

**Federal/State/Project Sponsor
High Priority Projects (HPP) Program
LOCAL LET
Project Agreement**

Project ID: 2984-23-02, 72 County: Milwaukee Municipality: City of Milwaukee

Project Name: Marsupial Bridge Improvements

Limits (if applicable):

The signatory Project Sponsor, through its undersigned duly authorized officers or officials, and the Wisconsin Department of Transportation (WisDOT) enter into this Agreement to accomplish the described project.

Section 86.25 of the Wisconsin State Statutes provides the authority for the Project Sponsor and WisDOT to enter into this Agreement.

The payment period for each project phase (e.g., design, real estate, construction) shall begin with written authorization by WisDOT to the Project Sponsor.

Needs and Estimate Summary: Project funded under SAFETEA-LU (P.L. 109-59) as a High Priority Project (HPP), Section 1702 of SAFETEA-LU, Project #2272

Description of the project: Build additional staircases, landscape, and other improvements to the Marsupial bridge at the Holton St. Viaduct in Milwaukee.

Federal Fiscal Year (FFY)	Federal amount	Local Share	Actual Federal Amount Available (1)	Modified Local Share (2)	Cumulative Federal Funds Available
2005	\$128,000	\$32,000	\$109,500	\$27,375	\$109,500
2006	\$128,000	\$32,000	\$110,307	\$27,577	\$219,807
2007	\$128,000	\$32,000	TBD	TBD	TBD
2008	\$128,000	\$32,000	TBD	TBD	TBD
2009	\$128,000	\$32,000	TBD	TBD	TBD
Total	\$640,000	\$160,000	\$	\$	\$

- 1) The amount available will be determined annually when the Federal Highway Administration (FHWA) issues the Notice of Funding for WisDOT for each Federal Fiscal Year (FFY). The amount includes or will include federal obligation limits and any applicable rescissions. WisDOT will provide notice of the amount to be inserted.

- 2) The required local match must equal 20% of the total. Project Sponsors may choose to increase local match or down-scope the project to compensate for decreased federal funds. WisDOT will provide notice or confirmation of the amount to be inserted after the Project Sponsor decides.

The federal High Priority Projects (HPP) program under 23 USC 117 provides authorization for funding over a five-year period, 20% each year, subject to the annual obligation limitation set by Congress in each year's appropriations bill. In FFY 2005, the obligation limitation ratio was 85.5%. Therefore, the project received an allocation of \$109,500 in FFY 2005 (85.547% of 20% of \$640,000).

In FFY 2006, the obligation limitation ratio was 87.048%, plus there was a 1% across-the-board federal rescission. Therefore, the project received \$110,307 in FFY 2006 (87.048% of 20% of \$640,000 minus a further 1% rescission required by law).

The amounts for FFY 2007, 2008 and 2009 will be updated in the above table as federal funds become available. WisDOT will provide notice or confirmation of the amount to be inserted.

FHWA requires that the project follow the eligibility rules that apply to the Transportation Enhancements (TE) or Congestion Mitigation Air Quality (CMAQ) programs. Project funding is a local responsibility and the state is statutorily unable to advance construct the project with state funds. Therefore, the Project Sponsor has the option to wait until all federal funding for the project is received – after the FFY 2009 appropriations bill has been enacted – or the Project Sponsor may front all of the project funds in excess of the federal funds currently available for reimbursement thus far. The Project Sponsor must ensure that the non-federal match requirement is met. The project covered by this Agreement must be a Local Let Contract. The applicable federal regulations must be complied with prior to reimbursement of funds.

As a Local Let Contract, the Project Sponsor shall only request reimbursement up to the cumulative amount of federal funds then currently available.

This request is also subject to the terms and conditions that follow (see pages 4-7) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon acceptance by WisDOT shall constitute agreement between the Project Sponsor, WisDOT and the Federal Government.

This project is subject to a DBE goal assessment of : *Discretionary*.

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

Signed for and in behalf of the Project Sponsor(s):

Name	Title	Date
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Name	Title	Date
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Name	Title	Date
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Accepted for and in behalf of WisDOT and returned to the Project Sponsor(s):

Name	Title	Date
	Chief, Bureau of Transit & Local Roads, Division of Transportation Infrastructure Development	

Terms and Conditions:

1. The initiation and accomplishment of the improvement will be subject to the applicable State and Federal laws, rules, and regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Transportation Project Implementation*.
2. The construction of this project will be in accordance with the appropriate standards unless the Federal Government or WisDOT grants an exception to standards prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Project Sponsor unless such exception is granted.
3. The Project Sponsor will assume all responsibility for complying with germane environmental requirements for the project.
4. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder. All contracts for design related services shall be awarded and administered in accordance with the requirements of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.
5. The Project Sponsor shall administer the work eligible for Federal participation.
6. The Project Sponsor will assume all responsibility for complying with the applicable Disadvantaged Business Enterprise (DBE) goal assigned to this project. The DBE goal is waived if the Project Sponsor constructs the project with its own permanent staff and if the project is not subcontracted out.
7. The maximum participation of Federal financing will be limited to a 80% of the actual eligible project cost or the level of Cumulative Federal Funds Available, shown in the table on the first page of this Agreement, as updated by WisDOT, whichever is less.
8. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and WisDOT submittals and approvals contained in these instructions and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and WisDOT and will furnish copies thereof when requested.
9. Federal Single Audits of the Project Sponsor:
 - a) The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and

regulations. (See federal Office of Management and Budget (OMB) Circular No. A-133.)

- b) This audit shall be performed in accordance with federal OMB Circular No. A-133 and State single audit guidelines issued by WisDOT.
 - c) The Project Sponsor will keep records of costs of construction, inspection tests and maintenance done by it to enable the federal government and the state to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three-year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
10. State Disbursements:
- a) Payment by WisDOT to the Project Sponsor shall be made on a quarterly basis upon presentation of vouchers for expenditures incurred during prior quarterly periods of the project duration subject to the allowable maximum payment, as referenced above in Section 7.
 - b) A final adjustment of state payments will be made upon completion of WisDOT's audit of the project. If WisDOT's audit establishes that WisDOT paid more than its share of the eligible project costs, the Project sponsor shall refund to WisDOT upon demand a sum equal to the overpayment. If the refund is not timely received, WisDOT may choose to set off the amount of refund due against any other moneys otherwise due and payable by WisDOT to the Project Sponsor
11. The Project Sponsor will maintain, at its own costs and expense, all portions of the project that lie within its jurisdiction.
12. In connection with the performance of work under this Project Agreement, the Project Sponsor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as define in S. 51.01(5), 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 Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.

13. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor'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 Project Sponsor; 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 Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the Department for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety or insurer or both may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to WisDOT; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and their officers and employees.

The State shall not be liable to the Project Sponsor 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.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

- a) The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (2003-04).
- b) Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

14. No term or provision of this Project Agreement including any of its attachments may be changed, waived or terminated orally but only by an instrument in writing signed by both parties to the Project Agreement, with the exception that WisDOT will provide notice to the Project Sponsor of the amount(s) to be inserted in the table on the first page of this Agreement from time to time.
15. The project must be completed within three years after the date of the last confirmed amount entered in the table on the first page of the Project Agreement by WisDOT central office. Extensions are available upon approval of a written request by the Project Sponsor to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
16. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
 - b) Have not, within a three year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
 - d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
 - e) That all grantees or contractors, also known as lower tier participant as that term is used in 49 CFR Part 29, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment have been declared ineligible, or have voluntarily been excluded from participation in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.