

## EMERGENCY MEDICAL SERVICES AGREEMENT

Between the City of Madison and the Town of Burke

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THIS AGREEMENT ("Agreement") is entered into by and between the City of Madison, a Wisconsin municipal corporation located in Dane County, Wisconsin (the "City") and the Town of Burke, a Wisconsin body corporate and politic located in Dane County, Wisconsin (the "Town").

### RECITALS

- A. The City and the Town recognize the need to provide emergency medical services to the residents of the Town.
- B. The City and Town have determined that each will benefit from entering an intergovernmental cooperation agreement under which the City will provide emergency medical services to the Town, and the Town will contribute to the cost of the City's Emergency Medical Services budget.
- C. The City and the Town are authorized by Wis. Stats. § 66.0301 to contract with each other for the receipt or furnishing of services.

### AGREEMENT

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the City and the Town make this intergovernmental agreement under Wis. Stat. § 66.0301 for the purposes described above and the benefit, health, safety and welfare of the public, and agree as follows:

- 1. Definitions. When used in this Agreement, the following terms shall have the following meanings:
  - A. *Fire Department:* Fire Department means the City of Madison Fire Department.
  - B. *Emergency Medical Services (EMS):* Emergency Medical Services means emergency response and non-emergency response for emergency medical situations (which for purposes of this Agreement shall include emergency medical transport), and other, similar emergency medical response services provided by the Fire Department for emergency medical responses at the same level of service and response as provided within the City.
- 2. Effective Date and Term of this Agreement. This Agreement shall be effective beginning July 1, 2015, and, unless terminated sooner under provisions elsewhere in this Agreement, shall be in effect until final attachment of all Town lands under the Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan (January 5, 2007).

3. Services to be provided by the City to the Town.

- A. *Emergency Medical Services.* The City shall provide Emergency Medical Services within and to all persons and premises within the Town at the same level of service that is provided within and to persons and premises within the City.
- B. The City may contract with other municipalities to provide Emergency Medical Services to the Town, if the City determines that it is in the best interest of the Town due to Emergency Medical Response times. The City will provide the Town with written notice at least 90 days prior to entering into a contract with another municipality for the provision of Emergency Medical Services in the Town.
- C. The Town may contract with the City of Sun Prairie to provide Emergency Medical Services to residents in the Boundary Adjustment Area—Sun Prairie on the map attached hereto and incorporated herein as Exhibit A.

4. Fees and Charges for City Services.

- A. *Fee Schedule.* For City services to be provided under this Agreement, the Town shall pay the City sixty thousand dollars (\$60,000) per year through December 31, 2022. Beginning January 1, 2023, and on January 1 of subsequent years, the fee for City services shall be adjusted annually based upon the Consumer Price Index (“CPI”), using the U.S. Department of Labor, Bureau of Labor Statistics (BLS) data for All Urban Consumers, U.S. city average, not seasonally adjusted 1982-84 = 100. An example of the calculation of the annual adjustment is as follows: Annual payment for 2022 (\$60,000) times 1 plus the percentage change between the December CPI for the years 2021 and 2022.

If the Town contracts for Emergency Medical Services under Sec. 3.C. above then the Town’s annual payment to the City shall be reduced by ten thousand dollars (\$10,000) per year. This amount shall be pro-rated if the contract with Sun Prairie is less than one year.

The Town’s payments for a given year shall be paid in quarterly installments by January 1, April 1, July 1, and October 1 of the given year. The City shall provide the Town with an invoice for each quarterly payment at least thirty (30) days before each quarterly payment is due. Payment shall be made to:

City Treasurer – City of Madison  
210 Martin Luther King, Jr., Blvd  
Room 107  
Madison, WI 53703

If the Town does not pay by the due date, the City shall provide the Town written notice of breach and ten (10) business days to cure. If the Town fails to cure by remitting full payment within 10 business days from the date of the notice, the City

