

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE CONSTRUCTION OF A
STORMWATER CONVEYANCE SYSTEM & SEDIMENT RETENTION BASIN**
Between the City of Madison and the Village of Maple Bluff

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as "Madison"), and the Village of Maple Bluff, a municipal corporation (hereinafter referred to as "Maple Bluff"), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, Madison and Maple Bluff (hereinafter collectively referred to as "the Parties") desire to install a new storm water conveyance system (piping) from the existing railroad culvert roughly located at 1416 Sheridan Drive to a new retention basin roughly located adjacent to the Maple Bluff public tennis courts at the intersection of Fisk Place and Lakewood Blvd.;

WHEREAS, the retention basin and piping will be constructed on lands owned by Maple Bluff and will reduce the discharge of total suspended solids (TSS) from the storm water collection system to Lake Mendota by approximately 88% (on a design basis), for the benefit of both of the Parties;

WHEREAS, the TSS reduction noted above can be jointly claimed by both Parties; and

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes the Parties to contract for the joint exercise of their powers and duties, and sharing of expenses arising there from; and

WHEREAS, the Parties desire to formalize arrangements for the sharing of the project's costs pursuant to section 66.0301, Stats.

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 Agreement is to provide for the construction of a new stormwater conveyance system (piping) and a new sediment retention basin and any associated devices necessary for its operation (collectively referred to as the "Project"), and the sharing of costs directly related to the Project between the Parties. The piping will extend from the existing railroad culvert located at 1416 Sheridan Drive to the new sediment retention basin that will be located adjacent to the Maple Bluff public tennis courts located at the intersection of Fisk Place and Lakewood Blvd. in the Village of Maple Bluff.
2. Construction. Maple Bluff agrees to construct or cause to be constructed the Project in accordance with plans prepared by the Maple Bluff Engineering Department (or its assignee) and approved by Madison, which approval shall not be unreasonably withheld. Once such plans are so submitted to Madison, Madison shall have thirty (30) days within which to review the same. If no written objection is made prior to the expiration of the

thirty (30) day period, then plans are deemed approved; and Maple Bluff may proceed with the bidding and construction of the Project.

3. Bidding Process. Two alternate proposals will be bid for the Project: Alternate A will consist of the construction of the project, with the disposal of excavated material to occur off-site at a site to be provided by the Contractor. Alternate B will consist of the construction of the project, with the disposal of excavated material to occur on-site (e.g. the Maple Bluff Country Club Golf Course) or within Maple Bluff, and restoration of the disposal area. Maple Bluff may enter into a separate agreement, which Madison will not be a party to, with the Club to provide for on-site soil disposal and for the restoration of the disposal area, as well as restoration of grass surfaces disturbed by pond and pipeline construction. The sole decision as to how the bid will be awarded shall be made by the Village of Maple Bluff based on discussions with the City of Madison as further described under the "Cost Sharing" portion of this agreement. Nothing contained herein shall obligate Maple Bluff to award the contract in the event the Parties are unable to enter into the agreements contemplated in Section 4 below.

4. Cost Sharing. Upon opening of the construction bids, staff from both the Village and City will come to an agreement as to what unit value will be assigned to 1) providing on-site soil disposal and restoration of the disposal area, and 2) restoration of grass surfaces disturbed by pond and pipeline construction. If the Village and City cannot come to an agreement as to what unit value is appropriate within 2 weeks of bid opening, this agreement shall terminate. Upon completion of construction of the Project, and inspection and approval by Madison to confirm that the construction was reasonably consistent with the approved plans, Madison agrees to pay to Maple Bluff the following:
 - If Alternate A is used, 36.7% of all design and construction expenses and costs incurred by Maple Bluff for the Project, including but not limited to engineering, labor, equipment, materials, and administrative costs, including any such costs incurred prior to the effective date of this Agreement.

