

**CONSTRUCTION AND MAINTENANCE AGREEMENT FOR ANCILLARY  
IMPROVEMENTS IN MARSHALL PARK**

Between the City of Madison and the Madison Metropolitan Sewerage District

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THIS AGREEMENT, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “MADISON”), and the Madison Metropolitan Sewerage District, a metropolitan sewerage district (hereinafter referred to as “MMSD”), shall be effective when signed by both Parties.

WITNESSETH:

**WHEREAS**, MMSD constructed and operates MMSD Pumping Station 15 within Marshall Park, a municipal park owned by MADISON; and,

**WHEREAS**, MMSD has determined the need for the rehabilitation of MMSD Pumping Station 15, which rehabilitation will benefit MADISON, MMSD, and surrounding communities; and,

**WHEREAS**, as part of the rehabilitation project, MMSD wishes to make ancillary public improvements, including the addition of restrooms, an aquatic invasive species control station (hereinafter referred to as “AISCS”), a bioretention basin, a bicycle repair station, an informational kiosk, pavers, landscaping and other public features (collectively referred to as “Ancillary Improvements”) within Marshall Park, all of which will benefit MADISON, MMSD, and surrounding communities; and,

**WHEREAS**, MADISON’s Board of Parks Commissioners approved the plans for the rehabilitation of MMSD Pumping Station 15 and the construction and installation of the Ancillary Improvements (the “Project”) on January 13, 2016 and the resulting use of portions of Marshall Park; and,

**WHEREAS**, MADISON and MMSD have discussed initial capital and construction costs for the Project as well as the future operation and maintenance costs associated with the Ancillary Improvements, and wish to provide for an agreed upon allocation and responsibility therefor, all as provided herein; and,

**WHEREAS**, Section 66.0301 of the Wisconsin Statutes authorizes cities, metropolitan sewerage districts and other specified public entities to enter into agreements for the joint exercise of any power or duty required or authorized by law; and,

**WHEREAS**, it is in both Parties’ interest and the general public interest to engage in a cooperative effort for the construction, maintenance and operation of public works and public improvements such as those described herein and to enter into an agreement allocating the costs and responsibilities for the Project and the future maintenance of the Ancillary Improvements.

**NOW, THEREFORE**, in consideration of the above recitals, which are incorporated herein by reference, 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 Construction and Maintenance Agreement for Ancillary Improvements in Marshall Park (the “Agreement”) is to set forth the terms and conditions relating to the Project, including the granting of a temporary limited easement for project construction purposes, as well as the transfer and future maintenance of the Ancillary Improvements in Marshall Park.
2. Temporary Limited Easement for Construction of the Project. To facilitate the Project, MADISON agrees to grant MMSD a temporary limited easement (TLE) for the purposes of the construction of the Project over the following lands:

All of Lot 6, Block 1, Forest Harbor Plat, along with the western 10 feet of Lot 5, Block 1, Forest Harbor Plat and the northern half of the western 110 feet of vacated Harbor Circle, all in the southeast quarter of Section 12, Town 7 North, Range 8 East, City of Madison, Dane County, Wisconsin.

This TLE area (the “Project Area”) includes the portion of Marshall Park subject to the Easement for Sanitary Sewer Pumping Station at Marshall Park granted by Madison to MMSD in 1973 (Doc. No. 1358656).

Following completion of the Project and acceptance of the improvements by MADISON as provided for in Section 8 below, the TLE area shall be restored as close as reasonably possible to the condition it was in prior to the construction of the Project, at which point the TLE shall expire. Access to the TLE area during construction may be restricted by MMSD.

3. The Project. The Project plans are attached hereto and incorporated herein as Exhibit A. Minor changes in these plans may be approved by MADISON’s Park Superintendent. Major changes to these plans will need the approval of MADISON’s Board of Parks Commissioners and possibly an amendment to this Agreement.
4. Construction. MMSD shall construct, at its expense and under its control, and pay for all capital costs associated with the Project. MMSD’s obligations include:
  - a. MMSD shall provide design, details, plans, specifications, bid items, quantities and all other information necessary to construct the improvements and shall comply with the public works bidding requirements of Wis. Stat. Sec. 66.0901 during the Project.
  - b. MMSD shall monitor construction of the improvements and provide all necessary construction administration, field inspection, quantity verification, field surveying, engineering, change order negotiation/approval, technical interpretations, shop drawing review, public relations, etc., related to the work.
  - c. MMSD shall obtain all necessary permits and approvals associated with construction of all facilities.

