

TRANSPORTATION ECONOMIC ASSISTANCE AGREEMENT – RAIL
(Industry Lead Track)

FOR

xxxx feet of
Railroad Industry Lead Trackage

Identification Number xxxx-xx-xx

By and Between

City of Milwaukee, Milwaukee County, Wisconsin

and

The Wisconsin Department of Transportation

_____ 2021

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TRANSPORTATION ECONOMIC ASSISTANCE AGREEMENT - RAIL
Agreement No. xxxx-xx-xx

RAIL SPUR TRACK – TEA GRANT

THIS AGREEMENT is made and entered into this ____ day of _____, 2021
by and between the City of Milwaukee, a municipal corporation ("Municipality"), and Wisconsin
Department of Transportation ("WisDOT").

ARTICLE 1.0 DEFINITIONS

As used in this Agreement and also, unless otherwise more particularly defined, in other
instruments referred to herein:

- a. "Operator" means Union Pacific Railroad Company or Canadian Pacific Railroad
Comapny.
- b. "Municipality" means the City of Milwaukee, Wisconsin.
- c. "WisDOT" or "Department" means the Wisconsin Department of Transportation.
- d. "FRA" means the Federal Railroad Administration of the United States Department of
Transportation.
- e. "STB" means the Surface Transportation Board or its successors, if any.
- f. "Industry" means Komatsu Mining Corp.
- g. "Municipality Land" means the corridor of real estate owned by Municipality and/or
Operator, upon which the Project Facility are located near the Industry plant site in
Milwaukee, Wisconsin, and more fully described in Attachment IV.

- h. "Improved Property" means the rails, ties, ballast, track material, switches, and culverts acquired, used or installed with the proceeds of this Agreement.
- i. "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- j. "Project Facility" means the industrial spur track constructed under this Agreement using Improved Property, and providing Industry's plant with access to Operator's track.
- k. "RHS" means the Railroads and Harbors Section of WisDOT.
- l. "Industry Track Agreement" means the agreement by and between the Operator and Municipality or Industry, or both, governing the provision of rail service over and the maintenance of the Project Facility.
- m. "Track Easement" means the agreement by and between Municipality and Operator granting Municipality a perpetual right for construction, operation and ownership of the Project Facility on Operator's land.
- n. "Facility Use Agreement" means the agreement by and between Municipality and Industry setting forth the terms and conditions under which Industry is allowed to use the Project Facility.
- o. "Direct job(s)" means the number of eligible jobs directly associated with the economic development project and listed on the application, as reviewed and approved by WisDOT under TRANS 510.

ARTICLE 2.0 THE APPROVED PROJECT

Section 2.1 General Description

Municipality shall construct the Project Facility on Municipality Land. The Project Facility is described in Attachment I. Construction of the Project Facility shall be completed no later than **xxxxxx, 2021**.

Section 2.2 Specific Description

The Project Facility shall be constructed according to the plans and specifications set forth in Attachment II, titled Description of Construction Work to be Performed which is made a part of this Agreement as of the date Attachment II is accepted in writing by RHS.

Section 2.3 Direct Job Guarantee

Municipality agrees to comply with the criteria established in the Transportation Economic Assistance Jobs Guarantee attached hereto as Attachment V.

ARTICLE 3.0 PROJECT FINANCES

Section 3.1 Assistance Amount

(a) In consideration of work performed by Municipality as set forth under this Agreement, WisDOT shall reimburse Municipality an amount equal to fifty percent (50%) of actual allowable Project Facility costs. The amount to be reimbursed to Municipality shall in no event exceed One Million Dollars (\$1,000,000.).

(b) The assistance amount and the project budget are based upon an engineer's estimate provided with the assistance application. In the event accepted bids or actual allowable costs for work and materials are for amounts less than shown in the project budget, the corresponding

budget item shall be automatically reduced by the amount(s) the accepted bids are less than the amounts set forth in Section 3.1(a) and Section 3.3 and the funds from the reduction shall be placed into the contingency fund. This reduction in the assistance amount, if any, shall be effective without compliance with Section 10.5 herein.

