

**INTERGOVERNMENTAL AGREEMENT REGARDING
SANITARY SEWER AND WATER SERVICE ON BLACKHAWK ROAD
BETWEEN THE CITY OF MADISON AND THE CITY OF MIDDLETON**

THIS AGREEMENT, 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”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, on March 2, 1994 Madison and Middleton (the “Parties”) entered into the Agreement Between the City of Madison, the City of Middleton and Old Sauk Trails Park Limited Partnership Regarding Detachment of Lands and Between the City of Madison and the City of Middleton Authorizing Connection to the City of Madison’s Blackhawk Road Sewer, which agreement allows Middleton properties north of Blackhawk Road to connect to Madison’s sanitary sewer at the Blackhawk Road and North Pleasant View Road intersection; and,

WHEREAS, in 1997-1998 Madison installed a 12” water main along the southern portion of the Blackhawk Road right-of-way from North Pleasant View Road approximately 2800 feet west, and Madison also has sewer and water service within the Blackhawk Subdivision to the south of Blackhawk Road; and,

WHEREAS, the property located at 8850 Blackhawk Road in the City of Middleton, with the current parcel ID number 038-0708-152-9330-0 (the “Development Parcel”), is an approximately 3.627 acre parcel with a single-family residence served by private well and septic that lies immediately adjacent to the southeastern boundary of the Pleasant View Golf Course at the northwestern intersection of Blackhawk Road and North Pleasant View Road, and along Middleton’s jurisdictional boundary with Madison on the south and east, and the Town of Middleton on the west; and,

WHEREAS, because it would be cost prohibitive to extend the nearest Middleton water service to serve the property, the current owner and/or developer of the Development Parcel (the “Developer”) has submitted a request to the Madison Water Utility that the property be allowed to connect to Madison’s water service in Blackhawk Road in order to facilitate the redevelopment of the property with the construction of a planned 110 unit apartment complex; and,

WHEREAS, pursuant to Madison General Ordinances Sec. 13.16(2)(b), the Madison Water Utility is allowed to serve properties outside the corporate limits of Madison if the area is identified by an intergovernmental agreement, provided the property is subject to the same rules and ordinances governing water customers inside the City, service to the properties will not adversely affect service to properties within Madison, and service has been approved by the Water Utility General Manager; and,

WHEREAS, Wisconsin Stat. Sec. 66.0301(2) authorizes the Parties to contract for the receipt or furnishing of services or the joint exercise of their powers and duties; and,

WHEREAS, Wisconsin Stat. Sec. 66.0707, authorizes a city to levy special assessments for municipal work or improvements and impose special charges against property in an adjacent city, under certain conditions; and,

WHEREAS, Madison is agreeable to allowing the Development Parcel and additional Middleton properties to the west along Blackhawk Road, to connect to Madison's water supply, subject to the terms and conditions set forth in this Agreement.

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 Intergovernmental Agreement Regarding Sanitary Sewer and Water Service on Blackhawk Road (the "Agreement") is to set forth the terms and conditions of Madison's granting of the Developer's request to allow the Development Parcel to connect with Madison's water service in Blackhawk Road to facilitate the development of the property. This Agreement also allows additional future connections to Madison services from Middleton properties north of Blackhawk Road west along the Pleasant View Golf Course, subject to certain conditions.
2. Development Parcel. The Developer's request to connect the Development Parcel to Madison water service in Blackhawk Road is approved by Madison, subject to the terms and conditions set forth in this Section and Section 3.
 - a. Water Service. The Development Parcel may connect to Madison water service in Blackhawk Road and the Madison Water Utility agrees to provide the Development Parcel with water service in perpetuity.
 - b. Sewer Service. The Development Parcel may connect to the Madison sanitary sewer main located in Blackhawk Road, to the east of North Pleasant View Road. Middleton or the Developer shall install a sewer main, as designed and approved by Madison, to cross North Pleasant View Road to the north side of Blackhawk Road to serve the Development. Middleton may wish to have this sewer main extended further west along the north side of Blackhawk Road to potentially serve properties to the west along Blackhawk Road in the future. The Developer will have to either enter into a developer's agreement with Madison or obtain a street excavation permit from Madison for the public main installation. Upon the satisfactory construction of the main extension, Madison will accept the dedication of the improvements.
 - c. Development Specifics. The development proposal for the Development Parcel submitted to Middleton on April 10, 2014, as shown on Exhibit 1, calls for the construction of two apartment buildings, each with 55 units and underground parking stalls, along with two surface parking lots, private driveways, a pool and stormwater retention features (the "Development"). As a condition of the extension of water service to the Development Parcel, Middleton will require that the proposed western building in the Development on the Development Parcel be turned to face Blackhawk Road and the western parking lot be relocated and/or incorporated into the main parking lot. This would cause the apartment complex to

have more of a presence on Blackhawk Road, and with all of the parking being located behind the buildings the surface parking would be less visible from Blackhawk Road and properties in Madison. Middleton shall discuss any major changes to the development proposal, or future site changes to the Development Parcel, with the Madison Planning Division, before approving any such changes, and shall incorporate any reasonable requests that are consistent with the interests set forth in Madison's approved comprehensive plan and neighborhood plan for the area adjoining the Development Parcel.

