

**INTERGOVERNMENTAL AGREEMENT RELATING TO A SHARED SANITARY
SEWER SERVING THE INDUSTRIAL DRIVE AREA IN MADISON & MONONA**
Between the City of Madison, the City of Monona and the Madison Metropolitan Sewerage
District

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as "Madison"); the City of Monona, a municipal corporation (hereinafter referred to as "Monona"); and the Madison Metropolitan Sewerage District, a metropolitan sewerage district (hereinafter referred to as "MMSD") is effective as of the date by which the three parties have signed hereunder.

WITNESSETH:

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes Madison, Monona and MMSD (the "Parties") to contract for the joint exercise of their powers and duties, and sharing of expenses arising therefrom; and,

WHEREAS, MMSD alerted Madison and Monona to an existing shared sewer that is in poor condition and in need of repair, with said sewer serving both Madison and Monona from a point on Industrial Drive to the MMSD sewer Interceptor approximately 1,375 feet to the South as depicted on Exhibit 1 (the "Facilities"); and,

WHEREAS, neither Madison nor Monona were assuming ownership of the Facilities or maintaining them; and,

WHEREAS, both Madison and Monona rely on the Facilities to serve properties in their respective municipalities; and,

WHEREAS, given that the Facilities function as a regional interceptor serving more than one municipality, it is logical that MMSD assume ownership and future maintenance of the Facilities; and,

WHEREAS, MMSD is agreeable to accepting ownership and future maintenance of the Facilities provided the Facilities are repaired to a "like new" condition by Madison and Monona, prior to transfer to MMSD; and,

WHEREAS, Madison and Monona are agreeable to the repair of the Facilities to "like new" condition, with costs of repair apportioned between Madison and Monona as described in this agreement, and with no part of said cost apportioned to MMSD.

NOW, THEREFORE, in consideration of 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 “Intergovernmental Agreement Relating to a Shared Sanitary Sewer serving the Industrial Drive Area in Madison and Monona” (the “Agreement”) is:
 - a. To set forth the conditions upon which Madison and Monona will agree to share in the repair cost of the Facilities; and
 - b. To define the conditions upon which MMSD will accept ownership of the Facilities, which include completion of the repair work by Madison and Monona to the satisfaction of MMSD; and
 - c. To identify Madison as the lead entity for contracting and management of the repair project, while working closely with Monona and MMSD; and
 - d. To identify Madison as the contracting entity, with responsibility for paying its share of the costs and obtaining payment from Monona for its proportionate share of the costs.
2. Past, Present and Future Use of the Facilities. Monona has used the Facilities since approximately 1958. Madison began using the sewer in approximately 1989. Based on past, present and future use of this sewer, the benefit apportionment is approximately 70% Monona and 30% Madison.
3. Ownership. Upon successful completion of the repair work to the standards set forth in this Agreement, the Parties agree that both Madison and Monona shall quit claim and assign any and all ownership rights associated with the Facilities, including easements, and warranties or contractual rights associated with the repair work, to MMSD. MMSD agrees to accept ownership and future maintenance responsibilities for the Facilities once the repair work has been completed to MMSD’s satisfaction as set forth in Section 5 below.
4. Facilities Repair. Madison shall assume the lead for design, permitting and contracting the needed repair work for the Facilities. Madison shall bid the work as a Public Works Project in accordance with Madison practices and MMSD standards. Madison shall provide an opportunity for Monona and MMSD to provide input into the design and construction documents, which will comply with MMSD standard practices. MMSD may also elect to participate in the construction meetings and / or inspection, at their cost.
5. Acceptance of Repairs by MMSD. Following Madison’s completion of construction of the repair work, Madison shall notify MMSD and provide MMSD with all relevant data regarding the repairs and the Facilities, including the as-built plans and specifications. MMSD shall have thirty (30) days to inspect the improvements to ensure that all applicable standards have been met in the construction thereof. Upon inspection and confirmation that the repairs were made according to the plans and specifications of the project and to MMSD’s standards, the Chief Engineer & Director of MMSD shall accept the improvements on behalf of MMSD, at which point MMSD shall assume full ownership, future maintenance, and all liability

associated with operation of the Facilities.