Section 3.2 Required Match Share

In consideration of the assistance provided by WisDOT, Municipality shall perform the work set forth under this Agreement and provide an amount equal to no less than fifty percent (50%) of actual allowable project costs. The amount to be provided by Municipality for the entire project is estimated to equal One Million Dollars (\$1,000,000.).

Section 3.3 Project Budget

The project budget is set forth in Attachment I titled Project Budget which is hereby made a part of this Agreement.

Section 3.4 Payment of Assistance Amounts

Payment of assistance amounts by WisDOT to Municipality shall be governed by the terms and conditions of Attachment III titled Project Operations, Accounts, Reports, and Payments which is hereby made a part of this Agreement.

ARTICLE 4.0 PROJECT MANAGEMENT

Municipality shall appoint a Project Manager to oversee all aspects of this project. Project Manager shall qualify under Section 1.2(a) of Attachment III and shall carry out the duties and responsibilities identified in Section 1.2(b) of Attachment III.

ARTICLE 5.0 PROJECT FACILITY OPERATION

Section 5.1 Written Agreements

Municipality has entered into the following written agreement(s) with appropriate parties to assure its ability to comply with the requirements of this Agreement. These agreements shall be submitted by Municipality for RHS acceptance prior to the execution of this Agreement. Assistance funds shall not be disbursed by RHS unless its acceptance of these agreements is given.

(a) Municipality shall enter into a Facility Use Agreement with Industry.

(b) Municipality shall provide an Industry Track Agreement with Operator governing the provision of rail freight service over and the maintenance of the Project Facility. In the event the Industry Track Agreement is by and between Industry and Operator, Municipality shall incorporate the Industry Track Agreement into its Facility Use Agreement with Industry.

(c) Municipality shall provide to RHS and obtain from RHS its written approval of the request for bid(s) to be issued for construction of the Project Facility.

Section 5.2 Maintenance of Project Facility

Municipality shall perform or arrange for performance of all maintenance of the Project Facility, the road bed of the Project Facility, drainage ways and any structures necessary for the safe operation of railroad service as determined by Operator or FRA, or both.

Section 5.3 Project Facility Use

(a) A de facto condition of default for failure to use may be declared by WisDOT upon occurrence of any one or more of the following events:

(i) Industry renders its loading docks or track side facilities permanently unfit for rail service by Industry or Operator for a period in excess of twelve (12) months, or permanently ceases its operation of its plant. The twelve (12) month period may be extended by RHS upon written request by Industry.

(ii) Operator abandons the line haul track and/or industrial lead track to which the Project Facility is connected.

(iii) Operator permanently ceases operation of line haul track and/or industrial lead track serving the Project Facility.

(b) Municipality or Industry shall provide to RHS not later than January 20 of each year from the date hereof until January 20, 2029 a report of the number of loaded railcars shipped out and the number of loaded railcars received on the Project Facility by Industry during the previous calendar year, after which, Municipality or Industry, may, upon written request of RHS

not more frequently than annually, voluntarily provide such report of loaded rail cars shipped and received on the Project Facility.. Municipality shall arrange for access by RHS or its authorized agent to examine waybill, demurrage, or other appropriate records for purposes of validating reported car counts. Such examination shall be conducted during Industry's regular business hours, and in a manner not to interfere with Industry's normal operations.

ARTICLE 6.0 PROJECT PROPERTY SECURITY, LIENS AND SALE

Section 6.1 Security for Borrowing

(a) Municipality shall not itself nor allow Industry or Operator to use the value of the Improved Property acquired or used for this project as security or collateral for any loan or other borrowing.

(b) Municipality shall not use Improved Property as security or collateral for any loan or other borrowing which is not recorded in the Office of Register of Deeds of Milwaukee County on the date of execution of this Agreement.

Section 6.2 Sale of Improved Property

Sale of the Improved Property without the written approval of RHS shall, at WisDOT's option, require Municipality to immediately repay to WisDOT an amount equal to the net proceeds from the sale of the Project Facility. In this Article 6.2, "net proceeds" means the amount realized from the sale of the Improved Property less the cost of removal if any.

ARTICLE 7.0 DEFAULT AND TERMINATION

Section 7.1 Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions. A notice of default of this Agreement shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 10.2. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of the default shall be the date of delivery of notice.