 - If Alternate B is used, 36.7% of all design and construction expenses and costs incurred by Maple Bluff for the Project, including but not limited to engineering, labor, equipment, materials, and administrative costs, including any such costs incurred prior to the effective date of this Agreement, but not including any costs or cost overruns associated or attributable to items described at the beginning of this section. Rather, for this portion of the Project, Madison agrees to pay Maple Bluff 36.7% of the costs under Alternate A attributable to said items. The costs for said items will be based on the unit values and as-built quantities agreed to by both the Village and City as set forth above.

Costs to be paid by Madison shall be calculated net, after receipt of any grant payment by Dane County for such costs. Payment shall be due from Madison 60 days after invoices are submitted to it by Maple Bluff, except that said payments are dependent on the Madison Common Council approval of the 2010 Capital Budget for the Storm Water Utility. Provided, however, that Madison's costs for the Project shall not exceed the budgeted amount of \$176,000, unless otherwise agreed to by the Parties in writing.

5. Total Suspended Solids (TSS) Removal Benefit Sharing. The preliminary estimate for TSS removal by the Project is 88.5%, which accounts for approximately 4.84 tons of TSS removed per year. The Parties agree to share the TSS removal benefits attributable to the Project during the life of the Project. Upon completion of construction of the project and throughout the period of the separate Maintenance Agreement referenced in Section 10 of this Agreement, Maple Bluff will assume credit for 63.3% of the TSS removal realized by the Project, and Madison will assume credit for 36.7% of the TSS removal realized by the Project. This corresponds to approximately 3.14 tons of TSS removed per year attributable to Maple Bluff, and approximately 1.7 tons of TSS removed per year attributable to Madison.
6. Project Completion. Maple Bluff shall complete construction of the Project by December 31, 2010 and shall submit a final invoice to the City no later than July 1, 2011. The final invoice submitted to Madison shall be clearly labeled FINAL. If no invoice is labeled FINAL then the last invoice received by the City of Madison on or before July 1, 2011 shall be considered FINAL. The foregoing completion date is subject to any force majeure provision in the Construction Agreement with the contractor(s) retained by Maple Bluff to construct the Project. If such construction is delayed for reasons beyond the control of Maple Bluff, such as war, riot, act of God, etc., then the time for performance and payment shall be reasonably extended.
7. Termination. Other than the provisions related to TSS Removal Benefit Sharing set forth in Section 5 of this Agreement, this Agreement shall terminate upon completion of construction of the Project, its inspection, acceptance and the FINAL payment by Madison.
8. Liability. Each party shall be responsible for injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees; and agrees to indemnify and hold harmless the other from the consequences thereof. The obligations of the Parties under this paragraph shall survive the expiration of termination of this Agreement.
9. Maintenances. It is anticipated that the Parties to this Agreement will also enter into a separate agreement for maintenance of the Project. The Parties agree to negotiate in good faith, a Maintenance Agreement, to be approved and executed on or before December 31, 2009. If such Agreement is not entered into by said date, then this Agreement shall terminate and be of no further force and effect.
10. Nondiscrimination. In the performance of the services under this Agreement, Maple Bluff agrees 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, sexual orientation, political beliefs, or student status. Maple Bluff further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.
11. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered United States mail, return receipt requested, addressed to the respective Parties at:

<u>Name</u>	<u>Address</u>
City Clerk	City of Madison 210 MLK Jr. Blvd., Room 403 City-County Building Madison WI 53703
Village Administrator	Village of Maple Bluff 18 Oxford Place Madison WI 53704

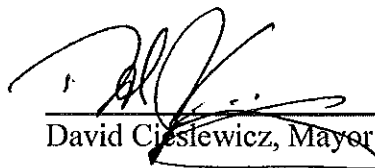
12. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect 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.

