT approved the transfer, and if WisDOT approves the terms and timing of the transfer. The approvals of WisDOT described in this paragraph will not be unreasonably withheld. No action by one or both of the parties shall constitute a waiver of this provision other than an express written waiver.

City Rights Under Law

15. Notwithstanding any other provision herein, the City retains and does not waive, alter, or amend, in any manner or to any extent, any and all procedural rights and protections the City has under law in the circumstance that a party desires or attempts to make a claim against the City. Notwithstanding any other provision herein, the City retains and does not waive, alter, or amend, in any manner or to any extent, any and all limitations on liability the City has under law in the circumstance that a party desires or attempts to make a claim against the City, and such limitations shall hereby be extended to contractual liability and alleged contractual liability arising out of the terms of the permit as well as any and all other kinds of liability. All provisions of the Permit shall be interpreted, limited, modified, or eliminated so that

the provisions of this paragraph 15. prevail over any provision of the Permit that is inconsistent with a provision of this paragraph 15.

CITY OF MADISON, WISCONSIN

A municipal corporation

By: _____
Paul Soglin, Mayor

Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk

Date: _____

Countersigned:
Approved as to Form:

David P. Schmeidicke, Finance Director

Date: _____

Michael P. May, City Attorney

Date: _____

Eric Veum, Risk Manager

Date: _____

This Bike Path Permit Application submitted to the Wisconsin Department of Transportation by the City of Madison, dated the ____ day of December, 2011, is hereby accepted by the Department of Transportation on this ____ day of December, 2011. A Permit to Use the Premises described in this Application, subject to the provisions of the Application, is hereby issued to the City of Madison by the Wisconsin Department of Transportation.

Concurrence

WISCONSIN DEPT. OF TRANSPORTATION

Witness

By _____
Ronald E. Adams, Chief
Railroads and Harbors Section

EXHIBIT A
To Bike Path Permit Application

THE PREMISES

The Premises consist of WSOR's that portion of WSOR's railroad corridor in the City of Madison, at railroad milepost 163.54, near the Highway 30 overpass.

The premises are shown on the attached map.

Permit No. 13-00400

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