

**EARLY ATTACHMENT AGREEMENT AND MUNICIPAL REVENUE SHARING
AGREEMENT FOR THE 30 NOB HILL ROAD PROJECT**
Between the City of Madison and the Town of Madison

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 Madison (“Town”), a Wisconsin municipal corporation with offices at 2120 Fish Hatchery Rd., Madison, Wisconsin 53713, is effective as of the date by which both parties have signed hereunder.

RECITALS

WHEREAS, pursuant to Wis. Stat. § 66.0307, City, Town and the City of Fitchburg entered into a Cooperative Plan related to boundary lines and other municipal issues among themselves, which Plan was approved on October 10, 2003, by the State of Wisconsin Department of Administration; and,

WHEREAS, City and Town agreed as a general rule that no attachments or annexations of Town lands would occur to the City prior to final attachment at the end of the Protected Period on October 31, 2022, or such earlier time when the Town ceases to exist as a separate entity, except as expressly provided in the Cooperative Plan; and,

WHEREAS, under the “Early Attachment” provisions of Section 8.A.1 of the Cooperative Plan, property owners may petition the City for early attachment following approval by the Town Board; and,

WHEREAS, the property with the address of 30 Nob Hill Rd., while owned by the same party, 30 Nob Hill LLC (the “Owner”), actually consists of two separate tax parcels, one lying in the City (Tax Parcel ID No. 251-0709-361-0092-7) (the “City Parcel”) and the other lying in the Town (Tax Parcel ID 032-0709-361-8405-7) (the “Town Parcel”); and,

WHEREAS, the City and the Town (the “Parties”) have been informed that Owner wishes to redevelop the two parcels (the “Project Parcels”) by constructing a new office building (the “Project”) on the combined site, which will require that the Project Parcels both be in the City; and,

WHEREAS, in return for allowing early attachment of the Town parcel to the City to allow for 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, subject to the terms and conditions set forth in this Agreement, the Town Board approves of the early attachment of the Town Parcel to the City for the purposes of this Project; 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 30 Nob Hill Road Project.
 - (b) Cooperative Plan. The City of Madison, City of Fitchburg and Town of Madison Cooperative Plan.
 - (c) Protected Period. Defined in Section 5 of the Cooperative Plan as the period between October 10, 2003 and October 31, 2022, or such earlier time when the Town ceases to exist as a separate entity.
2. Early Attachment. Upon submittal to the Town of a petition for attachment by the Owner of the Town Parcel requesting early attachment of the Town Parcel to the City, and approval of the petition for attachment by the Town Board, the Owner, the City and the Town shall then follow the procedures set forth in Sec. 8.A.1 of the Cooperative Plan to cause the Town Parcel to attach to the City.
3. Revenue Sharing. Upon attachment of the Town Parcel to the City, and during the Protected Period, 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. Sewer Connection. The Owner has expressed a preference that the redeveloped Project Parcels be served by connecting the site to the Town's sanitary sewer main approximately 1200 feet to the west on Nob Hill Road instead of connecting to the City's sanitary sewer approximately 500 feet to the east on Nob Hill Road. The Town and the City are agreeable to allowing the Owner to connect the Project Parcels to the Town's sewer and the Town providing sewer services to the Project Parcels, subject to the following conditions:
 - (a) Sewer Lining. Before any connection is made to the Town sewer from the Project or the Project Parcels, the City Engineer shall certify to the Town that the portion of the sewer shown on Exhibit A has been lined in accordance with the City's standard specifications. Upon such certification, the Town shall accept the improvement to the Town sewer. Any warranties that would otherwise extend to the City shall be extended to the Town. The City may accomplish the lining either

directly or by contract with the Owner or others, and consistent with any applicable Town requirements.

- (b) Main Extension. Owner shall be responsible for constructing a private sanitary sewer force main as generally depicted on Exhibit B. The private force main shall be constructed consistent with the City's standard specifications for such work and any applicable Town and City requirements, including the requirements that the private force main be located in the terrace, where possible, if in the public right-of-way, and that it be adequately marked, to the City's satisfaction, so that it can be located. Once the work is completed, it shall be inspected by the City to ensure that the work was performed adequately.
 - (c) Costs. The Town shall not be responsible for the costs of extending sewer service to the Project Parcels, including the sanitary main lining and the private force main extension. No connection of the Project Parcels to the Town's sanitary sewer main shall be permitted until all costs incurred by the Town have been reimbursed.
 - (d) Town Customers. If the Project Parcels connect to the Town sewer as provided for under this Section, the Project Parcels shall become customers of the Town and shall be billed for utility service by the Town upon connection. The Project Parcels shall pay the same rates and receive the same level of service as other Town customers. To the extent authorized by applicable laws, the City shall levy as a special charge upon the Project Parcels for any delinquent Town utility bills and penalties for collection pursuant to Sec. 66.0809, Wis. Stats., and shall pay all such revenues collected directly to the Town of Madison.
 - (e) Developer's Agreement. The City will likely enter into a Developer's Agreement with the Owner, or the Owner's successor in interest, regarding the sewer lining and main extension work required under this Section. If the City does enter into such an agreement, the City shall share this agreement with the Town.
5. 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 Parcels 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 Parcel in the year of attachment.
6. Commencement of Construction. Demolition of the existing improvements and construction of the Project are expected to commence within twenty-four (24) months of the execution of this Agreement. However, if demolition of the improvements and construction of the Project has not commenced within twenty-four (24) months of attachment of the Town Parcel to the City, the City shall either detach the Town Parcel back to the Town or continue to make payments to the Town under Section 5.
7. 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.

8. 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, including specifically the City of Fitchburg, any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
9. Amendment. This Agreement may be amended only by the written agreement of both of the parties hereto.
10. 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.
11. Binding Effect. The parties have entered into this Agreement under the authority of Wis. Stat. § 66.0301. The parties agree that this Agreement shall be binding upon both parties.
12. Entire Agreement. This Agreement represents the entire integrated agreement between the parties with regards to the early attachment of the Town Parcel 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 Parcel and the Project.
13. 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.
14. 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 MADISON

James A. Campbell, Town Chairman

Date

Renee Schwass, Town Clerk

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael P. May, City Attorney

Date

Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 19-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2019.

EXHIBIT A
Map of Town Sanitary Sewer to be Lined

EXHIBIT B
Map of Main Extension