

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE ACQUISITION OF BURKE
UTILITY DISTRICTS #2 AND #6**

Between the City of Madison and the Town of Burke

THIS AGREEMENT, is entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “Madison”), and the Town of Burke, a Wisconsin body corporate and politic (hereinafter referred to as “Burke”).

WITNESSETH:

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes Madison and Burke to contract for the joint exercise of their powers and duties, and sharing of expenses arising therefrom; and,

WHEREAS, on June 9, 1971, Burke created Burke Utility District #2 (BUD #2) pursuant to Wis. Stat. Sec. 66.072 (1969 Stats), now Wis. Stat. Sec. 66.0827, to provide sanitary sewer service to designated lands in Burke; and,

WHEREAS, on January 23, 1981 Burke created Burke Utility District #6 (BUD #6) pursuant to Wis. Stat. Sec. 66.072 (1971 Stats), now Wis. Stat. Sec. 66.0827, to provide sanitary sewer service to designated lands in Burke; and,

WHEREAS, on May 4, 2007 the “Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan” (the “Plan”) became effective, which Plan will cause Burke to cease to exist on October 27, 2036, with the lands being served by BUD #2 and BUD #6 (the “Districts”) to be attached to Madison at that time, unless attached to Madison earlier by intermediate attachment as set forth in the Plan; and,

WHEREAS, Burke and Madison have expressed mutual interest about Madison taking over the Districts from Burke, including transferring all assets and liabilities of the Districts to Madison, at which point Madison would assume ownership of utility district facilities and continue to provide sanitary sewer service to the Burke properties within the Districts presently being served by the Districts; and,

WHEREAS, the Madison sewer utility has found that the Districts’ infrastructures are in adequate condition and that assumption of the Districts’ assets and liabilities and continuing service to the Burke properties connected to the Districts services is in the best interests of the City, which finding the Madison Common Council has confirmed, as required under Madison General Ordinances Sec. 35.02(4)(b).

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 the Acquisition of BUD #2 and #6” (the “Agreement”) is to set forth the conditions upon which Madison will assume all ongoing operations of BUD #2 and BUD #6 from Burke and provide continued sanitary sewer service to certain properties within Burke.

2. Effective Date. This Agreement shall become effective following the execution of the Agreement by the parties hereto, and the vacation of the Districts as provided for under Section 4 below.
3. Legal Descriptions. The boundaries of the utility districts subject to the Agreement include all those lands remaining within the jurisdictional boundaries of Burke, within the following areas (the "District Boundaries"):
 - a. BUD #2: All that part of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 34, Town 8 North, Range 10 East, Township of Burke, Dane County, Wisconsin, that lies with the jurisdictional boundaries of the Town of Burke.
 - b. BUD #6: A parcel of land located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 28, Town 8 North, Range 10 East, Township of Burke, Dane County, Wisconsin, to-wit: Commencing at the Northwest corner of said Section 28; then S01°19'30"E, 1328.00 feet along the West line of the NW $\frac{1}{4}$ of said Section 28 to the point of beginning; thence Easterly 680 feet more or less along the North line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$; thence S37°58'00"E, 440 feet more or less to a point that is 380 feet West of the East line of the West $\frac{1}{2}$ of said NW $\frac{1}{4}$; thence S00°14'30"E, 990 feet more or less along a line that is parallel to said East line of said West $\frac{1}{2}$ of said NW $\frac{1}{4}$; thence West to a point which is S01°19'30"E, 1328.00 feet from the point of beginning; thence N01°19'30"W, 1328.00 feet to the point of beginning.
4. Vacation of Districts. A majority of the Burke Town Board of Supervisors shall vote to vacate the utility districts following the procedures set forth in Wis. Stat. Sec. 66.0827. The effective date of this vacation shall be July 1, 2015.
5. Representations. As a precondition to entering into this Agreement, Burke represents that it has disclosed all material information in its possession necessary for Madison to assess the condition of the Districts' facilities and that to its knowledge all the facilities owned or leased by the Districts are in good repair and in working order, except for ordinary wear and tear and the maintenance work noted in Section 8 below. Madison acknowledges and agrees that it has had a sufficient opportunity to review and assess the condition of the facilities. Burke will provide Madison with all mapping, real estate and facility records in its possession, as required by Madison for incorporation of the Districts' operations into Madison's sanitary sewer service area, and Madison represents that, by entering into this Agreement, it has accepted such records and any defects noted therein. Burke represents that it has good title to all of such assets and real property interests and that none of the assets or real property interests of the Districts are subject to any mortgage, lien, security interest, or other encumbrance. Burke further represents that it has disclosed all District assets and liabilities known to Burke, including any potential assets or liabilities that may be known to Burke.
6. Transfer of Assets and Liabilities. All assets and known liabilities of BUD #2 and BUD #6 shall be conveyed by Burke and accepted by Madison, including any property rights that may be held by Burke for sanitary sewer purposes. To the extent necessary, Burke will agree to timely execute any deeds to transfer any such assets or property rights to Madison. If any District assets or liabilities become known to Burke or Madison after the execution

