

**BOUNDARY ADJUSTMENT AGREEMENT
REGARDING THE NORTH PLEASANT VIEW ROAD RIGHT-OF-WAY
BETWEEN THE CITY OF MADISON AND THE CITY OF MIDDLETON**

THIS AGREEMENT, is 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 (“Madison”), and the City of Middleton, a Wisconsin municipal corporation with offices at 7426 Hubbard Ave., Middleton, WI 53562 (“Middleton”).

RECITALS

WHEREAS, Wisconsin Statutes, Section 66.0301(6), authorizes municipalities whose boundaries are immediately adjacent at any point to enter into a written agreement determining all or a portion of common boundary line between the municipalities; and,

WHEREAS, contemporaneous with this agreement, Madison and Middleton are entering into an Intergovernmental Agreement Regarding Sanitary Sewer and Water Service on Blackhawk Road (the “IGA”) to allow, among other things, the property located at 8850 Blackhawk Road in Middleton, with the current parcel ID number 038-0708-152-9330-0 (the “Property”), to connect to Madison sanitary sewer and water services; and,

WHEREAS, the Property was annexed into Middleton on April 15, 2014 from the Town of Middleton, who, as part of the Final City of Madison and Town of Middleton Cooperative Plan Under Section 66.0307, Wisconsin Statutes (the “Cooperative Plan”) allowed the attachment of the western 33 feet of the North Pleasant View Road right-of-way adjoining the Property to Madison; and,

WHEREAS, now that the Property is in Middleton, and in anticipation of the Pleasant View Road improvement project, Madison and Middleton (the “Parties”) agree that it is in both Parties’ best interests to adjust the boundary between the Parties by shifting the jurisdictional line approximately 33 feet east from the eastern property line of the Property to the centerline of the road; and,

WHEREAS, following the Pleasant View Road improvement project, the Parties may find that it is necessary to reestablish the jurisdictional line based upon the centerline of the as-built roadway from Blackhawk Rd. north to Greenway Boulevard.

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

1. **Purpose.** The purpose of this Boundary Adjustment Agreement Regarding the North Pleasant View Road Right-of-Way (the “Agreement”) is to shift the jurisdictional boundary between the Parties to the centerline of North Pleasant View Road in between Blackhawk Road and Greenway Boulevard. This agreement will result in a piece of right-of-way approximately 330 feet long and 33 feet wide to be immediately adjusted to Middleton, and will allow future adjustments to account for the centerline of the right-of-way following the Pleasant View Road project.

2. Scope of Agreement. This Agreement impacts the municipal boundary between the Parties on North Pleasant View Road from Blackhawk Road north to just south of Greenway Boulevard (the “Adjustment Area”), which area is depicted on Exhibit 1. No other boundary lines between the Parties are affected by this Agreement, and this Agreement shall not impact the ability of the Parties to determine their boundary lines in the future at this location, or any other.
3. Effective Date. Subject to the concurrent execution of the IGA, this Agreement will become effective after both Madison and Middleton publish this Agreement as Class I notices pursuant to the requirements of Wis. Stat. Section 66.0301(6)(c)1, or as soon thereafter as the Parties execute this Agreement. Neither Party shall publish this Agreement unless and until both parties have done all of the following in compliance with Wis. Stat. Section 66.0301(6)(c):
 - a. Provided at least twenty (20) days written notice by certified mail to each owner of property that may be affected by the boundary change provisions contained herein, and the owners of all immediately adjacent properties;
 - b. Published a Class 1 notice of a public hearing on this Agreement under Ch. 985, Stats.;
 - c. Held a public hearing on this Agreement in accordance with the published notice;
 - d. Approved this Agreement by resolution adopted by its governing body following the public hearing as provided in par. (c).

Notwithstanding the foregoing, if, within 30 days of the publication of this Agreement, a petition for referendum is filed in accordance with Wis. Stat. Section 66.0301(6)(c)2, this Agreement shall not be effective until the results of the election in favor of this Agreement are certified. In the event of a referendum whose results do not approve this Agreement, this Agreement shall be void.