- may immediately terminate this Agreement or impose a late fee of one percent (1%) of the amount owed.
- B. *Service Charges.* The City shall charge recipients for services within the Town fees for emergency medical services, transports, and any other service provided by the Fire Department for which the City charges a fee within the City, and such charges shall be at the same rate as the City charges recipients of such services within the City.
- C. *Ambulance Service Funds.* The Town shall provide to the City the funds received by the Town from the State of Wisconsin relating to support and improvement of ambulance services as authorized under Wis. Stats. § 256.12 (and all subsequent amendments and additions). The Town shall comply with all documentation required under Wis. Stats. § 256.12 (and all subsequent amendments and additions). When received, the funds shall be provided to the City within thirty (30) days. The City shall provide the Town with reasonable assistance related to documentation under Wis. Stats. § 256.12.
5. Special Charges. Subject to Section 4.B., in the event the City provides emergency medical services and the cost associated with such services are related to specific real property in the Town and are not covered by the fees paid by the Town under Section 4.A., the City may impose special charges against such real property under Madison General Ordinance § 4.09 and Wis. Stats. § 66.0627. Any special charges under this Section shall be apportioned to and collected from Town real property owners in the same manner as properties in the City, and shall not in any respect discriminate against Town real properties because the properties are in the Town. Town real property owners shall have all the same protections and rights as property owners in the City subject to the same type of special charges. Before imposing any special charge against any real property in the Town, the City shall notify the Town of such special charge. The Town may elect to pay any proposed special charge, and if the Town elects to pay a special charge, the special charge shall not be imposed against any real property in the Town. The Town hereby approves future special charges consistent with this Section under Wis. Stats. § 66.0707(2) and the Town's resolution approving this Agreement constitutes the Town's resolution required by Wis. Stats. § 66.0707(2) as it relates to these special charges. In the event that this blanket pre-approval provision is invalidated by a court of competent jurisdiction, the Town further agrees to the extent that it may lawfully do so, that it shall timely approve such special charge by separate resolution pursuant to said statute.
6. Operational Policy. Operational policy for providing Emergency Medical Services under this Agreement shall be established by the City, and the City shall have the responsibility for implementation of all policies adopted.
7. Operational Personnel. The personnel providing Emergency Medical Services under this Agreement shall be employees of the City, and are not agents or employees of the Town. The City shall be solely responsible for paying all wages, benefits, disability payments,

and pension and workers compensation claims for City employees providing services under this Agreement, and for damage to City equipment and clothing used in providing services under this Agreement.

8. Liability. Each party shall be responsible for the consequences of 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 be responsible only 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. Stats. § 893.80 or any other protections available to the parties by law.

9. Termination.

A. *Termination of Agreement.* The parties may agree in writing to terminate this Agreement at any time. Additionally, the City or Town may terminate this Agreement effective at 12:01 a.m. on a January 1 date after January 1, 2022 by providing at least eighteen (18) months written notice.

B. *Termination for Cause:* If either party shall commit a breach of, or fail to timely and properly fulfill any obligation under this Agreement, other than late payment as described in Section 4.A., the nonbreaching party shall provide the breaching party written notice thereof providing thirty (30) days from the date of receipt of the notice to cure. If the breach is not cured within the 30 days, the nonbreaching party retains all available rights at law and equity, including but not limited to the immediate termination of this Agreement and all rights of the breaching party, suit for damages, and specific performance. If due to the nature of the breach it cannot be cured within 30 days from the receipt of notice, then the breaching party shall be deemed to be complying with the notice to cure, if promptly upon receipt of such notice the breaching party takes steps to cure the breach as soon as reasonably possible and proceeds thereafter with due diligence to cure the breach within a period of time which, under all the circumstances, shall be reasonable.

C. This Agreement will terminate in the event that the City no longer provides Emergency Medical Services within the City.

D. *Effect of Termination.* If this Agreement is terminated for any reason, the Town's payment(s) due the City shall be pro-rated within the year of termination, through the effective date of termination.

10. Change in Law / Severability. If Section 3 or Section 4 of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable and there is no

further right to appeal such holding, or if there is a change in state or federal law that renders Section 3 or Section 4 illegal or otherwise unenforceable, this Agreement shall terminate. If any part, term, or provision of this Agreement other than Section 3 or Section 4 is held by a court of competent jurisdiction to be illegal or otherwise unenforceable by a change in state or federal law, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term or provision was never part of the Agreement.