of this Agreement, Madison and Burke shall agree to enter into discussions regarding these liabilities and assets and seek to reach a mutually agreeable resolution to the disposition of said currently unknown assets or liabilities. It is understood that customers of BUD #2 and BUD #6 have prepaid their service charges for 2015 and that all of BUD #2 and BUD #6 MMSD service charges will be paid in full prior to July 1, 2015. Following these MMSD payments, the Districts will transfer a total of \$12,475 of prepaid service charges to Madison. These prepaid service charges will be used to make the initial repairs noted in Section 8 below, which are estimated to cost approximately \$10,700. Following the completion of the repairs, Madison shall return any remaining balance in the prepaid service charges, estimated to be approximately \$1,775, to Burke for distribution back to the former Districts' customers as refunds.

7. Service Connections and Billing. Madison agrees to provide sanitary sewer service to all Burke properties in the Districts that are customers of the Districts on the Effective Date of this Agreement. All such customers of the Districts shall become customers of the Madison Sewer Utility, and shall be billed for sanitary sewer service by Madison beginning on the Effective Date of this Agreement. Customers of the Districts will pay the same rates and receive the same level of service as other Madison customers. To the extent authorized by applicable laws, Burke shall levy as a tax upon the Burke properties within the former utility districts for which Madison Sewer Utility service was given any delinquent Madison Sewer Utility bills and penalties for collection pursuant to Sec. 66.0809, Wis. Stats., and shall pay all such revenues collected directly to the Madison Sewer Utility. Any property located in Burke that lies within the District Boundaries that is not a customer of either District on the Effective Date of this Agreement shall be entitled to connect to Madison sewer services pursuant to Sections 8.c.1. and 12.C. of the Plan
8. Maintenance Work. Madison shall assume all maintenance responsibility over the facilities and sanitary sewer mains, including all locating required in accordance with Digger's hotline requests. Madison has determined that some initial repairs are necessary to bring the facilities up to a standard of good condition. These repairs are estimated to cost approximately \$10,700 and will be performed by the City following the effective date of this Agreement. Burke agrees to work with Madison in scheduling the repairs. Madison shall be responsible for the costs of any future repairs of the facilities. Burke acknowledges that Madison sewer maintenance equipment may occupy the Burke right-of-way from time to time for routine maintenance and that no permit or permission is required to perform this routine maintenance as long as such occupancy does not exceed 30 days. Madison shall provide Burke with reasonable notice prior to such right-of-way occupancy. Madison shall obtain a permit from Burke anytime it is necessary to excavate within the Burke right-of-way or if its occupancy of the right-of-way exceeds 30 days and the applicable Town ordinances require the City to obtain a permit.
9. Special Assessments or Special Costs. If Madison determines that it needs to impose sanitary sewer related special assessments or special costs on the Burke properties serviced by the sanitary sewer covered by this Agreement, then, pursuant to Wis. Stat. Sec. 66.0707, Burke agrees to timely consider a resolution approving the special assessments or costs, which approval shall not be unreasonably withheld. Special assessments and charges under this provision shall be apportioned to and collected from Burke properties in the same

manner as properties in Madison, and shall not in any respect discriminate against Burke properties.

10. Termination. This Agreement shall last through final attachment as provided for in the Plan, unless otherwise mutually terminated, amended or extended upon the written agreement of the Parties.
11. Liability. Except as expressly provided in this Agreement, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions, including providing its own defense. Except as expressly provided in this Agreement, in situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies, and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.
12. 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.
13. 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
Town of Burke	Town Clerk 5365 Reiner Rd. Madison, WI 53718

14. No Third Party Beneficiary. This Agreement is intended to be solely between Madison and Burke. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
15. Final Agreement. This Agreement constitutes the entire agreement of the Parties with respect to Madison's acquisition of BUD #2 and BUD #6 and supersedes all prior

negotiations, representations or agreements, either written or oral dealing with this subject matter.

16. Amendment. This Agreement may be amended only by the written agreement of both of the Parties hereto.
17. 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.
18. 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.
19. 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.
20. 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 TOWN OF BURKE

Kevin Viney, Town Chair

Date

ATTEST:

Brenda Ayers, Town Clerk

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 15-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2015.