

**EARLY ATTACHMENT AND MUNICIPAL REVENUE SHARING AGREEMENT
FOR THE HOEPKER ROAD PROJECT**

Between the City of Madison and the Town of Burke

THIS AGREEMENT, made and entered into by and between the City of Madison, a Wisconsin municipal corporation with offices at 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53703 (“City”), and the Town of Burke (“Town”), a Wisconsin municipal corporation with offices at 5365 Reiner Rd., Madison, Wisconsin 53718, is effective as of the date by which both parties have signed hereunder.

RECITALS

WHEREAS, pursuant to Wis. Stat. § 66.0307, the City, the Town, the City of Sun Prairie and the Village of DeForest entered into a Cooperative Plan (the “Cooperative Plan”) related to boundary lines and other municipal issues among themselves, which Cooperative Plan was approved on May 4, 2007, by the State of Wisconsin Department of Administration; and,

WHEREAS, under the Cooperative Plan the City and the Town agreed that no attachments or annexations of Town lands in certain specified “Protected Areas” would occur to the City prior to final attachment at the end of the protected period on October 27, 2036, except upon approval of such attachment by the Town; and,

WHEREAS, the owner of the Town parcels located at 4202 and 4210 Hoepker Rd. (collectively, the “Town Parcels”) has expressed an interest in combining the Town Parcels with adjacent lands located in the City of Madison for the purposes of the development of a large industrial facility (the “Project”); and,

WHEREAS, the owner of the Town Parcels has been informed that in order to proceed with the Project that the Town parcels must be attached to the City; and,

WHEREAS, because the Town Parcels are in a protected area under the Cooperative Plan, in return for approving early attachment of the Town Parcels to the City for the purposes of the Project, the City and Town agree that municipal revenue sharing of the local share of property tax revenue from the Project is appropriate; and,

WHEREAS, pursuant to Wis. Stat. § 66.0301, Wisconsin municipalities are authorized to enter into intergovernmental agreements; and,

WHEREAS, it is in the best interests of the City and the Town to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and agreements of the City and the Town, the receipt and sufficiency of which is mutually acknowledged, the parties do hereby covenant and agree as follows:

1. Definitions. For the purposes of this Agreement, the following definitions shall apply:
 - (a) Agreement. This Early Attachment Agreement and Municipal Revenue Sharing Agreement for the Hoepker Road Project.
 - (b) City Lands. The City lands shall be those parcels and lands in the City as of the effective date of this Agreement which are combined with the Town Parcels for the purposes of the Project. It is expected that the City parcels will include some, or all of, the following:
 - i. Lots 1-4, 7-10 and 15 of the Interstate Commerce Park Plat, along with a portion of Commerce Park Drive that is expected to be vacated.
 - (c) Project. The Project shall include the Town Parcels and those City lands that are assembled for the purposes of the development of a large industrial facility. The final footprint of the Project shall be mutually agreed to by the City and the Town. It is not the intent of the City or the Town to include within the Project those City lands that may be part of the initial assemblage of lands but that do not ultimately make up the Project that includes the Town Parcels.
 - (d) Protected Period. Defined in Section 5.A. of the Cooperative Plan as the period between May 4, 2007 and October 27, 2036, or such earlier time when the Town ceases to exist as a separate entity.
 - (e) Town Parcels. The Town parcels consist of the following:
 - i. 4202 Hoepker Road, Tax Parcel ID No. 0810-093-8730-0.
 - ii. 4210 Hoepker Road, Tax Parcel ID No. 0810-093-9290-4.
2. Early Attachment Approved. As authorized by Section 9.B. of the Cooperative Plan and pursuant to the terms and conditions of this Agreement, the Town approves the attachment of the Town Parcels to the City prior to the end of the Protected Period. The owner of the Town Parcels and the City shall follow the procedures set forth in Sec. 10 of the Cooperative Plan to cause the Town Parcels to attach to the City.
3. Revenue Sharing. Upon attachment of the Town Parcels to the City, and during the Protected Period, the City agrees to make payments to the Town according to the provisions set forth below. Except as provided below, the City shall be solely entitled to all fees, assessments and revenues attributable to the Project and shall be responsible for providing all services to the Project. This revenue sharing agreement expires upon the end of the Protected Period.
4. Payment by City to Town. Within thirty (30) days following the end of each quarter (March 31, June 30, September 30 and December 31), the City shall pay to the Town one-half of the City's share of property taxes from the Project received by the City during the quarter. Provided, however, that in no event shall the City's payments to the Town under this paragraph in any year be less than the Town's local share of property taxes levied

against the Town Parcels in the year of attachment. The revenue sharing between the City and the Town shall apply regardless of whether the Project, no development, or other development occurs on the Town Parcels after attachment.

5. Effect of City Action or Forbearance. If the City deliberately acts (or forbears to act) so as to reduce the revenues it would receive that are subject to sharing under this Agreement, then the amount due to the Town is one-half of what the City would have received (timely payments shall be assumed) if the City had not taken such deliberate action or forbearance.
6. No Third Party Beneficiary. This Agreement is intended to be solely between the City and the Town. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
7. Amendment. This Agreement may be amended only by the written agreement of both of the parties hereto.
8. Enforcement. This Agreement shall be governed by the laws of the State of Wisconsin. Any act by either party in violation of this Agreement shall be remedied by the courts of the State of Wisconsin. This Agreement is intended to provide both parties with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement.
9. Binding Effect. The parties have entered into this Agreement under the authority of Wis. Stat. § 66.0301 and the Cooperative Plan. The parties agree that this Agreement shall be binding upon both parties.
10. Entire Agreement. This Agreement represents the entire integrated agreement between the parties with regards to the early attachment of the Town Parcels to the City and revenue sharing for the Project, and supersedes all prior negotiations, representations or agreements, either written or oral dealing with early attachment and revenue sharing related to the Town Parcels and the Project.
11. Severability. In the event that any portion of this Agreement is invalidated or held unenforceable by a court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. Notwithstanding anything in this Section 11 to the contrary, in the event a court of competent jurisdiction invalidated or held Section 4 to be unenforceable, the Parties shall negotiate an enforceable revenue sharing provision that provides the same financial benefit to the Town.
12. Non-Discrimination. In the performance of the services under this Agreement, the Parties agree not to discriminate against any employee or applicant for employment 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 agrees not to discriminate 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.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement by authority of their respective governing bodies effective as of the date when all parties hereto have affixed their respective signatures.

FOR THE TOWN OF BURKE

Kevin Viney, Town Chairman

Date

Brenda Ayers, Town Administrator/Clerk

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 Madison is authorized by Resolution Enactment No. RES 19-_____, ID No. 53924, adopted by the Common Council of the City of Madison on January 8, 2019.