4. Term. The term of this Agreement is 10-years from the effective date as determined in Section 3. Upon the expiration of this term, all provisions of this Agreement expire, except that any boundaries adjusted pursuant to this Agreement shall remain in effect unless otherwise changed.
5. Boundary Adjustment Procedure. The municipal boundary in the Adjustment Area shall be adjusted as provided in this Section:
 - a. Immediate Adjustment. The boundary line of Middleton in the 1200 block of North Pleasant View Road adjacent to the Property shall be shifted east approximately 33 feet to the centerline of the existing North Pleasant View Road right-of-way to line up with the existing boundary line to the north on North Pleasant View Road to just south of Greenway Boulevard. Exhibit 2 to this Agreement sets forth the legal description of this right-of-way, and Exhibit 3 to this Agreement is a map showing the old and new boundary line between the Parties at the location.

- b. Future Adjustments. Following the completion of the Pleasant View Road improvement project, the Parties may find that the jurisdictional line no longer follows the centerline of the newly reconstructed highway. Upon agreement by the Parties as to the legal description of the new centerline of the right-of-way, the boundary line in the Adjustment Area shall again be shifted to line up with the new centerline of North Pleasant View Road.
 - c. Boundary Adjustment Procedure. In order to effectuate a boundary adjustment under this Agreement, the party gaining territory shall enact a boundary change ordinance and satisfy the filing and recording requirements as set forth in Wis. Stat. Sec. 66.0301(6)(e). If a future adjustment results in both Madison and Middleton gaining and losing territory, both Parties shall separately satisfy this requirement.
6. Infrastructure Responsibilities. Madison makes no representations about the condition of any roadway or other municipal infrastructure contained within the Adjustment Area right-of-way, and Middleton accepts any such improvements as-is. Following the immediate adjustment under Section 5.a., Middleton shall be responsible for ¼ of the maintenance and improvement costs for the North Pleasant View Road and Blackhawk Road intersection, the western 33 feet of the North Pleasant View Road right-of-way from Blackhawk Road north to the existing jurisdictional line near Greenway Boulevard, and any storm water features in this right-of-way. Following the Pleasant View Road project and any future adjustments as provided in Section 5.b., the Parties shall each be responsible for their portion of the right-of-way, unless otherwise agreed to.
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
Shawn Stauske	Public Works Director/City Engineer 7426 Hubbard Ave. Middleton, WI 53562

8. Liability. Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be

responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.

9. 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.
10. Binding Effect. The Parties have entered into this Agreement under the authority of Wis. Stat. §§ 66.0301(2). The Parties agree that this Agreement shall be binding upon all parties, as well as their respective heirs, successors and assigns.
11. No Third Party Beneficiary. This Agreement is intended to be solely between Madison and Middleton. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
12. Final Agreement. This Agreement and the IGA entered into by the Parties on this date constitutes the entire agreement of the Parties with respect to the boundary adjustment in the North Pleasant View Road right-of-way and supersedes all prior negotiations, representations or agreements, either written or oral dealing with this subject matter.
13. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.
14. 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.
15. 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.
16. 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.

