

**Amendment No. 1
to State/Municipal Agreement**

Whereas, the State of Wisconsin Department of Transportation (“State”), through 2019 Wisconsin Act 9, instituted a Multimodal Local Supplement (“MLS”) program to provide funding to political subdivisions for local multimodal transportation projects; and

Whereas, the State did enter into State/Municipal Agreements with various political subdivisions to provide such funding; and

Whereas, the Wisconsin Supreme Court in *Bartlett v. Evers* did find that the Governor’s veto within 2019 Wisconsin Act 9 to create the MLS program was unconstitutional; and

Whereas, upon the aforementioned Wisconsin Supreme Court decision, the State reviewed the State/Municipal Agreements entered into under the MLS program and determined that the majority of such projects could be converted into the Local Roads Improvement Program (LRIP); and

Whereas, the State enters into this Amendment pursuant to the authority provided in Wis. Stat. § 86.31 and Wisconsin Administrative Code Trans § 206.03(12);

Now, therefore, the State and the undersigned Municipality enter into this Amendment as of the date of last signature below to amend the terms and conditions of the State/Municipal Agreement for a Local-Let Multimodal Local Supplement Project entered into between the parties on June 24, 2020 as follows:

- (1) The name of the Agreement is amended to read, “2020-2021 Local Roads Improvement Program (LRIP) State Municipal Project Agreement”,
- (2) The program name is amended to read, “LRIP”,
- (3) Any reference to “2020-2021 Multimodal Local Supplement” is amended to read, “2020-2021 Local Roads Improvement Program”,
- (4) Any reference to “MLS” is amended to read, “LRIP”,
- (5) Paragraph (4) of the General Terms and Conditions is amended to read as follows:

The work, which is eligible for state participation, will be administered by the undersigned political subdivision. The authority for the state to delegate this responsibility is described in the general requirements for administering federal and state aid set forth in Wisconsin Administrative Code Chapter Trans 206 and Wis. Stat § 86.25(2).

(6) Paragraph (5) of the General Terms and Conditions is amended to read as follows:

All contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the provisions of s. 86.31 Wis. Stats. and all other municipal/county bidding requirements.

(7) Paragraph (7) of the General Terms and Conditions is amended to read as follows:

Payments to the political subdivision will be made after the improvement is completed, and the contractor(s) fully reimbursed.

(8) Paragraphs (14) and (15) of the General Terms and Conditions are deleted in their entirety.

(9) Paragraph (16) of the General Terms and Conditions is amended to read as follows:

This agreement is subject to the availability of State funds appropriated for this program. The continuance of this agreement beyond the limits of funds already available to the Wisconsin Department of Transportation is contingent upon appropriation of the necessary funds by the Wisconsin Legislature and the Governor.

As to the aforesaid, the parties hereto have caused this Amendment to be fully executed by their duly authorized representatives as of the date of last signature below.

Wisconsin Department of Transportation

By: _____
Merrill Mechler-Hickson
Local Programs & Finance Section Chief

Date: _____

City of Waukesha

By: _____
Name:
Title:

Date: _____



**STATE/MUNICIPAL AGREEMENT
FOR A LOCAL- LET MULTIMODAL
LOCAL SUPPLEMENT PROJECT**

**Program Name: Multimodal Local
Supplement (MLS)**

MLS Group: City/Village

State Appropriation #: 207

Date: April 30, 2020

I.D.: 1009-49-44

Road Name: Prairie Avenue

Limits: Paul Avenue to College Avenue

County: Waukesha

Roadway Length: 0.4 miles

Project Sponsor: City of Waukesha

Application Number: 1562

The signatory, City of Waukesha, 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 improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 20.395(2)(fc), 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. 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. The Municipality agrees to contract with an infrastructure consulting firm for construction engineering oversight.

