

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE TRANSFER OF
SANITARY SEWER IMPROVEMENTS AND SERVICE
FOR THE REGAS ROAD AND LARSEN ROAD AREAS**
Between the City of Madison and the Town of Blooming Grove

THIS AGREEMENT, is entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “Madison”), and the Town of Blooming Grove, a Wisconsin municipal corporation (hereinafter referred to as “Blooming Grove”).

WITNESSETH:

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes Madison and Blooming Grove to contract for the joint exercise of their powers and duties, and sharing of expenses arising therefrom; and,

WHEREAS, in approximately 1966, Blooming Grove constructed a sanitary sewer main and other improvements in Regas Road (the “Regas Road Improvements”) and began providing sanitary sewer service to certain Blooming Grove properties in the area, as shown on the attached Exhibit 1 (the “Regas Road Area”), which properties the Madison Metropolitan Sewerage District (MMSD) considers to be part of the Town of Blooming Grove Regas Road Sanitary District for billing and accounting purposes; and,

WHEREAS, three Blooming Grove parcels in the area of Larsen Road and Meadowview Road, as shown on the attached Exhibit 2 (the “Larsen Road Area”), are served directly by MMSD and also considered to be part of the Town of Blooming Grove Regas Road Sanitary District for billing and accounting purposes; and,

WHEREAS, Blooming Grove’s Regas Road Improvements currently serve two Blooming Grove parcels and three Madison parcels, and the Larsen Road Area currently includes three parcels, all of which are identified on attached Exhibit 3; and,

WHEREAS, on October 3, 2006 the “Town of Blooming Grove and City of Madison Cooperative Plan Under Section 66.0307, Wisconsin Statutes” (the “Plan”) became effective, which Plan will cause Blooming Grove to cease to exist on November 1, 2027 (the “Transition Date”), with the Blooming Grove parcels in the Regas Road Area and the Larsen Road Area to be attached to Madison at that time, unless attached to Madison earlier by intermediate attachment as set forth in the Plan; and,

WHEREAS, Section 24.A. of the Plan states that “The Town and the City shall cooperate in good faith to implement this Cooperative Plan and may enter further agreements to facilitate an orderly transition of remaining Town territory to the City on the Transition Date.” The Town and the City have determined that the transaction memorialized in this Agreement will facilitate the orderly transition of Town territory to the City as contemplated by the Plan; and,

WHEREAS, the Madison Sewer Utility has found that the Regas Road Improvements are in adequate condition, with any exceptions noted herein, and that assumption of the related assets and liabilities and providing sanitary sewer service to the properties in the Regas Road Area connected to

the Regas Road Improvements or switched to a redundant City of Madison system is in the best interests of the City, which finding the Madison Common Council has confirmed, as required under Madison General Ordinances Sec. 35.02(4)(b); and,

WHEREAS, the Madison Sewer Utility has found that providing billing and accounting services for the Larsen Road Area is also in the best interests of the City; and,

WHEREAS, Madison and Blooming Grove (the "Parties") both believe that it is in their mutual interest for Madison to take over the Regas Road Improvements, including the related assets and liabilities, which liabilities include but are not limited to the costs and other obligations associated with operation and maintenance of the sewer system, and for Madison to provide sanitary sewer service and/or billing and accounting services to the Blooming Grove parcels in the Regas Road and Larsen Road areas depicted on Exhibits 1 & 2 and further defined by address and tax parcel on Exhibit 3, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this "Intergovernmental Agreement Relating to the Transfer of Sanitary Sewer Improvements and Service for the Regas Road and Larsen Road Areas" (the "Agreement") is to set forth the conditions upon which Blooming Grove will convey and Madison will accept ownership of the Regas Road Improvements and provide continued sanitary sewer services, including billing and accounting services, to the Blooming Grove parcels in the Regas Road and Larsen Road areas depicted on Exhibits 1 and 2 and further identified on Exhibit 3.
2. Effective Date. This Agreement shall be effective July 1, 2016.
3. Representations. As a precondition to entering into this Agreement, Blooming Grove represents that it has disclosed all material information in its possession necessary for Madison to assess the condition of the Regas Road Improvements and that to its knowledge all the facilities owned or leased by Blooming Grove are in good repair and in working order, except for ordinary wear and tear and the maintenance work noted in Section 6 below. Madison acknowledges and agrees that it has had a sufficient opportunity to review and assess the condition of the Regas Road Improvements. Blooming Grove will provide Madison with all mapping, real estate and facility records in its possession, as required by Madison for incorporation of the Regas Road Improvements and Blooming Grove parcels identified on Exhibit 3 into Madison's sanitary sewer service area, and Madison represents that, by entering into this Agreement, it has accepted such records and any defects noted therein. Blooming Grove represents that it has good title to all of such assets and real property interests and that none of the Regas Road Improvements or real property interests of Blooming Grove are subject to any mortgage, lien, security interest, or other encumbrance. Blooming Grove further represents that it has disclosed all Town of Blooming Grove Regas Road Sanitary District assets and liabilities known to Blooming Grove relating to the Regas Road and Larsen Road Areas, including any potential assets or liabilities that may be known to Blooming Grove.

