

**MAINTENANCE AGREEMENT FOR ANDERSON ROAD AND
RELATED STORM SEWER FACILITIES**

Between the City of Madison and the Town of Burke

THIS AGREEMENT, made and 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 (“City”), and the Town of Burke (“Town”), a Wisconsin body corporate and politic with offices at 5365 Reiner Rd., Madison, Wisconsin 53718, is effective as of the date by which both parties have signed hereunder.

RECITALS

WHEREAS, on February 8, 2019, the City and the Town entered into an Early Attachment and Revenue Sharing Agreement for the Hoepker Road Project (the “Early Attachment Agreement”), which agreement authorized the early attachment, under the “Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan” (the “Cooperative Plan”), of certain Town parcels to the City to facilitate the development of a large industrial facility (the “Development Property”) and the sharing of local tax revenue from this development project through the final attachment of the Town to the City in 2036; and,

WHEREAS, as part of the development of the Development Property, a new right-of-way has been dedicated to the City (the “Manufacturers Drive” extension), pursuant to Certified Survey Map No. 15218 (Document No. 551639), which will connect the Development Property and City lands to the south with the Town’s Anderson Road right-of-way; and,

WHEREAS, as part of the site approval process, the developer of the Development Property has agreed to make intersection improvements at the intersection of Anderson Road and Stoughton Road/U.S. Highway 51, and build a new intersection at Manufacturers Drive and Anderson Road(the “Intersection”); and,

WHEREAS, due to the Intersection, it is expected that a greater amount of freight traffic will utilize Anderson Road, especially the roughly 650 feet between Manufacturers Drive and Stoughton Road; and,

WHEREAS, Wis. Stat. § 66.0301 authorizes cities, villages, towns, counties, and other public agencies to enter into agreements for the joint exercise of any power or duty required or authorized by law; and,

WHEREAS, Wis. Stat. § 66.0707 authorizes a Town to specially assess properties for municipal work against properties in an adjacent City if certain requirements are met; and,

WHEREAS, it is in the best interests of the City and the Town to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and agreements of the City and the Town, the receipt and sufficiency of which is mutually acknowledged, the parties do hereby covenant and agree as follows:

1. Purpose. The purpose of this Maintenance Agreement for Anderson Road and Related Storm Sewer Facilities (the “Agreement”) is to formally recognize the potential need for the City and the Town to jointly address the future maintenance needs for Anderson Road arising from additional traffic arising from the Intersection and the possible need for storm sewer facilities related to the construction of the Intersection.
2. Recognition. The Parties recognize that the Intersection will be entirely within the Town’s existing right-of-way. As a result of the Intersection, there will be greater use of the roughly 650 feet of Anderson Road from Manufacturers Drive west to Stoughton Road by additional traffic traveling over Manufacturers Drive. Anderson Road is currently in good condition as it was further improved in 2017 and has a 20-year design life, but it is not currently known how this greater use of Anderson Road will impact future maintenance needs, and this situation is not addressed by the Cooperative Plan. The Intersection may also result in the need for additional storm sewer facilities in the Town.
3. Future Highway and Storm Sewer Improvements and Maintenance. Prior to Final Attachment in 2036, as called for in the Cooperative Plan, should either Party find that Anderson Road, from the Intersection to Stoughton Road, or related storm sewer facilities are in need of maintenance, repair, replacement, or reconstruction, the Parties agree to have good faith discussions regarding cost sharing of such a project that takes into account the use of Anderson Road by traffic emanating from properties in the Town and properties in the City and the potential need for new or improved storm sewer facilities due to the Intersection at Manufacturers Drive. If a full reconstruction of the roadway is necessary prior to 2036, the Parties will consider early attachment of the right-of-way to the City. If it is determined that all or a portion of the costs of any public improvements are to be specially assessed to properties in both the City and the Town, the Parties agree to discuss the special assessment methodology that will be used prior to the Town Board proceeding under Section 4 or the City proceeding under Section 12.B. of the Cooperative Plan. The Parties will also agree to jointly review the condition of Anderson Road every two years or more frequently as necessary.
4. Future Assessments. In the event the Town Board shall determine to finance the cost of reconstruction, replacement, maintenance, or repair of Anderson Road and/or any related storm sewer facilities through special assessments against the properties specially benefited thereby, the City approves any such assessments so levied against properties located in the City and shall pay any such assessments collected over to the Town Treasurer as provided in § 66.0707(3), Wis. Stats. All such costs to be collected through special assessments shall be allocated among the benefited properties in a reasonable manner as allowed by law. Special assessments under this provision shall be apportioned to and collected from Madison properties in the same manner as properties in Burke, and shall not in any respect discriminate against Madison properties. The Town shall be solely responsible for defending any challenge to a special assessment levied by the Town under this section, and refunding any portion of a special assessment as may be determined to be owed to a

property owner. In the event this blanket pre-approval provision is invalidated by a court of competent jurisdiction, the City further agrees to the extent it may lawfully do so that it shall timely approve each such special assessment levy by separate resolution pursuant to Section 66.0707, Wis. Stats.

5. No Third Party Beneficiary. This Agreement is intended to be solely between the City and the Town. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
6. Amendment. This Agreement may be amended only by the written agreement of both of the parties hereto.
7. 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.
8. Binding Effect. The parties have entered into this Agreement under the authority of Wis. Stat. § 66.0301. The parties agree that this Agreement shall be binding upon both parties.
9. Entire Agreement. This Agreement represents the entire integrated agreement between the parties with regards to the creation of the Intersection, maintenance, repair, reconstruction and replacement of Anderson Road and related storm sewer facilities, and the Town's ability to specially accesses properties in the City for special assessment association with Anderson Road and related storm sewer facilities, and supersedes all prior negotiations, representations or agreements, either written or oral dealing with early attachment and revenue sharing related to the Town Parcels and the Project. The City and the Town expressly agree that this Agreement is in addition to and does not supersede the Early Attachment Agreement.
10. 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.
11. Non-Discrimination. 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.

12. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement by authority of their respective governing bodies effective as of the date when all parties hereto have affixed their respective signatures.

FOR THE TOWN OF BURKE

Kevin Viney, Town Chairman

Date

Brenda Ayers, Town Administrator/Clerk

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael R. Haas, City Attorney

Date

Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 20-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2020.