



WISCONSIN
UNIVERSITY OF WISCONSIN-MADISON

LETTER OF TRANSMITTAL

TO: Jeff Quamme – City of Madison Land Records
DATE: January 25, 2018
PROJ. NO: #14L2T
FROM: Aaron Williams – Assistant Campus Planner

RE: EAST CAMPUS MALL MAINTENANCE AGREEMENT AMENDMENT – UW SIGNED

- | | | |
|---|---|--|
| ☐ Copy of Correspondence | ☒ Signature | ☐ Design Report |
| ☐ Report | ☐ Plans, Prints | ☐ Program Statement |
| ☐ Agency Request | ☐ Specifications | ☐ Application Materials |

COPIES	DATE	NO.	DESCRIPTION
1 set	1-25-18		UW Signed Maintenance Agreement Amendment

TRANSMITTAL FOR as checked below:

- | | | |
|--|---|--|
| ☒ For your use | ☐ Make corrections as noted | ☐ Approved |
| ☐ As requested | ☐ Resubmit _____ copies | ☐ Approved as corrected |
| ☐ For review and comment | ☐ Submit _____ copies for distrib. | ☐ _____ |

REMARKS:

Jeff,

Please find the signed East Campus Mall Maintenance Agreement Amendment signed by UW. Please route on your end and send us a completed final PDF for our records,

Thank you,

Aaron Williams

aaron.williams@wisc.edu

608-890-4202

Facilities Planning & Management

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF MADISON
AND THE UNIVERSITY OF WISCONSIN-MADISON TO PROVIDE FOR THE
MAINTENANCE OF EAST CAMPUS MALL FROM REGENT STREET TO WEST
DAYTON STREET AGREEMENT**

THIS AMENDMENT, is made and entered into by and between the City of Madison, a Wisconsin municipal corporation ("City"), and the Board of Regents of the University of Wisconsin ("University") and is effective upon the execution by the parties hereto. The City and the University may be collectively referred to herein as the "Parties".

RECITALS

WHEREAS, on October 12, 2005, the Parties entered into "An Agreement Between the City of Madison and the University of Wisconsin-Madison to Provide for the Maintenance of North Murray Street From Regent Street to West Dayton Street" (the "Agreement"), attached hereto as Exhibit 1, which Agreement led to the establishment and development of a segment of the Murray Street pedestrian mall connecting Regent Street and Dayton Street. The Agreement laid out each party's responsibility over the pedestrian mall; and,

WHEREAS, since 2005, the Agreement has proven to be mutually beneficial to the Parties, and the public; and,

WHEREAS, in 2007, the City officially changed the name of the Murray Street to East Campus Mall, which pedestrian mall now runs from Regent Street north approximately 2600 feet to State Street; and,

WHEREAS, the University has obtained approval to reconstruct the existing South Eastern Recreational Center (the "SERF"), which reconstructed facility will sit at the intersection of the East Campus Mall pedestrian mall and West Dayton Street, and includes the installation of some new facilities within the pedestrian mall; and,

WHEREAS, the City is agreeable to the University's expanded use of the East Campus Mall, subject to the additional assignment of maintenance responsibility as set forth herein; and,

WHEREAS, because the Agreement has been mutually beneficial to the Parties, the Parties are agreeable to extending the length of the Agreement through 2037.

NOW, THEREFORE, the Parties hereto agree to incorporate the foregoing recitals into this Agreement, and in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. The Agreement shall be amended as follows:

- A. The title of the Agreement is amended as follows: “An Agreement Between the City of Madison and the University of Wisconsin-Madison to Provide for the Maintenance of ~~North Murray Street~~ the East Campus Mall From Regent Street to West Dayton Street”.
- B. All references to North Murray Street are replaced with “East Campus Mall”.
- C. Section 8.a. of is amended to replace “2025 with “2037”. This will extend the Agreement for an additional twenty-years from the execution of this Amendment.
- D. Section 9 is replaced as follows:
 - “9. Non-Discrimination. In the performance of the services under this agreement, the Parties agree to abide by their own respective affirmative action plans and in doing so agree not to discriminate, in violation of any state or federal law, against any employee or applicant because of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The Parties further agree not to discriminate, in violation of any state or federal law, against any subcontractor or person who offers to subcontract on this Agreement because of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs.”
- E. Section 14 is amended to replace the City’s notice provision with:

City of Madison
City Engineer
210 Martin Luther King, Jr. Blvd., Room 115
Madison, WI 53703

F. Appendix A is Amended to add the following items:

Maintenance Item	Area A	Area B
Masonry Piers at North End of Area B and South End of Area B		University
Bike Racks Along West Side of and Serving New SERF Building		University

2. SERF Reconstruction. The work to be performed within the East Campus Mall right-of-way, including the improvements being made to that space, as part of the SERF reconstruction project shall be made in accordance with the approved plans and specifications and the City of Madison Standard Specifications for Public Works Construction.