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

14. Assignment. This Agreement is binding upon the successors and assigns of the Parties hereto.

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



 David Cieslewicz, Mayor

1.29.10

 Date

Maribeth Witzel-Behl

 Maribeth Witzel-Behl, City Clerk
 Countersigned:

December 18, 2009

 Date

Approved as to form:



 for Dean Brasser, City Comptroller

1/25/10

 Date



Michael P. May, City Attorney

27 JANUARY 2010
Date

FOR THE VILLAGE OF MAPLE BLUFF



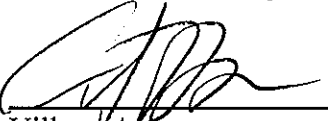
Eric McLeod, President

12-14-09
Date



Sandra Wilke, Village Clerk

12-14-09
Date



Village Attorney


12/14/09
Date

ADDENDUM A
TO THE INTERGOVERNMENTAL AGREEMENTS RELATING TO THE
CONSTRUCTION AND MAINTENANCE OF A STORMWATER CONVEYANCE SYSTEM
& SEDIMENT RETENTION BASIN BETWEEN THE CITY OF MADISON AND THE
VILLAGE OF MAPLE BLUFF

This addendum replaces Section 8 at Page 3 of the Construction Agreement, and Section 6 at Page 4 of the Maintenance Agreement, as set forth below:

Liability. Each party shall be responsible for ~~injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees; and agrees to indemnify and hold harmless the other from the consequences thereof.~~ **the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, 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. 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, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.** The obligations of the Parties under this paragraph shall survive the expiration of ~~or~~ termination of this Agreement.

FOR THE CITY OF MADISON



David Cioszewicz, Mayor

1-29-10
Date



Maribeth Witzel-Behl, City Clerk

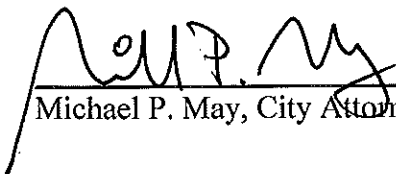
January 19, 2010
Date

Approved as to form:

for 

Dean Brasser, City Comptroller

1-25-10
Date



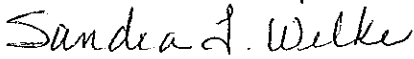
Michael P. May, City Attorney

27 JANUARY 2010
Date

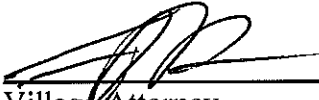
FOR THE VILLAGE OF MAPLE BLUFF


Eric McLeod, President

1-13-10
Date


Sandra Wilke, Village Clerk

1-13-10
Date


Village Attorney

Jan 13, 2010
Date

**INTERGOVERNMENTAL AGREEMENT RELATING TO THE MAINTENANCE OF A
STORMWATER CONVEYANCE SYSTEM & SEDIMENT RETENTION BASIN**
Between the City of Madison and the Village of Maple Bluff

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as "Madison"), and the Village of Maple Bluff, a municipal corporation (hereinafter referred to as "Maple Bluff"), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, Madison and Maple Bluff (hereinafter collectively referred to as "the Parties") have previously agreed to construct a stormwater conveyance system (piping) from the existing railroad culvert roughly located at 1416 Sheridan Drive to a new sediment retention basin approximately located adjacent to the Maple Bluff public tennis courts at the intersection of Fisk Place and Lakewood Blvd. (hereinafter referred to as the "Conveyance System");

WHEREAS, the Conveyance System will be constructed on lands owned by Maple Bluff and will reduce the discharge of total suspended solids (TSS) from the storm water collection system to Lake Mendota by approximately 88% (on a design basis), for the benefit of both of the Parties;

WHEREAS, the TSS reduction noted above can be jointly claimed by both Parties; and

WHEREAS, section 66.0301, Wisconsin Statutes, authorizes the Parties to contract for the joint exercise of their powers and duties, and sharing of expenses arising there from; and

WHEREAS, the Parties desire to formalize arrangements for the sharing of the ongoing maintenance costs associated with the operation of the Conveyance System pursuant to section 66.0301, Stats.

