

**INTERGOVERNMENTAL AGREEMENT REGARDING
THE MID TOWN ROAD RIGHT-OF-WAY
BETWEEN THE CITY OF MADISON AND THE TOWN OF VERONA**

THIS AGREEMENT is 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 Verona (“Town”), a Wisconsin municipal corporation with offices at 335 N. Nine Mound Rd., Verona, WI 53593.

RECITALS

WHEREAS, Wisconsin Statutes, Section 66.0301, authorizes the Parties to contract for the joint exercise of their powers and duties, and sharing of expenses arising therefrom; and,

WHEREAS, Wisconsin Statutes, Section 66.0707, authorizes a city to levy special assessments for municipal work or improvements against property in an adjacent town, under certain conditions; and,

WHEREAS, Mid Town Road (the “Road”), aka Mid-Town Road & Midtown Road, runs from Timber Lane in the Town east approximately 4.3 miles to S. Gammon Rd. in the City and generally serves as the northern boundary line of the Town. From S. Pleasant View Rd. (formerly County Highway M) east to S. Gammon Rd. (the “Adjustment Area”), some portions of the Road are entirely in the City, and other portions are equally in both jurisdictions; and,

WHEREAS, the City wishes to improve and reconstruct the Road in the Adjustment Area from S. High Point Rd. to S. Gammon Rd. (the “Project”) as the Road in this area primarily serves City residents and the improvements thereto will benefit City residents; and,

WHEREAS, the Town does not wish to fully participate financially in the planned Project; and,

WHEREAS, in the near future, similar improvements and reconstruction may be necessary for the Road in the Adjustment Area outside of the Project area, and municipal boundary lines in this area may still lead to issues in funding said improvements and reconstruction; and,

WHEREAS, the Parties have agreed to enter into a Boundary Adjustment Agreement Regarding the Mid Town Road Right-of-Way (the “Boundary Adjustment Agreement”), executed concurrently with this Agreement, which will cause the entire width of the Road in the Adjustment Area to be in the City of Madison, the entire cost of future maintenance and responsibility for the Road in the Adjustment Area to be borne by the City, and the entire cost of the Project to be paid for by the City; and,

WHEREAS, in recognition of the City taking on this responsibility for the Project and the maintenance and responsibility of the Adjustment Area, the Town agrees to establish a procedure whereby the City may recover for special assessments against property in the Town located adjacent to the Adjustment Area, and to make a payment to the City of a portion of the costs it would otherwise bear for the Project which will be applied toward the special assessments levied against Town parcels.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the City and the Town do agree as follows:

1. Purpose. The purpose of this Intergovernmental Agreement (the "Agreement") is to recognize the additional responsibilities that will be assumed by the City by shifting the portion of the Town's northern boundary that runs through the center of the Road in the Adjustment Area south so that the entire right-of-way of the Road in the Adjustment Area is located in the City. As a result of this boundary adjustment, the maintenance and responsibility of the Road in the Adjustment Area will be the sole responsibility of the City, as will the Project. In exchange, the Town is agreeing to follow the procedures set forth in Wis. Stat. Sec. 66.0707 regarding the levying of special assessments by the City on property in the Town adjacent to the Adjustment Area that is specially benefitted by certain improvements constructed by the City in the Adjustment Area ("Benefitted Town Parcels"), and to be responsible for said assessments in the event the levy or imposition is not approved by the Town. In addition, the City agrees to apply the Town's \$20,000 contribution as a credit against the special assessments levied or to be levied against Benefitted Town Parcels.
2. Effective Date. This Agreement will become effective concurrent with the Boundary Adjustment Agreement, and will remain in full force and effect until all of the properties subject to this Agreement are no longer in the Town.
3. Scope of Agreement. In addition to the payment under Section 4 below, this Agreement only involves special assessments levied by the City on Benefitted Town Parcels. Exhibit 1 to this Agreement is a Map showing all of the Benefitted Town Parcels that will be subject to this Agreement.
4. Payment by Town. In recognition of the City taking responsibility for the entire Project and the ongoing maintenance responsibilities of the Road in the Adjustment Area, the Town agrees to pay to the City \$20,000 upon completion of the Project. The payment by the Town shall be applied to reduce the special assessments levied against each Benefitted Town Parcel by the City for costs associated with the Project or subsequent public improvements within the Adjustment Area at the time each Benefitted Town Parcel is subject to special assessment. Each Benefitted Town Parcel shall be allocated a share of the \$20,000 credit based on the number of linear feet of frontage it has adjacent to Midtown Road as compared to the total of such frontage for all Benefitted Town Parcels. The Town shall pay the required amount to the City within ninety (90) days of the City sending notice to the Town that the Project is complete. The Town's failure to make this payment may be enforced by an action for specific performance.
5. Special Assessments. The Parties recognize that as a result of the boundary adjustment, the City may, from time to time, find that it is necessary to levy special assessments for public improvements under Madison General Ordinances (MGO) Sec. 4.09 and Wis. Stats. Secs. 66.0701 or 66.0703 against Benefitted Town Parcels. Notwithstanding anything to the contrary in this Agreement, nothing herein shall be construed as, or as requiring, authorization by the Town for any special assessments for any costs related to public water or sanitary sewer improvements against Benefitted Town Parcels unless (a) the assessed property is actually receiving service through the facilities for which the assessment is