Section 7.2 Opportunity to Cure and Termination

In the event of any substantial failure on the part of either party to perform its obligations under the terms of this Agreement, including but not limited to, transmittal of scheduled contractual payments under this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving twenty (20) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

Section 7.3. Industry Opportunity to Cure Municipality Default

Notwithstanding Section 7.2 above, if Municipality breaches this Agreement by removing the Project Facility in whole or in part, rendering it unusable or unsafe by Operator or renders the Project Facility unfit for railroad freight service pursuant to Section 7.1 hereof, and fails to remedy the default pursuant to Section 7.2 above, Industry may, at Industry's election, not

terminate this Agreement, and repair or cause the repair of the Project Facility to fitness for use, and may recover the cost of such repair from Municipality without causing the termination of this Agreement or Industry's use of the Project Facility.

Section 7.4. Expenses of Termination

The Parties shall themselves, and Industry shall use reasonable efforts to require Operator, to mitigate the expenses of termination to the greatest extent possible, and the Municipality shall pay those that do occur if default is caused by Municipality, and Industry shall pay those that do occur if default is caused by Industry. If termination is caused by acts of Operator, the Parties will cooperate to recover the expenses of termination from Operator.

Section 7.5 Force Majeure

The Parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitations: Acts of God; strikes or other labor troubles, pandemic, acts of terrorism, or other causes beyond the reasonable control of the Parties; interruption of service caused by accidents, explosions, fires, vandalism, or malicious mischief. To the extent permitted by WisDOT, the Municipality and Industry will be excused from the performance of their obligations hereunder if the Parties' failure to use the Project Facility is due to the economic or business conditions of Industry or the failure of Operator to provide freight cars or switching service.

ARTICLE 8.0 REPRESENTATIONS AND WARRANTIES

Section 8.1 WisDOT

WisDOT represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

Section 8.2 Municipality

Municipality represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

ARTICLE 9.0 HOLD HARMLESS

To the extent permitted by law, Municipality shall save and hold WisDOT, its officers, employees and agents harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of the Municipality, or the Municipality's servants, contractors, subcontractors, or employees acting in the course and scope of their employment, during the period this Agreement between WisDOT and Municipality is in effect related to the Project Facility, including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, or subcontractors, whether based upon, or claimed to be based upon contract, tort, or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability, and whether or not caused or claimed to have been caused by the negligence, or other breach of duty by the Municipality, its officers, employees acting in the course and scope of their employment.

ARTICLE 10.0 GENERAL CONDITIONS

Section 10.1 Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of the County of Milwaukee.

Section 10.2 Notice

(a) Any notice required or permitted under this Agreement shall be personally served or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Chief, Railroads and Harbors Section
Wisconsin Dept. of Transportation
P.O. Box 7913
4822 Madison Yards Way, 6th Floor South
Madison, WI 53707-7913

Commissioner of City Development
809 N. Broadway, 2nd Floor
Room 205
Milwaukee, WI 53202

With a copy to:

Office of the City Attorney
841 N. Broadway, 7th Floor
Milwaukee, WI 53202

(b) A copy of any notice provided under Section 10.2(a) above shall also be delivered to the following persons by first-class mail, postage prepaid:

President

Komatsu Mining Corp.
4400 West National Avenue
Milwaukee, WI 53214

With a copy to:

General Counsel
Komatsu Mining Corp.
8770 W Bryn Mawr Ave., Suite 100
Chicago, IL 60631
President
Union Pacific Railroad Co.
1400 Douglas Street
MS 1690
Omaha, NE 68179

Section 10.3 Transfer of Rights Under This Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto. Operator's or Municipality's or Industry's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly. Transfer of rights cannot be assigned without WisDOT prior review and written approval. Approval will not be unreasonably withheld.

Section 10.4 Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition

and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.5 Amendment, Consents and Approvals

(a) No term or provision of this Agreement, or any of its attachments to or any of the agreements subject to WisDOT's written approval, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement.

(b) Consents and approvals required under this Agreement and interpretation of this Agreement may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 10.6 Officials

(a) Officials authorized to execute amendments or modifications to this Agreement on behalf of WisDOT are the Secretary of Transportation, or the Deputy Secretary, or the Administrator of the Division of Transportation Investment Management or the Chief of the Railroads & Harbors Section.