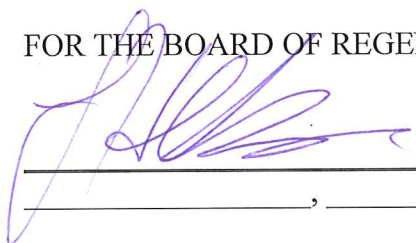
3. Legal Provisions.

A. 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.”

B. The Parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hands at Madison, Wisconsin.

FOR THE BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN



_____, _____

1/23/18

Date

FOR THE CITY OF MADISON

Paul R. Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael P. May, City Attorney

Date

Execution of this Agreement by the City is authorized by Resolution Enactment No. RES ____ - _____,
ID No. _____, adopted by the Common Council of the City of Madison on _____, 20__.

EXHIBIT 1
Original Agreement

AN AGREEMENT
BETWEEN THE CITY OF MADISON
AND
THE UNIVERSITY OF WISCONSIN-MADISON

TO PROVIDE FOR THE MAINTENANCE OF NORTH MURRAY STREET FROM
REGENT STREET TO WEST DAYTON STREET

THIS AGREEMENT made and entered into this 12th day of October, 2005, (the "Agreement") by and between the Board of Regents of the University of Wisconsin System, hereinafter referred to as the "University", and the City of Madison, a Dane County, Wisconsin municipal corporation, hereinafter referred to as the "City."

RECITALS

WHEREAS, the City of Madison is the owner of the public street right of way known as "North Murray Street" laid out between Regent Street and West Dayton Street; and,

WHEREAS, the University of Wisconsin-Madison is interested in making and maintaining certain improvements to North Murray Street consistent with a pedestrian mall concept; and,

WHEREAS, the City is interested in insuring the public's long term use of North Murray Street; and,

WHEREAS, the City and the University entered into an agreement on March 28, 1996 entitled, "Kohl Center Planned Development District, Contract for Public Improvements, Contract No 1612" which outlined maintenance responsibilities for the pedestrian underpass at North Murray Street; and,

WHEREAS, the City is planning to construct a bike path adjacent to the Wisconsin Department of Transportation railroad right of way; and,

WHEREAS, the existing pedestrian underpass at North Murray Street will need to be lengthened as a result of the bike path construction, and,

WHEREAS, the University is planning to construct housing south of the railroad right of way and is planning to extend utilities on North Murray Street to serve the new building; and,

WHEREAS, Section 66.0301 of the Wisconsin Statutes authorizes the University and the City to enter into agreements for the receipt or furnishing of services or joint exercise of any power or duty required;

NOW, THEREFORE, the City and the University hereby agree as follows:

1. **Areas covered by this agreement.**

This agreement covers two areas as follows:

Area A is that portion of North Murray Street from 10.0 feet south of the north right of way line of Regent Street (the north back of curb along Regent Street extended through the North Murray Street intersection) to a line perpendicular to the centerline and 257.0 feet north of the Regent Street right of way (end of asphaltic pavement).

Area B is that portion of North Murray Street from a line perpendicular to the centerline and 257.0 feet north of the Regent Street right of way (end of asphaltic pavement) to 10.0 feet north of the south right of way line of West Dayton Street (the south back of curb along West Dayton Street extended through the intersection).

2. **Reconstruction of North Murray Street.** The reconstruction of North Murray Street areas A and B shall take place in accordance with plans and specifications prepared under the direction of the Division of Facilities Development of the State of Wisconsin Department of Administration and approved by the City's Board of Public Works and Common Council and in accordance with City of Madison Standard Specifications for Public Works Construction, pursuant to that certain Development Agreement, 21 & 35 North Park Street PUD, Contract No. 2003, Project No. 53B2003, between Park Street Properties I LLC and the City, dated September 22, 2004.
3. **Public Pedestrian Access.** The public shall be allowed continuous pedestrian access through areas A and B unless maintenance required by the University or the City requires North Murray Street to be closed.
4. **Public Vehicular Access.** All properties not owned by the University shall be allowed continuous vehicular access at driveway locations within areas A and B unless restricted by the City.
5. **Maintenance.** The University at its sole expense shall be responsible for those items listed as University in Appendix A and the City at its sole expense shall be responsible for those items listed as City in Appendix A.
6. **Special Assessments, Impact Fees and other Charges.** No provision contained within this agreement shall preclude the City from assessing costs, collecting impact fees or collecting other charges from abutting property owners for construction, reconstruction, maintenance or service provided the assessment, impact fee or charge is typically imposed for the work or service.