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 Agreement is to delineate responsibilities and cost sharing between the Parties for the maintenance of the Conveyance System.
2. Maintenance Requirements. Maple Bluff agrees to maintain or cause to be maintained the Conveyance System in accordance with the maintenance requirements that follow. Any plans required for maintenance shall be prepared by the Maple Bluff Engineering Department (or its assignee) and approved by the Madison City Engineer, which approval shall not be unreasonably withheld. Once such plans are so submitted to the Madison City Engineer, Madison shall have thirty (30) days within which to review the same. If no written objection is made prior to the expiration of the thirty (30) day period, then plans are deemed approved and Maple Bluff may proceed with the bidding and maintenance of the pond as set forth in this agreement. Maintenance of the Conveyance System shall be performed as follows:

a. Routine Maintenance – Maple Bluff shall perform routine maintenance of the Conveyance System at its own expense with no cost sharing from Madison, in accord with the following specifications:

- Mowing shall be completed a minimum of two (2) times per year such that flow is unobstructed in the ten (10) year storm event.
- Volunteer brush and trees shall be promptly cleared and not allowed to obtain a trunk size of one inch diameter or larger and stumps shall be treated with an herbicide to prevent resprouting.
- Pipe, outlet structure, and culvert openings and culverts shall be maintained free of debris.

The term “routine maintenance” includes only those items identified above; any other maintenance is either “periodic” or “systematic” as hereinafter defined.

b. Periodic Maintenance – Maple Bluff shall perform or cause to be performed the following periodic maintenance of the Conveyance System, the costs of which shall be shared with Madison in accord with this agreement:

- A topographic survey of the pond bottom shall be taken once every three (3) years. The survey shall be of sufficient detail so as to insure maintenance of pond design depth and integrity of the 10 to 1 sloped safety bench along the waters edge. Survey data shall be sealed by a registered land surveyor and submitted to the Madison City Engineer for review. This survey shall also show the depth of sediment accumulation/siltation in the pond.
- Siltation in the pond, as identified by the topographic survey, shall be dredged and disposed offsite in accordance with NR 528 when the average depth of the pond has reached three (3) feet of depth. Dredging shall result in the retention pond returning to its original design conditions.

Sediment accumulation in the Conveyance System leading from Madison to the pond shall be removed from the catch basins on an annual basis, unless inspection reveals more or less frequent cleaning is needed. Following any such inspection by Maple Bluff wherein it is determined that such removal is necessary, Maple Bluff shall first notify Madison (which notification shall be in the form of a writing sent to the City Engineer by regular US mail) of this sediment accumulation; and Madison shall then have the option to perform this work with its own crews. Madison must exercise this option in writing by so notifying Maple Bluff prior to the expiration of the six weeks after receipt of the initial notice from Maple Bluff. If no notice is given by Madison, then Maple Bluff shall proceed to perform the required periodic maintenance in question. If Madison has elected to perform the work, then it shall proceed to do the work promptly; and Maple Bluff shall pay its proportionate share of the such costs as provided for in section 4 below.

Any maintenance which is not "routine" or "systematic" as set forth in this agreement, shall be deemed "periodic maintenance."