(b) Officials authorized to execute amendments or modifications to this Agreement on behalf of the Municipality are its Mayor, City Clerk, and Comptroller.

Section 10.7 Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of the individual's handicap, be excluded from the participation in, be denied the benefits of, or be

subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 10.8 Environmental Protection

(a) Municipality agrees to conduct work under this Agreement in compliance with all applicable environmental requirements. Municipality will use WisDOT environmental guidance and forms to document the effects the proposal will have on the quality of the human environment.

1. A Categorical Exclusion Checklist (CEC) will be completed for all projects unless otherwise determined by RHS. The CEC shall include the results of coordination with appropriate agencies having jurisdiction over project-affected resources and must include, at a minimum, the results of coordination with the Wisconsin Department of Natural Resources (DNR) and the State Historical Society (SHS).

2. Environmental Impact Statements (EIS) and Environmental Assessments (EA) shall not be covered by this contract. If an EIS or EA are required, additional contract language will be required.

(b) Municipality agrees to consider both beneficial and adverse effects and accurately report any proposed mitigation required as a result of coordination with other agencies and the public.

(c) Approved projects shall be conducted in compliance with the requirements of all applicable environmental requirements.

(d) Municipality certifies that no contaminated properties will be acquired for development of proposed facilities.

(e) Municipality stipulates that it will notify WisDOT as soon as it or any subcontractor receives any communication indicating that any facility, which will be utilized or improved as part of an approved project, is under consideration to be included on any contaminated properties list.

(f) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance as so determined by such officials, may be used for the Project Facility without the prior concurrence of the Administrator of the EPA and the State Historical Preservation Officer.

Section 10.9 Prohibited Interests

(a) Conflicts of Interest:

(1) Neither Municipality nor Industry, nor any of their subcontractors shall enter into any contract, subcontract, or agreement in connection with the project or any property included or planned to be included in the Project Facility in which any director, officer or employee of Municipality during his or her tenure or for one (1) year thereafter has any interest, direct or indirect except as permitted under Sec. 946.13(2), Wis. Stats.

(2) Municipality and Industry shall insert in all agreements entered into by it in connection with the Project Facility, the following provision:

"No director, officer, or employee of the Municipality, during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in

this contract or the proceeds thereof except as permitted under Sec. 946.13(2), Wis. Stats. "

(3) No subcontractor of Municipality or Industry may enter into any contract, subcontract or other arrangements regarding the construction or maintenance of the Project Facility, which may affect the activities for which assistance is available under this Agreement if any director, officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in this Agreement.

(4) The provisions of this subsection shall not be applicable to any agreement between Municipality or Industry and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

Section 10.10 Non-Discrimination

(a)

i. In connection with the performance of work under this Agreement, Municipality agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Sec. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Municipality agrees to post in conspicuous places, available for employees and applicants for employment notices setting forth the provisions of the nondiscrimination clause.

(b) Municipality shall comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require their subcontractors through contractual agreement to similarly comply:

- i. Title VI of the Civil Rights Act of 1964, 78 Stats. 252, 42 U.S.C. 2000d et seq.
- ii. Subchapter II of Chapter 111, Wis. Stats.
- iii. Section 16.765, Wis. Stats.

(c) Municipality, in the procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontracts, or materials procurement connected with the work performed under this Agreement.

Section 10.11 Entire Agreement

This Agreement and the attachment(s) hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

[Signature Page Follows]

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year designated in this Agreement.

City of Milwaukee
Milwaukee County, Wisconsin

Witness: _____

By: _____
Tom Barrett, Mayor

Witness: _____

By: _____
Jim Owczarski, City Clerk

Countersigned

Witness: _____

By: _____
Aycha Sawa, Comptroller

WISCONSIN DEPARTMENT OF
TRANSPORTATION

Witness: _____

By: _____
Lisa A. Stern, P.E.
Chief of Railroads and Harbors

TEA-RAIL

Agreement No. xxxx-xx-xx

ATTACHMENT I - PROJECT BUDGET

1.0 Project: Rail Spur Track - TEA Grant

This budget is for construction of industrial rail spur tracks, approximately xxxx feet in length, xx turnouts, and connection to Union Pacific Railroad and Canadian Pacific Railway tracks in Milwaukee, Wisconsin.

