

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE MAINTENANCE OF
STORMWATER IMPROVEMENTS**

Between the City of Madison and Madison Area Technical College District

THIS AGREEMENT, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “City”), and the Madison Area Technical College District, a Wisconsin technical college district (hereinafter referred to as “Madison College”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, Madison College’s Truax Campus is located in Madison, in the area generally bounded by Stoughton Road, Kinsman Boulevard, Pearson Street, the Bridges Golf Course, Straubel Street, Wright Street, and Anderson Street and is made up of several different parcels, some owned by Madison College, others leased from Dane County under a 99-year ground lease with an option to purchase entered into on February 9, 1977; and,

WHEREAS, Madison College owns the parcel located at 1849 Wright Street (tax parcel ID No. 251-0810-294-0403-5) (“Truax-East”), which parcel is subject to a 50 foot wide drainage easement held by the City running over the southeast corner (Doc. Nos. 4512376 and 1383263); and,

WHEREAS, Madison College’s lease with Dane County includes the following lands:

- 1701 Wright Street (tax parcel ID Nos. 251-0810-294-0086-9) (“Truax-North”), which lands are subject to a 50 foot wide drainage easement held by the City running along the northern property line (Doc. No. 1416749, pages 684-687);
- 1702 Wright Street in Madison (tax parcel ID No. 251-0810-294-0082-7) (“Truax-West”), which lands are subject to a 2012 permanent limited stormwater drainage easement held by the City (Doc. Nos. 4877283 and 5084351), a condition of which is that upon completion of construction of the stormwater facilities and improvements the facilities, Madison College would be responsible for the maintenance thereof, by separate agreement with the City;
- 3100 Straubel Street and 3003, 3101, 3102 & 3201 Anderson Street (tax parcel ID No. 251-0810-321-0604-0) (“Truax-South”), which lands are subject to a 50 foot wide and a 100 foot wide drainage easement held by the City running from the western edge of the parcel east and north through the parcel to Anderson Street (Doc. No. 1416749, pages 684-687); and,
- 2999 Anderson Street (tax parcel ID No. 251-0810-322-0099-1) (“Truax-Southwest”), which lands are subject to a 100 foot wide drainage easement held by the City running east-west through the middle of the parcel ((Doc. No. 1416749, pages 684-687); and,

WHEREAS, the stormwater easements running through the parcels identified above, as depicted on Exhibit A, consist of an open drainageway and other stormwater improvements that convey stormwater through the Madison College Truax Campus north and east to Stoughton

Road and the City's stormwater system (the "Improvements"); and,

WHEREAS, proper care and maintenance of the Improvements is necessary to ensure that the Improvements function as designed and the failure to properly care for or maintain the Improvements may cause flooding issues at Stoughton Road, a condition that has a negative impact upon the City and Madison College; and,

WHEREAS, Wis. Stat. Sec. 66.0301 authorizes cities and the state or departments or agencies of the state, to enter into agreements for the joint exercise of any power or duty required or authorized by law; and,

WHEREAS, the City and Madison College (the "Parties") find it necessary to enter into this intergovernmental agreement to set forth each party's responsibilities related to the Improvements.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the Parties' respective responsibilities for the Improvements depicted on Exhibit A and described above, and the sharing of costs thereof between the parties.
2. Madison College's Responsibilities. Madison College agrees as follows:
 - a. For those Improvements identified on Exhibit A as being "Jointly Maintained by City of Madison and Madison College", Madison College will perform the following routine maintenance of the Improvements, at its own cost:
 - (1) Routine mowing of the channel banks with the purpose of prohibiting the growth of woody brush and monocultures of invasive vegetation such as reed canary grass, burdock, and cattail.
 - (2) Removal of accumulated trash. This does not include removal of accumulated sediment, which will be the responsibility of the City.
 - (3) Removal of accumulated debris at drainage grates and channel inlets as necessary to maintain adequate flood conveyance. This does not include cleaning of culverts.
 - (4) Installation, replacement, and removal of culverts that are NOT beneath City of Madison roadways. This includes installation, replacement, and removal of all apron endwalls, stone, etc. associated with the culvert.
 - b. Madison College will not use the channel as snow storage.
 - c. Madison College will inform the City within a reasonable amount of time, under the circumstances, if maintenance beyond the routine maintenance identified above is necessary to ensure the proper functioning of the Improvements.

