

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE TRANSFER OF SANITARY
SEWER IMPROVEMENTS AND SERVICE FOR THE BLOOMING GROVE SEWER
DISTRICT #10 AND AMENDMENT OF MUNICIPAL REVENUE SHARING AGREEMENT**

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 1957, Blooming Grove constructed sanitary sewer mains and other sewer related improvements (“Sewer Improvements”) within the Clyde A. Gallagher Subdivision in the Town of Blooming Grove, as depicted on Exhibit 1, forming the Town of Blooming Grove Sewer District #10 (herein referred to as BGSD#10) to own and operate this sewer system; and,

WHEREAS, BGSD#10 currently serves approximately 109 Blooming Grove parcels located in the area bounded by Zinc Avenue, N. Walbridge Avenue, Milwaukee Street and N. Stoughton Road before discharging to a Madison owned sanitary sewer; 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 BGSD#10 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.” Blooming Grove and Madison have determined that the transaction memorialized in this Agreement will facilitate the orderly transition of Blooming Grove territory to Madison as contemplated by the Plan; and,

WHEREAS, the Madison Sewer Utility has found that the BGSD#10 Sewer Improvements are in adequate condition, with any exceptions noted herein, and that assumption of the related assets and liabilities of BGSD#10 and providing sanitary sewer service to the properties in the BGSD#10 is in the best interests of Madison, which finding the Madison Common Council has confirmed, as required under Madison General Ordinances Sec. 35.02(4)(b); and,

WHEREAS, Madison and Blooming Grove (the “Parties”) both believe that it is in their mutual interest for Madison to take over ownership and operation of the BGSD#10 Sewer 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 Town parcels served by BGSD#10, subject to the terms and conditions set forth in this Agreement; and,

WHEREAS, on July 11, 2013 the Parties entered into a “Municipal Revenue Sharing Agreement (4100-4108 Milwaukee Street)” (the “Revenue Sharing Agreement”) which agreement called for, among other things, connection of a proposed development to the Madison Sewer Utility, instead of to BGSD#10 Sewer Improvements as a condition of receiving Madison water service, as well as sharing of Madison Sewer Utility revenue with Blooming Grove; and,

WHEREAS, upon Madison taking over ownership and operation of the BGSD#10 Sewer Improvements pursuant to this Agreement, the Parties agree that the sewer utility revenue sharing clause in the Revenue Sharing Agreement no longer applies because service would have been transferred to Madison under this Agreement, and therefore the sewer utility revenue sharing clause should be removed from that 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 Blooming Grove Sanitary District #10 and Amendment of Municipal Revenue Sharing Agreement” (the “Agreement”) is to set forth the conditions upon which Blooming Grove will convey and Madison will accept ownership of the BGSD#10 Sewer Improvements and provide continued sanitary sewer services, including billing and accounting services, to the Town properties served by BGSD#10 as set forth in Section 3 below. This Agreement also amends the Revenue Sharing Agreement to eliminate Madison’s obligation to pay a portion of its sewer utility revenue to Blooming Grove as the property served under the Revenue Sharing Agreement would have had its sanitary sewer service provided for by Madison under this Agreement had it not been required to connect to Madison under that agreement.
2. Effective Date. This Agreement shall be effective January 1, 2017.
3. Parcels Served by District. This Agreement applies to any parcel served by BGSD#10 on the effective date of this Agreement (the “Parcels”). BGSD#10’s service area is depicted on Exhibit 1. Blooming Grove has identified the parcels identified on Exhibit 3 as parcels being served by BGSD#10. Exhibit 2 is Dane County’s list of parcels within the BGSD#10 service area. It is not the intent of either Party to exclude from the terms of this Agreement any parcel not identified in Exhibits 2 or 3. Should any such parcel be found to exist, the Parties shall confirm the information and proceed as if the parcel was included on either Exhibit 2 or Exhibit 3.
4. 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 BGSD#10 Sewer 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 0 below. Madison acknowledges and agrees that it has had a sufficient opportunity

to review and assess the condition of the BGSD#10 Sewer Improvements. Blooming Grove will provide Madison with all mapping, real estate and facility records in its possession, as required by Madison for the transfer of ownership and operation of the BGSD#10 Sewer Improvements in the Blooming Grove parcels identified on Exhibits 2 & 3 to Madison, 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 BGSD#10 Sewer Improvements or real property interests of Blooming Grove are subject to any mortgage, lien, security interest, or other encumbrances. Blooming Grove further represents that it has disclosed all BGSD#10 assets and liabilities known to Blooming Grove, including any potential assets or liabilities that may be known to Blooming Grove.

5. Transfer of Assets and Liabilities. All assets and known liabilities associated with the BGSD#10 shall be conveyed by Blooming Grove and accepted by Madison, including any property rights that may be held by Blooming Grove for BGSD#10 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 BGSD#10. 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 BGSD#10 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 BGSD#10 shall be billed by Blooming Grove for service through December 31, 2016. Also in January 2017, Blooming Grove's associated MMSD service charges for the BGSD#10 will be paid in full through 12/31/2016, by BGSD#10. Following these billing collections and MMSD payment, Blooming Grove will transfer the remainder balance to Madison. This remainder balance shall be used to offset the costs for work described in Section 0 below, to the extent possible. The estimated cost of the repair work described below is \$14,500. If the BGSD#10 balance is less than this amount, the Town of Blooming Grove agrees to pay the difference up to the actual repair cost, not to exceed a total payment of \$14,500. If the BGSD#10 has funding in excess of the repair cost, it shall transfer to Madison and applied as a customer credit.
6. Service Connections and Billing. Upon transfer of assets and liabilities as provided for under Section 5, Madison agrees to provide sanitary sewer service to the Parcels. All of the 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 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 will be subject to the terms and conditions of the Plan.

7. Maintenance and Operations, Required Work or Correction of Deficiency.

- a. Maintenance and Operations. Madison shall assume all responsibility for maintenance and operation over the BGSD#10 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.
- b. Repair Work. Madison has determined that, as a condition of taking over BGSD#10, the following repairs or actions need to be addressed, which repairs are depicted on Exhibit 4:
 - (1) The investigation found one manhole structure that is buried (MH TWN 6539-005A). It shall need to be located and raised to grade. Additionally, three other manholes need to be reset, two with new castings.
 - (2) At the Northeast corner of Milwaukee Street and Stoughton Road, the existing sewer main crosses under a Department of Transportation owned steel sheet piling retaining wall. The sheeting has pierced the pipe. A point repair at this location is required.
 - (3) One run of sewer main has concrete set up in the flow line, obstructing the flow. This concrete will need to be removed completely from the inside of the pipe.
- c. Street Occupancy and Permits. 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.

8. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special costs on the Parcels, 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.

9. Amendment of Revenue Sharing Agreement. The following sections of the Revenue Sharing Agreement are amended as follows:
- a. Section 4.b. shall be deleted in its entirety.
 - b. Section 4.c. shall be amended by deleting the final two sentences.
10. 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.
11. 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.
12. 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.
13. 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

14. 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.
15. 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.
16. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.
17. 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.
18. 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.
19. 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.
20. 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.