4. Transfer of Assets and Liabilities. All assets and known liabilities associated with the Regas Road Improvements shall be conveyed by Blooming Grove and accepted by Madison, including any property rights that may be held by Blooming Grove for sanitary sewer purposes and any and all liabilities, which liabilities include but are not limited to the costs and other obligations associated with operation and maintenance of the sewer system. To the extent necessary, Blooming Grove will agree to timely execute any deeds to transfer any such assets or property rights to Madison. If any Regas Road Improvement related assets or liabilities become known to Blooming Grove or Madison after the execution of this Agreement, the Parties shall agree to enter into discussions regarding these liabilities and assets and seek to reach a mutually agreeable resolution to the disposition of said currently unknown assets or liabilities. It is understood that customers of Blooming Grove in the Regas Road and Larsen Road Areas shall be billed by Blooming Grove in July 2016 for service through June 30, 2016. Also in July 2016, Blooming Grove's associated MMSD service charges for the Regas Road and Larsen Road Areas will be paid in full through 6/30/2016. Following these billing collections and MMSD payment, Blooming Grove will transfer the remainder balance to Madison (**estimated to be \$6,200**). This remainder balance shall be used to offset the costs for work described in Section 6 below, to the extent possible. It is assumed that there will be no remainder balance after this work has occurred.
5. Service Connections and Billing. Madison agrees to provide sanitary sewer service to the Regas Road Area Blooming Grove parcels identified on Exhibit 3, as well as provide billing and accounting services for MMSD for the Larsen Road Area Blooming Grove parcels identified on Exhibit 3. All of these parcels shall become customers of the Madison Sewer Utility, and shall be billed for sanitary sewer service by Madison beginning on the Effective Date of this Agreement, paying the same rates and receiving the same level of service as other Madison customers. To the extent authorized by applicable laws, Blooming Grove shall levy as a tax upon the Blooming Grove parcels identified on Exhibit 3 for which Madison Sewer Utility service was given, including the billing and accounting services for MMSD provided to the Larsen Road Area parcels, any delinquent Madison Sewer Utility bills and penalties for collection pursuant to Sec. 66.0809, Wis. Stats., and shall pay all such revenues collected directly to the Madison Sewer Utility. If any Blooming Grove parcel wishes to change the level of service currently being provided by Blooming Grove, any such request shall be subject to the terms and conditions of the Plan.
6. Maintenance, Required Work or Correction of Deficiency. Madison shall assume all responsibility for maintenance and operation over the Regas Road Improvements, including all locating required in accordance with Digger's hotline requests. Madison's responsibility for maintenance and operation shall also include compliance with any and all applicable state requirements including but not limited to the requirements of the Capacity, Management, Operation and Maintenance Program and the Compliance Maintenance Annual Report. Madison has determined that following repairs or actions need to be addressed:
 - a. There is no public easement of record for the sewer that runs approximately 410 feet from Regas Road to the West across private property. Madison agrees to attempt to secure a public easement from the property owner at no cost. Madison will assume the

cost for document preparation and recording. If unsuccessful at securing an easement, the sewer shall be deemed privately owned and maintained.