- d. Right-of-Way Dedication and Improvement. Middleton will consult with Madison about the appropriate right-of-way dedication from the Developer in light of the future Pleasant View Road improvement project. If Middleton does not require sidewalk installation as part of the Development approval, Middleton should require a temporary grading easement so one can be constructed when North Pleasant View Road and/or Blackhawk Road are improved. Madison further encourages Middleton to require the installation of curbs and sidewalks along Blackhawk Road as part of the Development approval process.

3. Additional Terms and Conditions.

- a. Future Development Along Blackhawk Road. Except for the Development Parcel, any future development in Middleton west along Blackhawk Road, from North Pleasant View Road to the end of the Pleasant View Golf Course property (the Town of Middleton Blackhawk Ridge subdivision) must be either consistent with a Middleton neighborhood plan that is approved by Madison, or limited to single family housing of similar, or lesser, density to the Madison lands on the south side of the road. Such plan approval shall be made in writing by Madison's Planning Division Director following review and approval by Madison's Plan Commission.
- b. Additional Connections Along Blackhawk Road. Any future development meeting the requirements of Subsection a. shall be entitled to connect to Madison water and sanitary sewer service, if available. Madison shall not be required to extend any mains to serve these properties and, unless a separate agreement is reached, any such extension must be paid for by the property owner, developer or Middleton and any mains constructed shall be approved by and dedicated to Madison.
- c. Requirement of All Connections. All connections made under this Agreement, including for the Development Parcel, are subject to the following conditions:
 - i. Urban Services. No Middleton property may connect to Madison services unless that property will be served by both water and sanitary sewer services.
 - ii. Well Abandonment. No service connections may be made unless the property has properly abandoned any private wells on the property, or made arrangements to do so. The abandonment must follow WDNR standards and must be done within 30 days of connection to Madison water. Any property

that fails to properly abandon a private well will be disconnected from Madison services.

- iii. Sewer Expansion Requests. Middleton shall be responsible for the central urban service area expansion request and the payment of any fees related thereto. Madison shall be responsible for any Madison Metropolitan Sewerage District annexation requests to serve properties that will be connected to Madison's sanitary sewer, the costs of such requests to be recovered from the property owner.
- iv. Connection Standards. All work related to the service connections or main extensions (including any right-of-way restoration and patching) must be according to Madison's standards and specifications and Madison's Pavement Patching Policy, as well as the sanitary sewer and water utility rules of service. Any water or sewer main extensions shall be completed in accordance with a plan approved by the Madison Water Utility or Madison Sewer Utility. Any contractor performing work within Madison right-of-ways shall obtain a street excavation permit from Madison, shall comply with the conditions of the permit and shall pay all fees associated with the permit.
- v. Service Conditions. Any property connected to Madison sewer and/or water service under this Agreement shall become a customer of Madison's water and sewer utilities and billed accordingly. If any property connects to Madison water service, they shall also connect to Madison sanitary sewer service. The property shall be subject to all applicable Madison water and sewer utility ordinances and rules, including, but not limited to, prior to connection, payment of any outstanding costs for water and sewer main installation, the actual costs of connection and any sewer expansion related fees and costs that are otherwise collected by Madison, including Madison Metropolitan Sewerage District fees.
- vi. Billing and Collections. To the extent authorized by applicable laws, Middleton shall levy as a tax upon any property covered by this Agreement any delinquent Madison water and sewer utility bills and penalty for collection pursuant to Sec. 66.0809, Wis. Stats., and shall pay all such revenues collected directly to the respective utilities.
- vii. Special Assessments or Special Charges. By entering into this Agreement, Middleton agrees that any future special assessments levied or special charges imposed by Madison against Middleton properties served by Madison under this Agreement for water or sanitary sewer related municipal work, improvements or services are approved under Wis. Stat. Sec. 66.0707. If a court finds that this pre-approval is not valid, Middleton agrees to timely consider a resolution under Wis. Stat. Sec. 66.0707 approving the special assessments or charges, which approval shall not be unreasonably withheld. Special assessments and charges under this provision shall be apportioned to and collected from Middleton properties in the same manner as properties in

Madison, and shall not in any respect discriminate against Middleton properties.

4. Boundary Adjustment. As a condition of this Agreement, the Parties will separately enter into a boundary adjustment agreement under Wis. Stat. Sec. 66.0301(6) that will cause the existing jurisdictional line between Madison and Middleton in the 1200 block of North Pleasant View Road along the eastern property line of the Development Parcel to shift approximately 33 feet east to the centerline of the existing right-of-way and line up with the jurisdictional line to the north on North Pleasant View Road to just south of Greenway Boulevard. Following this boundary adjustment, Middleton shall be responsible for ¼ of the maintenance and improvement costs for the North Pleasant View Road and Blackhawk Road intersection and shall accept and be responsible for any stormwater management features located in the new Middleton right-of-way.
5. 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

6. 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.
7. 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.

8. 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.
9. 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.
10. Final Agreement. This Agreement and the Boundary Adjustment Agreement entered into by the Parties on this date constitutes the entire agreement of the Parties with respect to the Development and future Middleton development along Blackhawk Road and supersedes all prior negotiations, representations or agreements, either written or oral dealing with this subject matter.
11. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.
12. 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.
13. 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.
14. 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.
15. 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

Development Proposal (April 10, 2014)