17. 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 CITY OF MADISON

Paul Soglin, 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

FOR THE CITY OF MIDDLETON

Kurt J. Sonnentag, Mayor

Date

Lorie J. Burns, City Clerk

Date

EXHIBIT 1

MAP OF ADJUSTMENT AREA

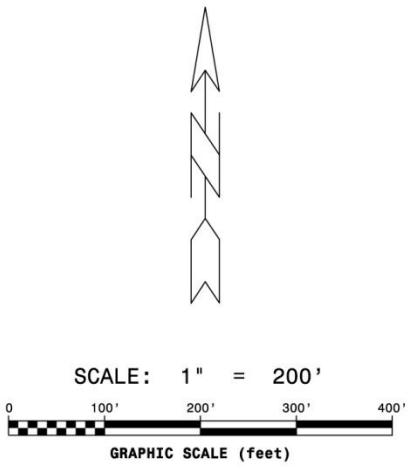
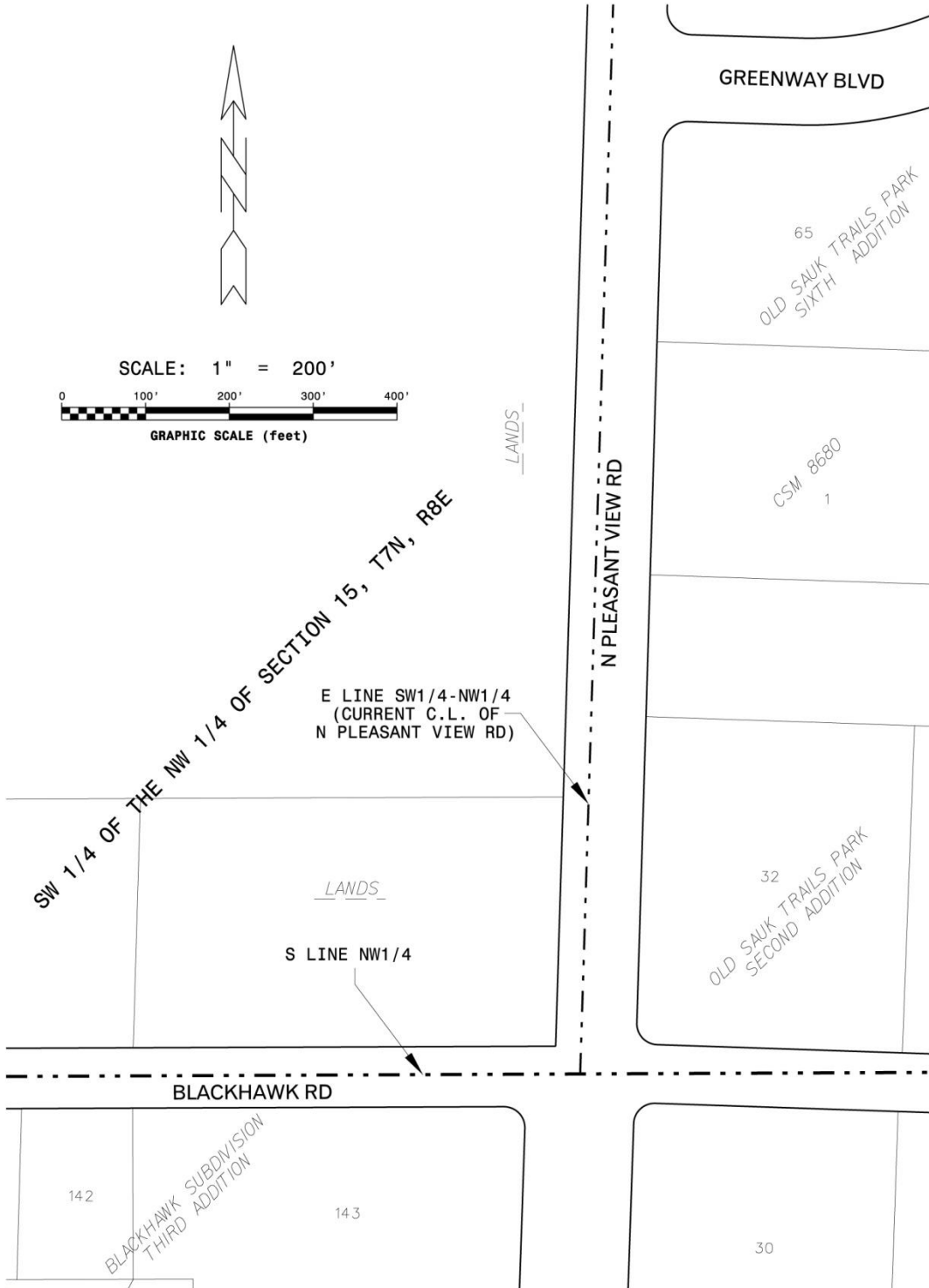


EXHIBIT 2
LANDS TO BE IMMEDIATELY ADJUSTED TO THE CITY OF MIDDLETON
FROM THE CITY OF MADISON

Part of the Southwest ¼ of the Northwest ¼ of Section 15, Township 7 North, Range 8 East, City of Madison, Dane County, Wisconsin, more fully described as follows:

The East 33 feet of the South 330 feet of the said Southwest ¼ of the Northwest ¼ of Section 15.

EXHIBIT 3
MAP SHOWING OLD BOUNDARY LINE AND NEW BOUNDARY LINE
FOLLOWING THE IMMEDIATE ADJUSTMENT