Existing Facility - Describe and give reason for request: Prairie Avenue is one of the major arterials leading to the historic downtown business district, to Carroll College, and is a major trucking route to businesses on the South Side of Waukesha. Prairie Avenue is also heavily used by bicyclists as the corner of N Prairie Avenue and College Avenue is the trail head for both the Ice Age trail, Fox River Trail, and the New Berlin Trail Connector. The City has a desire to improve the safety and make the existing WSOR crossing on Prairie Avenue near Marshall St a quiet zone. Improving the safety of this crossing and making this a quiet zone would drastically improve this neighborhood. In its existing condition the existing concrete pavement is rapidly deteriorating to the point where City DPW crews have made several patches.

The Municipality has listed the pavement condition of the roadway as a 50.

Proposed Improvement - Nature of work: The project is 0.4-mile road reconstruction on Prairie Avenue from Paul Avenue to College Avenue using concrete pavement. The improvement consists of two 14' travel lanes and two 8' parking lanes providing enough width for on street bicycle accommodations. The also includes updating all ADA ramps at all intersections, and one traffic signal replacement.

The project includes concrete curb and gutter removal, pavement removal, applying a 1-1/4 inch dense aggregate (8-inch base), crushed stone backfill, traffic control, shaping and grading of roadway base, walk & drive approach removal, 30-inch concrete curb and gutter, concrete walk and handicap ramps, drive and walk approaches, 9-inch concrete pavement, landscaping, storm sewer and pavement marking.

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: Not applicable.

The Municipality agrees to the following 2020-2021 Multimodal Local Supplement project funding conditions:

Under the MLS program, project construction costs may be funded with up to 90% state funding to a maximum of \$1,000,000 for all state-funded project phases when the municipality agrees to provide the remaining minimum 10% and all funds more than the \$1,000,000 state funding maximum, in accordance with the Multimodal Local Supplement (MLS) program guidelines. Non-participating costs are 100% the responsibility of the municipality. Any work performed by the Municipality prior to state authorization is not eligible for state funding. The Municipality will be notified by the State that the project is authorized and available for charging. For this project, the project will be funded at 37.1% resulting in \$1,000,000 of funding for eligible items.

This project is currently scheduled as a locally let project. **In accordance with the State's sunset policy for Multimodal Local Supplement projects, the subject 2020-2021 Multimodal Local Supplement improvement must be constructed and in final acceptance within six years from the date of MLS project award.**

The dollar amounts shown in the Summary Funding Table below are state maximum amounts unless explicitly identified otherwise. These amounts are calculated based on estimated eligible costs submitted in the project sponsor's MLS application. The final Municipal share is dependent on the final State participation, and actual costs will be used in the final division of cost for reimbursement.

Project Cost Summary	Estimated Costs	MLS/State Funds	Municipal Funds
Engineering:			
Right of Way Acquisition:			
Construction:	\$2,690,000	\$1,000,000	\$1,690,000
Total Eligible Costs:	\$2,690,000	\$1,000,000	\$1,690,000
Total Ineligible Costs:			
Total Improvement Costs:	\$2,690,000	\$1,000,000	\$1,690,000

\$1,000,000 is the maximum MLS award for this project and reimbursements may not exceed 90% of project costs.

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of either the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of: City of Waukesha (please sign in blue ink.)

Name Fruel Abadi Title 6/22/20 Date

Signed for and in behalf of the State:

Name Merrill Weckler-Hickson Title Local Programs & Finance Chief Date 6/24/2020

GENERAL TERMS AND CONDITIONS:

1. The initiation and accomplishment of the improvement will be subject to the MLS program guidance, applicable federal, state and local laws, administrative policy and program rules, ordinances,

standards, and contract bidding requirements. Please note that if any portion of an improvement is funded using federal funds (including design, real estate, or other related work activities), the entire improvement will be subject to federal requirements. All components of the improvement must be defined in the environmental document if any portion of the project is federally funded.