- b. In conjunction with the proposed resurfacing of Regas Road in 2017, Madison shall construct a manhole to intercept the flow from the sewer described in subsection a above and discharge it into Madison's 15 inch sewer running North on Regas Road. This shall allow for abandonment of the parallel Blooming Grove sewer in this location going Northerly for approximately 480 feet.
 - c. In conjunction with the proposed resurfacing of Regas Road in 2017, Madison shall replace the approximately 16 foot long "crossover" pipe from Blooming Grove Structure 6439-005 to the MMSD manhole to the West.
 - d. Blooming Grove acknowledges that Madison sewer maintenance equipment may occupy the Blooming Grove right-of-way from time-to-time for routine maintenance and that no permit or permission is required to perform this routine maintenance as long as such occupancy does not exceed 30 days. Madison shall provide Blooming Grove with written notice at least 30 days prior to any extended right-of-way occupancy. Madison shall obtain a permit from Blooming Grove anytime it needs to excavate within the Blooming Grove right of way. Blooming Grove agrees to work with Madison in scheduling the repairs. Madison shall be responsible for the costs of any future repairs of the facilities.
7. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special costs on the Blooming Grove parcels identified on Exhibit 3, then, pursuant to Wis. Stat. Sec. 66.0707, Blooming Grove agrees to timely consider a resolution approving the special assessments or costs, which approval shall not be unreasonably withheld. Special assessments and charges under this provision shall be apportioned to and collected from Blooming Grove properties in the same manner as properties in Madison, and shall not in any respect discriminate against Blooming Grove properties. Madison acknowledges there are no assessments contemplated at this time.
8. Termination. This Agreement shall last through final attachment as provided for in the Plan, unless otherwise mutually terminated, amended or extended upon the written agreement of the Parties.
9. Liability. Except as expressly provided in this Agreement, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, 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. Except as expressly provided in this Agreement, 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, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.

10. Nondiscrimination. In the performance of the services under this Agreement, the Parties agree not to discriminate 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 against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

11. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by United States mail at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the date of postmark, if sent by certified mail, postage prepaid, addressed to:

<u>Name</u>	<u>Address</u>
City of Madison	City Engineer 210 MLK Jr. Blvd., Room 115 Madison, WI 53703
Town of Blooming Grove	Town Clerk 1880 S. Stoughton Rd. Madison, WI 53716

12. No Third Party Beneficiary. This Agreement is intended to be solely between Madison and Blooming Grove. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.

13. Final Agreement. This Agreement constitutes the entire agreement of the Parties with respect to Madison's acquisition of the described Blooming Grove Sewer District and supersedes all prior negotiations, representations or agreements, either written or oral dealing with this subject matter.

14. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.

15. 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.

16. 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.

17. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.

18. Miscellaneous.

- a. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
- b. All addenda and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addenda and exhibits shall be binding upon all parties.

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

FOR THE TOWN OF BLOOMING GROVE

Dwight Johnson, Town Chair

Date

ATTEST:

Mike Wolf, Town 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 16-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2016.



Exhibit 1:
202 Regas Road
3712 Milwaukee St

- City of Madison
- MMSD Sanitary Mains
- Parcels To Be Added
- City of Madison Sanitary Mains

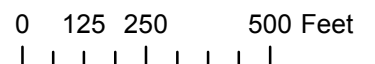




Exhibit 2:
 3200 Larsen Road
 3224 Larsen Road
 4680 Meadowview Road

- City of Madison
- MMSD Sanitary Mains
- Parcels To Be Added
- City of Madison Sanitary Mains

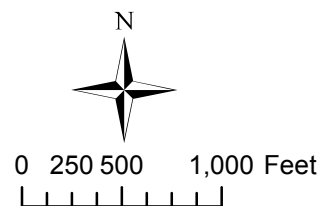


EXHIBIT 3
Parcels Served by Improvements

Blooming Grove Parcels:

- 202-206 Regas Road: Tax Parcel ID No. 008-0710-042-9524-4
- 3712 Milwaukee Street: Tax Parcel ID No. 008-0710-042-9760-8
- 3200 Larsen Road: Tax Parcel ID No. 00/-0710-313-9100-8
- 3222-3224 Larsen Road: Tax Parcel ID No. 008-0710-313-9002-7
- 4680 Meadowview Road: Tax Parcel ID No. 008-0710-313-9700-0

Madison Parcels:

- 3700-3706 Milwaukee Street: Tax Parcel ID No. 251-0710-042-0086-3
- 205 Regas Road/205 Corporate Drive: Tax Parcel ID No. 251-0710-042-0082-1
- 109 Regas Road/201 Regas Road/3902 Milwaukee Street: Tax Parcel ID No. 251-0710-042-0092-0