6. Apportionment of Repair Costs and Billing. Madison shall finance the work and bill Monona their share based upon benefit apportionment set forth in Section 2 above. No repair costs shall be apportioned to MMSD. All work invoiced and billed by Madison shall be documented and billed on a quarterly basis. Monona shall have thirty (30) days to make payment to Madison. Monona shall budget for their portion of the costs in 2017 and Madison shall do no billings in 2016 if work is able to start that soon. Monona shall pay 70% of the total project costs and Madison shall pay for 30%, which shall include the following: construction costs; engineering, design or related professional costs; survey and inspection costs, and any other miscellaneous costs related to the project. Total project costs are estimated to be **\$325,000** with the Monona share estimated at **\$227,500** and the Madison share estimated at **\$97,500**. These amounts cannot be exceeded without written, mutual consent of Madison and Monona.
7. Service Connections and Sewer Billing. It is understood and agreed that Monona and Madison will retain as sewer customers all properties within their respective jurisdictions, that drain to the Facilities, with the following 2 exceptions: 1) The Madison property located at 2800 / 2811 Industrial Drive in Madison, shall remain a customer of Monona; 2) The Monona properties at 2800 / 2850 Royal Avenue shall remain a customer of Madison. MMSD shall configure their monitoring and measurement of sewerage flow to allocate billing volume for sewerage to the appropriate Municipality.
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 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.
9. Nondiscrimination. In the performance of the services under this Agreement, the Parties agree not to discriminate against any employee or applicant for employment 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 agrees not to discriminate against any subcontractor or person who offers to

subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

10. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by United States mail at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the date of postmark, if sent by certified mail, postage prepaid, addressed to:

| <u>Name</u> | <u>Address</u> |
|---|---|
| City of Madison | City Engineer 210 MLK Jr. Blvd., Room 115 Madison, WI 53703 |
| City of Monona | Director of Public Works 5211 Schluter Road Monona, WI 53716 |
| Madison Metropolitan Sewerage District | Chief Engineer & Director 1610 Moorland Rd. Madison, WI 53713 |

11. 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.

12. Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.

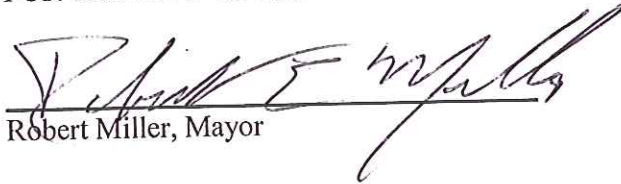
13. Miscellaneous.

- 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.

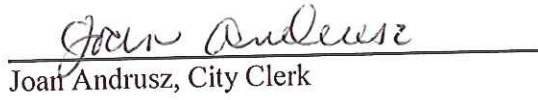
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE CITY OF MONONA



Robert Miller, Mayor

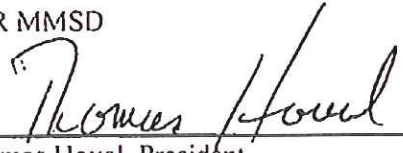
10-17-16
Date



Joan Andrusz, City Clerk

10-17-16
Date

FOR MMSD



Thomas Hovel, President

12/15/2016
Date



Angela James, Secretary

12/15/2016
Date

Approval of this Agreement by MMSD is authorized by Resolution 2016-12-15-R2
adopted by the MMSD Commission on _____

FOR THE CITY OF MADISON

Paul Soglin
Paul Soglin, Mayor

19 December 2016
Date

Maribeth Witzel-Behl
Maribeth Witzel-Behl, City Clerk

11/16/16
Date

Countersigned:

Approved as to form:

David P. Schmiedicke
David P. Schmiedicke, Finance Director

12/15/16
Date

Michael P. May
Michael P. May, City Attorney

19 DECEMBER 2016
Date

EXHIBIT 1
Map of Sanitary Sewer Serving the Industrial Drive Area
In Madison and Monona (the "Facilities")

