



#1 REVISION
STATE/MUNICIPAL AGREEMENT
FOR A STATE LET BICYCLE
AND PEDESTRIAN
FACILITIES PROGRAM
PROJECT

This agreement supersedes the agreement signed by the Municipality on May 23, 2011, and signed by WisDOT on June 2, 2011.

Program Name: Bicycle Pedestrian

Facilities (BPFP)

Sub-program #: 215

Revised Date: **August 13, 2012**

Date: **April 29, 2011**

I.D.: **5992-09-06/07**

Project Title: **City of Madison, Cannonball Path**

Phase 3

Location/Limits (as applicable): **USH12/14/18/151**

Overpass

County: **Dane County**

Project Length (if applicable): **0.5 miles**

Project Sponsor: **City of Madison**

MPO Area: **Madison**

The signatory, City of Madison, 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 transportation project hereinafter described.

Wisconsin Statute 85.024 authorizes the State to administer a program to award grants of assistance for the planning, development, or construction of bicycle and pedestrian facilities.

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.

Proposed Project - Nature of work: Construct a bicycle pedestrian overpass structure over USH 12/14/18/151.

Need for or Benefits of Project – summarize reasons for request: Current Cannonball Path needs a bicycle pedestrian overpass structure over USH 12/14/18/151 to connect neighborhoods south of USH 12/14/18/151 to destinations in central Madison.

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 and state requirements: The furnishing and installation of permanent signing is the responsibility of the project sponsor.

The Project Sponsor agrees to the following Calendar Year 2010 [Fiscal Year 2011-2014] Bicycle and Pedestrian Facilities Program (BFPF) project funding conditions:

The subject project is funded with 55% federal funding up to a maximum of \$2,200,240 for all federal-funded project phases when the Project Sponsor agrees to provide the remaining 45% and all funds in excess of the \$2,200,240 federal funding maximum, in accordance with BFPF guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

In the summary funding table below, the federal/state share of the total estimated cost distribution indicates the maximum amount of federal/state funding available to the project, to be distributed across federal/state-funded project phases. The final Project Sponsor share is dependent on the final federal/state participation, and the actual costs will be used in the final division of costs for billing and reimbursement.

PHASE	SUMMARY OF COSTS				
	Total Est. Cost	Federal/ State Funds	%	Municipal Funds	%
ID 5992-09-06					
Design		\$0	0%	Balance	100%
Design Review	\$48,751	\$26,813	55%*	\$21,938	45%
ID 5992-09-07					
Participating Construction	\$3,556,516	\$1,956,084	55%*	\$1,600,432	45%
Participating Construction Review	\$395,170	\$217,343	55%*	\$177,827	45%
Non-Participating Construction			0%		100%
Total Est. Cost Distribution	\$4,000,437	\$2,200,240	MAX	\$1,800,197	N/A

*This project has a BFPF federal funding maximum of **\$2,200,240**. This maximum is cumulative for all federal funded project phases.

#Due to state legislative action, availability of construction funds are not guaranteed during FY 2011-2013. Funding for construction may not be available until FY 2014 or FY 2015.

This request is subject to the terms and conditions that follow (pages 4 – 8) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State shall constitute agreement between the Municipality and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of the City of Madison:

By: _____
Michael May Date
City Attorney

By: _____
Paul R. Soglin Date
Mayor

By: _____
David P. Schmiedicke Date
Finance Director

By: _____
Maribeth Witzel-Behl Date
City Clerk

By: _____
Eric Veum Date
Risk Manager

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. The Municipality will be notified by the State when each project phase or ID is authorized and available for charging.
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 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
 - 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. All DBE requirements that the State specifies.
 - d. Federal and state statutes that govern the Bicycle and Pedestrian Facilities Program, including but not limited to Wis. Stat. 85.024.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
 - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
 - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.
5. Bicycle and Pedestrian Facilities Program projects are limited to bicycle and pedestrian facilities under Wis. Stats. 85.024. For the purposes of this State/Municipal Agreement, bicycle and pedestrian projects do not include sidewalk or beautification measures.

STATE RESPONSIBILITIES AND REQUIREMENTS:

6. Funding of the project is subject to inclusion in Wisconsin's approved Bicycle and Pedestrian Facilities program. Federal/state 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. Storm sewer mains necessary for the surface water drainage.

- c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - e. Pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
 - f. New installations or alteration of street lighting and traffic signals or devices.
 - g. Landscaping.
 - h. Management Consultant and State Review Services.
7. The work will be administered by the State and may include items not eligible for federal/state participation.
8. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to federal/state 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/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPALITY RESPONSIBILITIES AND REQUIREMENTS:

9. Work necessary to complete the subject Bicycle and Pedestrian Facilities Program project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below, when applicable to the project.
- 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. Preliminary Engineering:
 - i. Real estate for the improvement:
 - j. Other 100% Municipality funded items: Furnishing and installation of permanent signing.
10. Any improvement projects for which the Public Sponsor received a grant under this section shall be let by contract based on bids and the contract shall be awarded to the lowest competent and responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. **Local Force Account work is prohibited for construction.**

11. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements of 23 CFR 172 and procedures established in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.
12. 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.
13. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State 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.
14. Work to be performed by the Municipality without federal/state 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.
15. The Municipality is responsible for financing administrative expenses related to Municipality responsibilities.
16. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
17. The Municipality will pay to the State all costs incurred by the State in connection with the project that exceed federal/state financing commitments or are ineligible for federal/state 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.
18. When applicable to the project, the Municipality will at its own cost and expense:
 - a. When applicable to the project, the Municipality will at its own cost and expense:

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, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure) for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provisions for such maintenance each year. The Municipality will ensure that facilities are available in all weather conditions, including clearing snow from sidewalks and multi-use facilities.
 - 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 projects.
 - e. Provide relocation orders and real estate plats and easements, as required by the project.
 - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.

- g. Provide maintenance and energy for lighting.
- h. 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.

19. 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 State/ Municipal 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 the State if the State 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 on 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.

20. The project must be authorized for construction within three years from the date of approval of the State/ Municipal Agreement by the State. Extensions are available upon the State's approval of a written request made by the Municipality. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

LEGAL RELATIONSHIPS:

21. 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 Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

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.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
- b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

22. 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.
23. 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 beneficiary rights to be held by any person or entity who is not a party to this State/ Municipal Agreement. Nor does it accord on any non-party the right of enforcement.
24. 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.
25. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

PROJECT FUNDING CONDITIONS

26. The Municipality agrees to the following Calendar Year 2010 [Fiscal Year 2011-2014] Bicycle and Pedestrian Facilities program project funding conditions:
 - a. ID 5992-09-06: Design and any related review costs are funded 100% by the Municipality. This 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.
 - b. ID 5992-09-07: Construction:
 - i. Costs for the bicycle pedestrian overpass and any related review costs: are funded with 55% federal funding, when the Municipality agrees to provide the remaining 45%. These costs are subject to the cumulative project federal funding cap.
 - ii. Non-participating costs for furnishing and installation of permanent signing are funded 100% by the Municipality. Costs include construction delivery and review.
 - c. The maximum participation of federal funding will be limited to 55% of the actual eligible project cost or the total cost distribution of BFPF funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of **\$2,200,240** is cumulative for all federal funded project phases.
 - d. Due to state legislative action, availability of construction funds are not guaranteed during FY 2011-2013. Funding for construction may not be available until FY 2014 or FY 2015.

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