- d. MMSD shall demolish, remove and properly dispose of all existing facilities within the Project Area, as needed to construct the improvements.
  - e. MMSD shall ensure that any warranties that would otherwise apply to the restroom facilities, the AISCs, and the bioretention basin shall extend to MADISON, as permitted by the manufacturer.
5. Easements. MMSD shall retain all of its existing easement rights, which rights are sufficient to construct, maintain, and operate its wastewater facilities within Marshall Park.
6. Division of Responsibilities. Following completion of the Project, and acceptance of the improvements by MADISON as provided for in Section 8 below, the Parties shall assume responsibility for the Project improvements as follows:
  - a. MMSD. MMSD shall pay for all future operation and maintenance costs associated with Pumping Station 15 and all associated facilities and features with the TLE area north of (and including) the permeable paver path separating Pumping Station 15 from the restrooms as shown on Exhibit A. This includes the Pumping Station 15 exterior and interior, the bicycle repair station, the informational kiosk and any other items within the above-described area.
  - b. MADISON. MADISON shall pay for all future operation and maintenance costs associated with the Project improvements south of the permeable paver path separating Pumping Station 15 from the restroom as shown on Exhibit A. This includes the restroom facility, the AISCs, the bioretention basin and any other items within this area.
7. Specific Obligations. Notwithstanding the foregoing general division of responsibilities, the Parties agree to the following specific ongoing cost sharing and maintenance obligations:
  - a. Utility Costs. MMSD shall pay for all future utility costs associated with Pumping Station 15, the restrooms, the AISCs and the remaining Ancillary Improvements. This includes all water, sewer, heat and electricity for these facilities.
  - b. Landscaping. MADISON shall maintain all grassed areas and landscaping south of the permeable paver path that separates Pumping Station 15 from the restrooms, and MMSD shall maintain all grassed areas and landscaping north of the permeable paver path.
8. Acceptance of Improvements by MADISON. Following MMSD's completion of construction of the restrooms, the AISCs and the bioretention basin, MMSD shall notify MADISON and provide Madison with all relevant data regarding the improvements, including the plans and specifications. MADISON shall have thirty (30) days from the date of such notice to inspect the improvements to ensure that all applicable standards

have been met in the construction thereof. Upon inspection and confirmation that the improvements were built according to the plans and specifications of the Project, the City Engineer shall accept the improvements on behalf of MADISON, at which point MADISON shall assume full ownership and all liability associated with operation of these facilities, except for the utility costs as noted above. If MADISON fails to reject the improvements by written notice specifying the basis for rejection within said thirty (30) days, then the improvements shall be deemed accepted by MADISON. Upon acceptance and assumption, MADISON shall:

- a. Be responsible for all regulations regarding usage of the restrooms and the AISCs, including seasonal availability, daily opening/closing of the facilities, cleaning, supplies, annual start-up and shutdown, enforcement, and all other related obligations; and,
  - b. Maintain all equipment and appurtenances serving the Restrooms and the AISCs, which includes, but is not limited to, walls, interiors, electrical and plumbing fixtures, electrical wiring, water piping, drain piping, ventilation fans, hoses, signs, and doors.
9. 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 or the completion of the Project. 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 or by insurance coverage, and both Parties hereby preserve any and all said rights to the full extent of the law. This paragraph shall survive the termination or expiration of this Agreement.
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: (a) by United States mail, postage prepaid, to the Parties' respective addresses set forth below, with delivery presumed two (2) days following mailing; (b) by commercial delivery service with tracked delivery data serving as confirmation of actual delivery; or (c) by personal delivery, with delivery on the date personally delivered.

<u>Name</u>	<u>Address</u>
City of Madison	Parks Superintendent 210 MLK Jr. Blvd., Room 104 Madison, WI 53703
Madison Metropolitan Sewerage District	Chief Engineer & Director 1610 Moorland Rd. Madison, WI 53713

12. Final Agreement. This Agreement entered into by the Parties on this date constitutes the entire agreement between 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.

13. 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.

14. 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.
- d. Each person executing this Agreement represents and warrants that he or she is duly authorized to so act and execute this Agreement as represented below.

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

**FOR THE MADISON METROPOLITAN SEWERAGE DISTRICT**

\_\_\_\_\_  
D. Michael Mucha, Chief Engineer & Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bruce Borelli, Director of Engineering

\_\_\_\_\_  
Date

**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

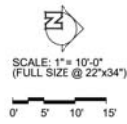
\_\_\_\_\_  
Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES 16-\_\_\_\_\_, ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2016, and the approval of the Board of Parks Commissioners on January 13, 2016 and June 8, 2016.

# EXHIBIT A: Project Plans



I:\BURNINGMOUNTAIN\40963-PS 15\CADD\DRAWINGS\DWG\PUMPING STATION 15\ELEMENTS\BASESHEET\_22X34.DWG Model  
 Plotted: 12/18/2015 10:48:11 AM By: 421TLB  
 Title: Pumping Station 15 Rehabilitation  
 State of Wisconsin - Professional Design Firm  
 License No. - 484-011 - Expires 1-31-16



CONSULTANTS

NO.	DATE	REVISION	DESCRIPTION

PLAN SHEET DESIGNATION

COVER

- GENERAL
- CIVIL
- LANDSCAPING
- DEMOLITION
- ARCHITECTURAL
- STRUCTURAL
- MECHANICAL
- PLUMBING
- HVAC
- ELECTRICAL
- INSTRUMENTATION

PROJECT NO: 140963

SCALE: AS NOTED

DRAWING DATE: 12/18/2015

DESIGNED BY: NMS

DRAWN BY: NMS

CHECKED BY: NMS

CLIENT

**MADISON METROPOLITAN  
SEWERAGE DISTRICT  
MADISON, WISCONSIN**

Madison Metropolitan Sewerage District

**PUMPING STATION 15  
REHABILITATION**

SHEET TITLE

**SITE RENDERING**

**L-02**

NOT FOR BIDDING