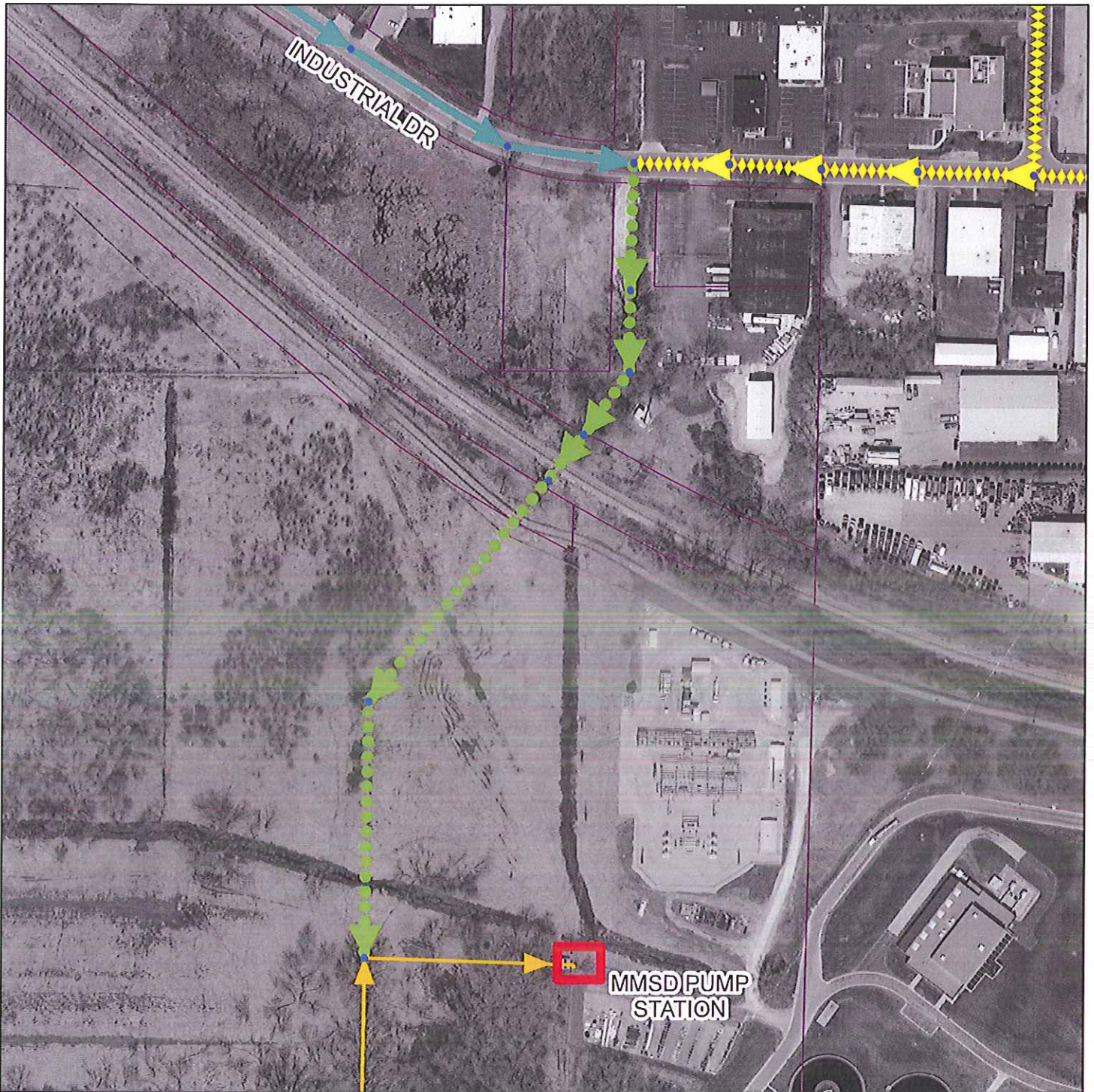








Exhibit 1:

Shared Sanitary Sewer
Serving the Industrial
Drive Area in
Madison and Monona

-  Madison Sewer
-  Monona Sewer
-  Shared Sewer
-  Sanitary Structures
-  MMSD Mains
-  City of Madison Parcels