- c. **Systematic Maintenance** - Maple Bluff shall perform or cause to be performed maintenance, other than the routine or periodic maintenance described above, that is required to maintain the functionality of the Conveyance System, provided that said systematic maintenance is not required due to the negligence of Maple Bluff or Madison. Examples include natural disasters or vandalism that require repairs or reconstruction to the Conveyance System. The costs of systematic maintenance under this provision shall be shared with Madison in accord with this agreement.
3. **Bidding Process.** Whenever periodic or systematic maintenance is required under Sections 2.b. or 2.c., proposals will be bid to perform the required maintenance. The sole decision as to how the bid will be awarded shall be made by Maple Bluff based on discussions with Madison as further described under the "Cost Sharing" portion of this agreement. Nothing contained herein shall obligate Maple Bluff to award the contract in the event the Parties are unable to enter in to the agreements contemplated in section 4 below.
4. **Cost Sharing.** Upon opening of the construction bids, staff from both Maple Bluff and Madison will come to an agreement as to whether the bid represents a reasonable price and should be awarded. If the Parties cannot come to an agreement as to what value is appropriate within 2 weeks of bid opening, the maintenance will not proceed and no bid will be awarded. Upon completion of the periodic or systematic maintenance as set forth above, and inspection and approval by Madison to confirm that the maintenance was performed reasonably consistent with the approved plans, Madison agrees to pay to Maple Bluff 36.7% of all expenses and costs incurred by Maple Bluff for the periodic or systematic maintenance of the retention pond as set forth above, including but not limited to engineering, labor, equipment, materials, and administrative costs.

Costs to be paid by Madison shall be calculated net, after receipt of any grants payment by Dane County for such costs. Payment shall be due from Madison 60 days after invoices are submitted to it by Maple Bluff.

However, it shall be the option of Madison to complete the sediment removal periodic maintenance activity referred to in Section 2.b. with its own crews and to invoice Maple Bluff for its 63.3% share of the costs incurred. If Madison elects to utilize its own crews to complete the work, payment shall be due from Maple Bluff 60 days after invoices are submitted to it by Madison. Such invoices shall clearly state the number of hours worked, hourly rates for workers and equipment, and materials used. If Madison does not utilize its own crews for this work, Maple Bluff shall proceed to bid the work out as set forth under Section 3, and the standard cost sharing provisions of this Section shall apply.
5. **Amendment or Termination of Agreement.** This agreement supplements the Intergovernmental Agreement Relating to the Construction of a Stormwater Conveyance System & Sediment Retention Basin Between the City of Madison and the Village of Maple Bluff, dated _____, 2009, between the Parties, and relating to the construction of the Conveyance System. The Parties may amend or terminate this agreement only upon the

written agreement of both Parties. In the event that the Conveyance System is no longer in service by the mutual agreement of the Parties, this agreement will terminate on its own terms.

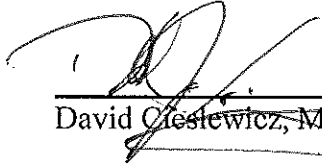
6. Liability. Each party shall be responsible for injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees; and agrees to indemnify and hold harmless the other from the consequences thereof. The obligations of the Parties under this paragraph shall survive the expiration of termination of this Agreement.
7. Nondiscrimination. In the performance of the services under this Agreement, Maple Bluff and Madison separately 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, sexual orientation, political beliefs, or student status. Maple Bluff and Madison further separately agree not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.
8. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered United States mail, return receipt requested, addressed to the respective Parties at:

<u>Name</u>	<u>Address</u>
City Clerk	City of Madison 210 MLK Jr. Blvd., Room 103 City-County Building Madison WI 53703
Village Administrator	Village of Maple Bluff 18 Oxford Place Madison WI 53704

9. 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.
10. Law. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.
11. Assignment. This Agreement is binding upon the successors and assigns of the Parties hereto.

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



David Cieslewicz, Mayor

2-1-10

Date



Maribeth Witzel-Behl, City Clerk
Countersigned:

December 18, 2009

Date

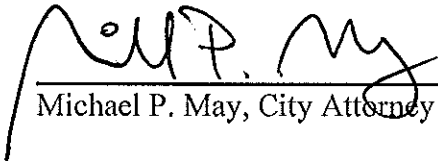
Approved as to form:



Dean Brasser, City Comptroller

1-25-10

Date



Michael P. May, City Attorney

27 JANUARY 2010

Date


FOR THE VILLAGE OF MAPLE BLUFF



Eric McLeod, President

12-10-09


Date



Sandra Wilke, Village Clerk

12-11-09

Date



Village Attorney

12-16-09

Date