11. Force Majeure. "Force Majeure" shall mean an event or circumstance beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure. It shall include a failure or interruption in the provision of services due to an act of God; war; sabotage; riot; insurrection; civil unrest or disturbance; explosion; earthquake; flood or other abnormal weather condition. An event of Force Majeure that prevents the City from providing Emergency Response Services shall excuse the City from providing such service until the event of the Force Majeure no longer prevents the City from providing such service.
12. Conflict Resolution. The City and the Town pledge their good faith to resolve any concerns or disputes that arise regarding their respective obligations. Any potential misunderstandings or disputes that are not resolved by Town or City Fire Department staff shall be addressed by a group consisting of the Mayor of the City, the Town Chair, the City Fire Chief, and any staff members and legal counsel requested by either party. Either party may at any time request a meeting with the other party to discuss a concern relating to this Agreement. Nothing in this section is intended to prevent either party from seeking any remedy available to it under this Agreement from a court of competent jurisdiction in Dane County, Wisconsin as described in Section 17.
13. Non-Discrimination. In the performance of work under this Agreement, the City and Town agree to not 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 City and Town further agree to not 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.
14. Notices. All notices to be given shall be in writing and delivered by personal delivery or Certified United States mail, as follows:

To the City: Fire Chief, City of Madison  
Madison Fire Department  
325 West Johnson Street  
Madison WI 53703

with copy to: Madison City Attorney

Room 401  
210 Martin Luther King Jr. Blvd  
Madison WI 53703

To the Town: Town Clerk/Treasurer  
5365 Reiner Road  
Madison WI 53718

with copy to: Town of Burke Attorney  
Stafford Rosenbaum LLP  
222 West Washington Ave, Suite 900  
Madison WI 53703

Either party may change the names and addresses for giving notice to such party by delivering written notice of such change or changes to the other party.

15. Entire Agreement. This Agreement, including any and all addenda, exhibits and the like attached hereto, sets forth the entire agreement between the City and the Town regarding the City's provision Emergency Medical Services to the Town, and supersedes any prior discussions, agreements, or understandings, either written or oral.
16. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Town shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Town therein. A waiver of any covenant, term of condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
17. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction in Dane County, Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such dispute according to any law.
18. No Third Party Beneficiaries. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any person who is not a party hereto, including but not limited to employees of either party.

19. Amendment / Modification. This Agreement may be amended or modified only by written amendment approved and executed by the Town and the City.
20. Binding Effect / Assignment. The parties have entered into this Agreement under the authority of Wis. Stats. § 66.0301. Neither party may assign its obligations hereunder to any third party without the prior written consent of the other party. Subject to the foregoing, the parties agree that this Agreement shall be binding upon and inure to the benefit of both parties, as well as their respective heirs, successors and assigns.
21. 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 of that party's attorney drafted this Agreement or any part hereof.
22. Authority. Each party represents that it has the authority to enter into the Agreement and that all necessary procedures have been followed to secure authorization to enter into this Agreement from the party's respective governing body. Each person signing the Agreement represents and warrants that he or she has been duly authorized to do so.
23. Counterparts. The Agreement may be signed in counterparts which, when taken together, shall be effective as if all signatures appeared on the same original document.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their proper officers as of the date when all parties hereto have affixed their respective signatures.

**FOR THE CITY OF MADISON**

\_\_\_\_\_  
Paul 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 \_\_\_\_\_, 2015



**FOR THE TOWN OF BURKE:**

\_\_\_\_\_  
Kevin Viney, Town Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brenda Ayers, Town Clerk/Treasurer

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Christopher Hughes, Town Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by the Town is authorized by a resolution, adopted by the Town Board of the Town of Burke on \_\_\_\_\_, 2015.

Attachments: Exhibit A – Map showing Boundary Adjustment Area—Sun Prairie

## EXHIBIT A

## Map showing Boundary Adjustment Area—Sun Prairie