2.0 Budget Line Items

<u>Item</u>	<u>Amount</u>
2.1 Construction – Storm Sewer	\$
2.2 Construction – Industrial Lead Tracks & Turnouts	\$
2.3 Engineering and Permitting	\$
2.4 Contingency	\$
Total	<u>\$x,xxx,xxx.</u>

<u>3.0 Funding Source</u>	<u>Total Project</u>
3.1 WisDOT	\$ 1,000,000.
3.2 Local	<u>\$ x,xxx,xxx.</u>
Total Project	<u>\$ x,xxx,xxx.</u>

4.0 Use of Contingency

The item identified as contingencies included in the overall project budget may only be expended when specifically authorized by RHS in writing.

ATTACHMENT II - DESCRIPTION OF CONSTRUCTION WORK TO BE PERFORMED

1.0 Project Description

The construction work shall consist of the work set forth in the bid proposal accepted by Municipality, and the work proposal, if any, by the Operator and accepted by Municipality, and the project design and management work performed by Municipality or its Engineer.

2.0 Changes to Specifications

The specifications outlined in Part 4.0 of this attachment shall be met under the construction project. Any variance from these specifications shall be requested in writing to RHS. Approval of a variance shall be issued in writing to the Municipality and the Operator, prior to the terms of the variance being effective and any costs incurred being allowable for reimbursement under this Agreement.

3.0 Work Schedule and Inspections

3.1 This Agreement covers the work to be accomplished under the entire project. The timetable for completing the project may be extended upon mutual agreement of WisDOT and Municipality, provided however that the total amount of grant expenditures will not be increased by reason of such extension of time. The project shall be completed by **xxxx, 2021**.

3.2 Progress Inspection Procedure

In addition to inspections conducted by Municipality, WisDOT may conduct its own project inspections.

3.3 Final Inspection and Acceptance

Final inspection shall be conducted within 30 days following a request by the Municipality, unless snow cover makes such inspection impractical. These final inspections shall include the Operator, Contractor and RHS personnel. Defects in workmanship discovered upon final inspection shall be deemed defective work. WisDOT shall not accept project as complete until outstanding defects are corrected.

4.0 Project Specifications

The construction work performed shall meet the Wisconsin Department of Transportation's Specifications for Industrial Track Construction, except as may be otherwise agreed to, in writing, by WisDOT.

ATTACHMENT III - PROJECT OPERATIONS, ACCOUNTS AND REPORTS

1.0 Project Performance and Management

1.1 Method of Performance

Municipality shall appoint a qualified project manager to plan, direct and supervise the performance of Operator and Construction Contractor in the performance of the construction work accomplished under this Agreement and the performance of any subcontractors.

1.2 Project Manager

(a) Designation and Qualification - The Project Manager must be qualified in all phases of work to be performed under this Agreement. Before any work is started, the Municipality shall identify the Project Manager by name and provide a statement of qualifications of the Project Manager to RHS. RHS shall have the right to accept or reject the use of the selected Project Manager or any subsequent Project Manager on this project. RHS shall review and accept or reject the contract, if any, between the Municipality and Project Manager.

(b) Responsibilities -

- (1) The Project Manager is required to perform inspection of the work, daily if necessary, to assure that the work program is performed in compliance with the terms of this Agreement.
- (2) The Project Manager shall document both the quantity and quality of all work performed whether by the Operator's own forces or a Construction Contractor or a subcontractor. Documentation shall be made in a manner and using forms supplied or approved by WisDOT.
- (3) The Project Manager shall be responsible for the preparation of all progress reports, invoices for reimbursement, requests for change orders, variances or amendments affecting the project scope of work or funding.
- (4) The Project Manager shall retain all project documents (vendor invoices, time sheets, specifications, etc.) at a project office. Said documents shall be made accessible to RHS or its representative during normal business hours.
- (5) The Project Manager shall be responsible for preparation and revision of schedules, worker productivity, and inspecting material.