levied or (b) the Town otherwise consents to such special assessment by resolution. Any special assessments under this Section shall be apportioned to and collected from Town properties in the same manner as properties in the City immediately adjacent to the Adjustment Area, and shall not in any respect discriminate against Town properties. Subject to the requirements of MGO Sec. 4.09 and Wis. Stats. Sec. 66.0707, the Parties agree that if the City seeks to levy a special assessment under Wis. Stat. Sec. 66.0707(1) against Benefited Town Parcels in accordance with this Agreement, that the Town will promptly consider a resolution authorizing the special assessment sought by the City, and either approve or reject the resolution. If the Town approves the resolution, Wis. Stat. Sec. 66.0707(3) shall apply. However, if the Town rejects the resolution, the Town hereby agrees to be responsible for the entire amount of the special assessment properly levied on Benefited Town Parcels, and shall pay said amount in full to the City within ninety (90) days of said rejection. If the Town rejects the resolution and fails to timely pay the full amount of the special assessment to the City, the City may collect the balance due by pursuing collection in Dane County Circuit Court, or by any other legal or equitable means available to the City. In any resulting litigation, the only defense to nonpayment by the Town shall be either that the City lacked the authority to levy the special assessment against the Benefited Town Parcel under Wis. Stat. Sec. 66.0707, the City did not follow its own procedures with respect to the special assessment as set forth in the Madison General Ordinances or all or part of the special assessments as levied are contrary to any other applicable legal requirement or the terms of this Agreement. In pursuing said special assessments against Benefited Town Parcels, the City agrees to provide the Town property owners the same protections and rights as property owners in the City subject to the same special assessment.

6. Nondiscrimination. In the performance of 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, political beliefs, or student status. The Parties further agree not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin. The parties further agree not to discriminate against any individual or property on the basis of that individual's residency or property's location, within the Town.
7. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered or certified United States mail, return receipt requested, at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or three (3) days after notice is deposited in the mail. Any party may, at any time, change its notice address by giving the other party written notice of the new address.

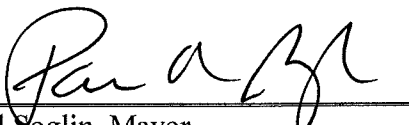
| <u>Name</u> | <u>Address</u> |
|--------------|--|
| Rob Phillips | City Engineer 210 MLK Jr. Blvd., Room 115 City-County Building Madison WI 53703 |
| Rose Johnson | Town Administrator/Director of Public Works 335 N. Nine Mound Rd. Verona, WI 53593 |

8. 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.
9. Final Agreement. This Agreement and the Boundary Adjustment Agreement entered into by the Parties on this date constitute the entire agreement of the Parties with respect to the subject matter hereof, and may only be modified or supplemented by an additional writing between the Parties. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
10. Liability. In the performance of their duties under this Agreement, each party shall be responsible for the consequences of its own acts or omissions and those of its employees, Boards, Commission, Agencies, Officers, and Representatives and be responsible for losses, claims and liabilities, which are attributed to such acts or omissions. 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. In situations involving joint liability, each party shall be responsible for that portion of the consequences due to 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.
11. 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.
- c. This Agreement is intended to benefit the parties hereto and their respective officials and shall not be construed to create any right or benefit on behalf of any person, firm, corporation or other entity not a party hereto.

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 CITY OF MADISON



Paul Soglin, Mayor

7-26-11
Date

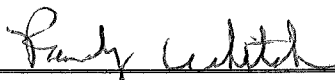


Maribeth Witzel-Behl, City Clerk

7-19-2011
Date

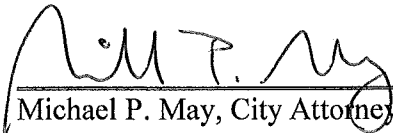
Countersigned:

Approved as to form:

for 

Randy White, City Comptroller


7-25-11
Date



Michael P. May, City Attorney

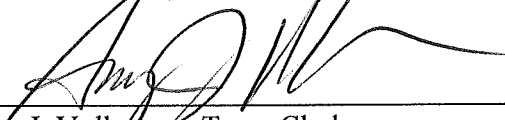
26 JULY 2011
Date

FOR THE TOWN OF VERONA



David K. Combs, Town Chair

7-15-2011
Date



Amy J. Volkmann, Town Clerk

7-14-2011
Date



Allen D. Reuter, Town Attorney

7-18-2011
Date