2. The design and construction of the improvement shall be in accordance with nationally recognized association standards unless an exception to standards is granted by the state prior to construction. The entire cost of the improvement not constructed to standards will be the responsibility of the Municipality/County unless such exception is granted.
3. The Municipality/County will assume all responsibility for complying with all applicable environmental requirements for the improvement.
4. The work, which is eligible for state participation will be administered by the Municipality/County. The authority for the state to delegate this responsibility is described in General requirements for administering federal and state aid set forth in ch. Trans 206 and Wis. Stat 86.25(2). Municipal staff resource time is not eligible for payment under this grant.
5. The initiation and accomplishment of the improvement will be subject to the applicable federal, state and local laws, administrative policy and program rules, ordinances, standards, and contract bidding requirements that include, but are not limited to, the following:
 - a) The improvement must be advertised for bid for a minimum of fifteen (15) consecutive days, and contracts awarded to the lowest responsible bid.
 - b) Other competitive bidding requirements set forth in Wis. Stat. 16.855, 66.0901, 985.01(1m) and 985.07.
6. State financing will be limited to up to 90% participation in eligible items or to the limit approved for the improvement - whichever is less.
7. Payments to the Municipality/County can be made to the Municipality/County prior to completion of the project for partial project reimbursement. MLS reimbursement request forms will be provided to the Municipality/County with the signed SMA and the authorization to incur costs form. Project reimbursement documents may also be submitted to WisDOT at time of project completion for one-time reimbursement. Total project reimbursement amounts cannot exceed initial program award amounts. Project reimbursements will be issued to the primary sponsor. Required documentation that must be submitted to WisDOT by the primary sponsor prior to project reimbursement includes the following:
 - a) A copy of the advertisement to bid – ideally an Affidavit of Publication – identifying the text of the ad, the name of the publication in which it was placed, and the dates it was advertised.
 - b) Lowest responsible bid award and rejection notices or dated board minutes, including action taken.
 - c) An Exception to Standards, if applicable to the project.
 - d) Documentation to confirm contractor(s) payment.
8. 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, including General Transportation Aids under Wis. Stat. 86.30.
9. The Municipality/County will keep records of the cost of the improvement together with letting documents and will have them available for inspection by representatives of the state and will furnish copies when requested.
10. The design and construction of the improvement must be certified by a registered professional engineer, if the cost of the improvement exceeds \$65,000.
11. Federal Single Audits of Local Government Units:

- a) The Municipality/County shall have a single organization audit performed by a qualified independent auditor if required to do so under federal law and regulations. (See Federal Circular No. A-133).
 - b) This audit shall be performed in accordance with Federal Circular A-133 issued by the Federal Office of Management and Budget (OMB) and state single audit guidelines issued by the Wisconsin Department of Administration (DOA).
 - c) The Municipality/County will keep records of costs of construction, payroll documents, inspection tests and maintenance done by it to enable the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be subject to a project review or audit as directed by the Department within twelve (12) years of project closing.
12. The Municipality/County will maintain, at its own cost and expense, all portions of the project that lie within its jurisdiction and will make ample provision of such maintenance as long as the road remains open to traffic.
 13. In accordance with the State's sunset policy for MLS projects, the subject improvement must be constructed and submitted for reimbursement within 6 years of award.
 14. Design and construction work prior to state authorization is ineligible for state funding.
 15. If real estate costs total under \$100,000, these costs must be entirely locally funded. If real estate costs exceed \$100,000, all real estate costs are eligible for MLS funding but do not increase the original MLS project award.
 16. The appropriation from which this grant is to be paid is the result of a gubernatorial veto of 2019 Wisconsin Act 9 that is currently the subject of litigation pending before the Wisconsin Supreme Court (Wisconsin Institute for Law and Liberty v. Gov. Evers). The outcome of that litigation could adversely affect the availability or amount of funds that are otherwise payable under this contract, or the ability of the Department of Transportation to perform this contract.
 17. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
 18. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
 19. 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.

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