2.0 Fiscal Control

2.1 Financial Management, Audit, and Records

(a) Municipality financial management and records systems shall include records and procedures for determining the allowability of costs incurred on the approved project.

(b) Municipality shall maintain and shall ensure that each recipient of funds under this Agreement, except funds received under a competitive bid process, whether in the form of contracts, subcontracts or other arrangements, maintains the following until the expiration of three years after the date of the submission and acceptance of the final close out accounting which shall include:

- (1) Records that identify the sources and applications of funds for the approved project or tasks and contain information pertaining to financial assistance awards, draw downs, obligations, unobligated balances, assets, liabilities, outlays, and income;
- (2) Supporting source documents;
- (3) All documentation underlying the preparation of the financial reports; and
- (4) All accounting documents of Municipality pertaining to the approved projects or tasks shall be clearly identified and readily accessible to WisDOT and its designee. Municipality shall impose this requirement upon each of its contractors and ensure that it is imposed on each subcontractor.

(c) Municipality and its subcontractors shall make available to the auditors of WisDOT the records of revenues and costs related to this Agreement. All such records will be kept for a period of at least three (3) years after the issuance of final inspection and acceptance report by RHS, and any such records that are the subject of an auditing dispute shall be kept for the term of the dispute. Municipality shall allow inspection by the authorized agents of WisDOT of the above described records and similar records of its subcontractor(s). Inspections shall be made during regular business hours and upon reasonable notice.

2.2 Allowable Costs

(a) Allowable costs of this project may only be reimbursed under this Agreement after execution of this Agreement.

(b) Construction costs incurred for this project are not allowable for reimbursement under this Agreement if they are incurred prior to the execution of this Agreement unless specifically authorized in writing by WisDOT to be incurred prior to execution of this Agreement.

(c) The costs incurred by Municipality to carry out the project are allowable if they are covered by this Agreement or a contract approved by RHS in accordance with this Agreement.

2.3 Defective Work

If RHS determines that any material or workmanship is deficient, Municipality, without reimbursement under this Agreement, shall promptly require the replacement of materials or correction of workmanship necessary to cure the deficiency.

2.4 Acceptance, Storage and Protection of Materials

All materials delivered to Municipality or its subcontractors for use in performing the work set forth in Attachment II shall be inspected and accounted for upon delivery and protected from theft or damage. The Project Manager shall conduct inspections and shall reject defective material prior to shipment by the supplier or at the time of delivery to the project stockpile or work site or as soon thereafter as defects are discovered. Replacement of damaged or stolen or defective material is not an eligible cost under this Agreement. Damage or theft of material is not an acceptable reason for non-performance of Municipality's obligations under this Agreement.

2.5 Use of Contingency Funds

Contingency funds may only be expended when expenditure is authorized by RHS. The request for use of contingency funds shall be made in writing to RHS. Written approval shall be obtained by Municipality or its subcontractor prior to release of contingency funds. Verbal approval may be given by RHS, but only after written request has been received. The verbal approval shall be verified by follow-up written approval.

3.0 Accounting

3.1 Financial Record Keeping and Pre-Award Audit

Municipality shall establish and maintain a separate set of accounts showing receipts and disbursements of all funds provided under this Agreement and all other funds accruing to or received on account of the project and shall require subcontractors to maintain a like set of accounts. This system of accounts shall permit the clear differentiation of charges to the project from expenditures made by Municipality for non-project work. Subcontractor's awarded contracts on the basis of sealed bid are exempt from this requirement.

3.2 Interim and Project Close-out Audits

(a) All costs charged to this project shall be supported by documents evidencing in detail the nature and propriety of the charges. All accounting documents pertaining to the project shall be clearly identified and readily accessible to WisDOT. Copies of all vendor invoices shall be submitted to the project inspector when reimbursement is being claimed.

(b) WisDOT may conduct an audit of project costs at such times during the progress of project work as it deems appropriate.

(c) WisDOT may conduct a project close-out audit following completion of final project inspection and acceptance of project work.

4.0 Scheduling and Reporting

4.1 Construction Scheduling

Prior to starting construction on the project, Municipality shall provide RHS with a schedule of anticipated work progress. The schedule shall be updated as needed or reported as needing no change and included with the invoice for payment.