7. **Utilities.** The City shall have permitting authority over private utilities and University utilities being installed on North Murray Street. City of Madison General Ordinances and Standard Specifications for Public Works Construction shall apply to utilities excavating and installing facilities in the public right of way. All public and private utilities shall have the right to access North Murray Street for construction, maintenance, inspection and repair.
8. **Term of Agreement.**
- a. The maintenance work to be performed under this agreement shall commence on approximately December 1, 2005, and the agreement shall remain in force and effect until December 31, 2025, after which it shall continue on a month to month basis, subject to either party giving the other ninety (90) days written notice of termination. No reason shall be required for termination after the above date.
 - b. **Termination on Default** It is mutually understood and agreed that if the University shall be in default for breach of, noncompliance with, or failure to perform any covenant, agreement, condition or provision required on the University's part to be kept, complied with or performed hereunder each or any of which events or occurrence shall constitute default of the University under this Agreement, the City shall have the right to terminate this Agreement as hereinafter provided. If the City, in the event of any such default, desires to terminate this Agreement, City shall give written notice of default to the University and the University shall have a specified period of not less than ninety (90) days after the giving of such notice to cure the default. If the default exists at the end of such specific period, the City may, in addition to any and all remedies provided by law or this Agreement, declare the term of the Agreement terminated.
9. **Non-Discrimination.** 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 because of race, religion, color, age, disability, sex or national origin.
10. **Misrepresentation.** All terms and conditions with respect to this Agreement are expressly contained herein and both parties agree that no representative or agent of the City or the University has made any representation or promise with respect to this Agreement not expressly contained herein.

11. **Prior Agreements.** Where this agreement conflicts with other agreements pertaining to the maintenance of this portion of North Murray Street, the provisions of this agreement shall take precedence over previous agreements.
12. **Severability.** If any term or provision of this Agreement or the application thereof to the City or University or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall, or the application of such term or provision to the City or University or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by law.
13. **No Waiver.** Failure or delay on the part of either party to enforce any of the terms, covenants, conditions, or agreements hereof shall not operate as a waiver thereof nor avoid or affect the right of the party to enforce the same upon the subsequent default or breach. Except as otherwise provided in this lease, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rule of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.
14. **Notices.** Notices shall be sufficient if sent by certified mail, postage prepaid, addressed to or personally delivered to:

City

City of Madison

Real Estate Development Unit Director
Suite GR-100, Madison Municipal Building
215 Martin Luther King, Jr. Blvd.
Madison, WI 53703

University

Board of Regents of the
University of
Wisconsin System
1860 Van Hise Hall
1220 Linden Drive
Madison, WI 53706

AN AGREEMENT BETWEEN THE CITY OF MADISON AND THE UNIVERSITY
OF WISCONSIN-MADISON TO PROVIDE FOR THE MAINTENANCE OF NORTH
MURRAY STREET FROM REGENT STREET TO WEST DAYTON STREET

IN WITNESS THEREOF, the parties hereto execute this Agreement the day first above
written:

Witness:

Gary A. Brown

Signed for and on behalf of The Board of
Regents of the University of Wisconsin
System:

Alan R. Fish 6-26-05
Alan R. Fish Date
Associate Vice Chancellor

Witness:

David Cieslewicz

Signed for and on behalf of City of Madison:

Dave Cieslewicz 10-12-05
Dave Cieslewicz Date
Mayor

Ray Fisher

Ray Fisher 10-5-05
Ray Fisher Date
City Clerk

Approved As To Form:

Michael May 12 Oct, 2005
Michael May Date
City Attorney

Countersigned:

Joan Brasser 10/10/05
Joan Brasser Date
City Controller

Appendix A - North Murray Street Maintenance Responsibilities

Maintenance Item	Area A	Area B
Pedestrian underpass at RR structure maintenance.		City
Pedestrian underpass at RR retaining wall maintenance.		City
Pedestrian underpass at RR railing maintenance.		City
Pedestrian underpass at RR lighting maintenance.		University
Pedestrian underpass at RR electric utility bills.		University
Pedestrian underpass at RR sweeping.		University
Pedestrian underpass at RR graffiti removal.		University
Pedestrian underpass at RR snow and ice removal.		University
Landscaping.	University	University
Maintenance and repair of surface features such as curb and gutter, sidewalk, special paving, asphaltic pavements, concrete pavements.	City	University
Storm Sewer Main, Inlets and Leads.	City	City
Storm Sewer Laterals to buildings and parking lots.	Storm Sewer Laterals are owned and maintained by the entity being served.	
Sanitary Sewer.	City	City
Sanitary Sewer Laterals.	Sanitary Sewer Laterals are owned and maintained by the entity being served.	
Street and Pedestrian Lighting Maintenance.	University	University
Street and Pedestrian Lighting Electric Utility Bills.	University	University
Street and sidewalk sweeping.	City	University
Snow and ice removal.	University	University
RR track and adjacent lands above the pedestrian underpass.	The railroad track and adjacent corridor above the railroad underpass is maintained by the railroad.	
Pedestrian / Bike Path adjacent to the RR corridor and all associated items.		City