- d. Madison College agrees to provide the City with access to the Improvements for maintenance activities via Madison College managed facilities and roads. The City assumes responsibility for damage to these facilities during the completion of any maintenance and repair activities. A minimum of 14 days notice shall be given to Madison College prior to access of the Improvements, except in the case of emergencies, in which case reasonable notice shall be provided to Madison College.
 - e. In the event that the City needs to take emergency measures to mitigate flooding due to improper snow storage, or lack of routine maintenance as defined in subsection a. above, Madison College shall pay 100% of the costs associated with the emergency response and/or repair.
3. City's Responsibilities. City agrees as follows:
- a. For those Improvements identified on Exhibit A as being "Maintained by City of Madison", the City shall perform the routine maintenance duties identified in Sec. 2.a above.
 - b. For all Improvements, except those identified in Exhibit A as being "Maintained by Others" the City will perform larger maintenance duties, including:
 - (1) Dredge drainage channel as necessary to maintain adequate capacity.
 - (2) Bank regrading and stabilization as necessary to repair or prevent erosion within the channel.
 - (3) Removal of large woody vegetation (trees) from the drainage and banks, and the removal of trees that have fallen into the channel.
 - (4) Jetting and cleaning of culverts as necessary to remove accumulated debris or other impediments.
 - (5) Installation, replacement, and removal of culverts that are beneath City of Madison roadways. This includes installation, replacement, and removal of all apron endwalls, stone, etc. associated with the culvert.
 - c. Prior to completing large scale maintenance, stabilization, or restoration activities, the City shall coordinate proposed activities and the associated impacts with Madison College.
4. Liability. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards,

commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

5. Non-Discrimination. In the performance of the obligations under this Agreement, the Parties agree to abide by their own respective affirmative action plans and in doing so agree not to discriminate, in violation of any state or federal law, against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The parties further agree not to discriminate, in violation of any state or federal law, against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
6. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the Parties.
7. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
8. Notice. All notices and other communications pertaining to this Agreement will be in writing and will be deemed duly to have been given to a Party if personally delivered, sent by facsimile or email, or sent by the United States Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carriers. Any Party may change its notification address by giving written notice to that effect to the other Party in the manner described in this Section 14. Notices will be effective upon receipt. All notices or communications between County and City pertaining to this Agreement will be addressed as follows:

<u>Name</u>	<u>Address</u>
City of Madison	City Engineer 210 MLK Jr. Blvd., Room 115 Madison, WI 53703
Madison College	Director, Facilities Administration 1701 Wright Street., Room B1244C Madison, WI 53704

9. Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties, their successors and assigns.

10. Waiver of Breach. The Parties agree that the waiver by any Party of a default under this Agreement by the other Party will not operate as or be construed to be a waiver of any other default of this Agreement.
11. Amendment. This Agreement may not be amended in any respect other than by an instrument in writing signed by both Parties.
12. Compliance with Laws. The Parties will perform, and will require their employees, contractors and agents to perform, all obligations under this Agreement in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances.
13. Governing Law; Construction. This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin.
14. Counterparts. This Agreement may be executed in counterparts, including via facsimile or other electronic means, each of which will be deemed an original and all of which together will constitute one and the same instrument.
15. Entire Agreement. This Agreement, including all attached addenda, constitutes the entire understanding among the Parties with respect to the subject matter described in this Agreement and supersedes all prior agreements and negotiations relating thereto.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their proper officers on the day and year written below.

FOR THE MADISON AREA TECHNICAL COLLEGE DISTRICT

Jack Daniels, President

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-16-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2016.

EXHIBIT A
Map of Improvements