4.2 Immediate Reporting

Municipality, Industry or Operator shall report to RHS immediately in writing whenever there is any change in conditions or in State or Local law, or any other event, that may significantly affect: (a) Municipality's, or Industry's, or Operator's ability to perform the projects or tasks in accordance with the provisions of this Agreement, or (b) Municipality's continuing eligibility for financial assistance under this Agreement.

4.3 Routine Reporting

(a) If during any month Operator or Contractor has performed work on the approved project, a performance report shall be filed with the invoice for payment and include the following information:

- (1) the costs incurred to the end of the month and the estimated costs to complete the project;
- (2) for work performed other than under a fixed price contract, unit costs of materials and labor charged to the project for the period covered by the report;
- (3) the percentage of completion of each major element of the project and the estimated date of its completion;

(4) a narrative description of any difficulties or delays encountered, including an explanation of any cost overruns or high unit costs, and any corrective action taken or to be taken;

(5) an explanation of any anticipated difficulties or delays until the end of the project and the action to be taken in an effort to avoid such difficulties or delays; and

(6) any additional narrative necessary to explain any major change that has been made during the month to the monthly schedule of work.

(b) Financial reports shall be on the same basis as Municipality's or Construction Contractor's accounting records.

5.0 Payment of Assistance Amounts

5.1 Payment Schedule

(a) Invoices for payment of eligible project costs may be submitted not more frequently than once per month and no less frequently than once per quarter.

(b) Original invoices shall be submitted to Chief, Railroads & Harbors Section, Madison Yards Way, 6th Floor South, P.O. Box 7913, Madison, WI 53707-7913.

(c) Invoices and supporting documentation shall be in a format acceptable to WisDOT.

5.2 Payment Process

(a) Invoice Submittal

(1) Municipality shall prepare and submit original invoices to RHS (see 5.1(b)) along with any supporting documentation.

(2) RHS shall review the submitted invoice for payment and shall discuss with Municipality or its subcontractor any exception RHS may take to the amounts billed.

(b) Payment

(1) Municipality shall invoice only for work completed or materials installed.

(2) Upon approval of the invoice by RHS, WisDOT shall pay to Municipality the amounts due, less any amounts subject to exceptions.

(3) Municipality shall have paid Vendor or Contractor invoices or shall pay them immediately following receipt of WisDOT's payment.

5.3 Payment Amount

- (a) WisDOT shall pay to Municipality 50% of each invoiced amount, less exceptions under Section 5.4 of this Attachment.
- (b) WisDOT shall pay to Municipality the final billing amount following receipt from Municipality of the TEA PROJECT COMPLETION CERTIFICATE (Attachment VI) and WisDOT's final inspection and acceptance of the work performed.

5.4 Payment Delays

- (a) Should any element of cost billed on any invoice be questioned as to its allowability or accuracy, WisDOT may except that cost from payment until the eligibility of the cost item(s) is determined and shall pay the remainder of the invoiced amount per schedule.
- (b) Payment shall be made to Municipality only for work already completed or for materials installed. Unless billed under a fixed price contract, Operator's invoices for labor and equipment costs shall be verified by use of time cards and equipment use logs.
- (c) Payment by WisDOT of amounts which may become due under this Agreement shall be made only following Municipality's full and complete compliance, to the satisfaction of WisDOT, with Section 5.1 of the Agreement.

ATTACHMENT IV - TEA JOBS GUARANTEE

ATTACHMENT V - TEA PROJECT COMPLETION CERTIFICATE

TEA PROJECT COMPLETION CERTIFICATE

Project No.: xxxx-xx-xx

Project Name: Komatsu Industry Lead and Spur, City of Milwaukee TEA

County: Milwaukee County

Municipality: City of Milwaukee

Railroad: Union Pacific Railroad Company

Name of Contractor: _____

Date Contract Work Completed: _____

I certify that the above listed project was completed in accordance with the contract. I further certify that the above listed project was constructed substantially in accordance with the approved plans and specifications, as may have been amended by contract change order.

Project Engineer

Date

The above listed project appears to have been constructed in substantial conformance with the approved plans and specifications, as may have been amended by the attached contract change order.

WisDOT DTIM
Project Coordinator

Date