

**CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589**

**RESOLUTION OF THE COMMON COUNCIL**

To approve the Agreement By and Between the Wisconsin Department of Transportation and the City of Stoughton, WI for the Maintenance of the Shared Use Path, Pedestrian Median Crossings, Retaining Wall and the Central Island between Ramp Roundabout Termini within the Rights-of-Way of USH 51 and STH 138.

**File Number:** R-105-2015

**Date Introduced:** July 14, 2015

*The City Council of the City of Stoughton, Dane County, Wisconsin, resolves as follows:*

**RECITALS**

**WHEREAS**, Kettle Park West LLC (the “Developer”) proposes to purchase certain real property described (the "Property"), and intends to undertake commercial development on the Property in accordance with the Planned Development District zoning of the Kettle Park West Commercial Property approved by the City in Ordinance No. 0-23-2013, as the same may be amended (the “Project”);

**WHEREAS**, the Project requires the City to assume responsibility for maintaining certain public improvements to be constructed as part of the Project, in accordance with the Agreement By and Between the Wisconsin Department of Transportation and the City of Stoughton, WI for the Maintenance of the Shared Use Path, Pedestrian Median Crossings, Retaining Wall and the Central Island between Ramp Roundabout Termini within the Rights-of-Way of USH 51 and STH 138 (the “Maintenance Agreement”) attached as Exhibit A.

**RESOLUTION**

The Maintenance Agreement attached as Exhibit A is approved, and the Mayor and City Clerk are hereby authorized to execute the Agreement on the City's behalf.

*The foregoing Resolution was adopted by the Common Council of the City of Stoughton at a meeting held on July 14, 2015.*

**APPROVED:**

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Donna Olson, Mayor

ATTEST:

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Lana Kropf, City Clerk

Posted \_\_\_\_\_

Published \_\_\_\_\_

**Exhibit A**  
**Maintenance Agreement**

**AGREEMENT BY AND BETWEEN  
THE WISCONSIN DEPARTMENT OF TRANSPORTATION  
THE CITY OF STOUGHTON, WI  
FOR THE MAINTENANCE OF THE SHARED USE PATH, PEDESTRIAN MEDIAN  
CROSSINGS, RETAINING WALL,  
AND THE CENTRAL ISLAND BETWEEN RAMP ROUNDABOUT TERMINI  
WITHIN THE RIGHTS-OF-WAY OF USH 51 and STH 138**

This AGREEMENT for Maintenance of the shared use path, side path, pedestrian median crossings, retaining wall, and central island of the STH 138 roundabout between the Wisconsin Department of Transportation and City of Stoughton, WI is made and entered into this \_\_\_\_\_ day of July, 2015, by and between City of Stoughton, hereinafter called the “City” and the State of Wisconsin, Department of Transportation, hereinafter called the “State”. This Agreement shall be effective upon last signature below.

**WITNESSETH:**

WHEREAS, the State and the City have agreed to the development of: 1) a shared use path, along the northwest quadrant of the STH 138 and USH 51 intersection, and; 2) the construction of a roundabout on STH 138 which incorporates a landscaped central island, pedestrian median crossings, and a roundabout side path along the south side of STH 138; and 3) the retaining wall adjacent to and south of the side path. The shared use path, hereinafter called the “Path”, includes an area approximately seven (7) feet on each side of the Path plus any appurtenances such as drainage pipes, structures, and railings constructed for the Path. This agreement includes the Path, pedestrian median crossing, roundabout central island areas, retaining wall, and roundabout side path. (See attached Exhibit A for location map and maintenance limits.) The Path, pedestrian median crossing, roundabout central island areas, roundabout side path, and retaining wall, defined by Exhibit A, shall be referred to as the “maintenance items”.

WHEREAS, the initial construction of the Path, roundabout, pedestrian median crossings, central island, roundabout side path, and retaining wall and other appurtenances will be constructed under a Work in Right of Way Permit.

WHEREAS, the City has agreed to maintain the Path, pedestrian median crossings, roundabout central island, roundabout side path, and retaining wall located within the City as shown on Exhibit A.

WHEREAS, Wis. Stat. Sec. 66.0301 authorizes municipalities, including the City and the State, to contract with one another for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

**AGREEMENT:**

NOW, THEREFORE, the City and the State, in consideration of the mutual covenants herein set forth, and other good and valuable considerations, the receipt of which is hereby acknowledged,

agree to make this Intergovernmental Agreement under Wis. Stat. sec. 66.0301 for the purposes stated herein, as follows:

1. **Path Location.** The paved Path general limits are as described above in the first “Whereas” paragraph and illustrated in Exhibit A.
2. **Path Construction.** The Path shall consist of ten-foot wide asphaltic paved surface both within and outside of the USH 51/ STH 138 Rights-of-Way as shown on Exhibit A. The initial construction of the Path will be constructed under a Work in Right of Way Permit.
3. **Central Island, Medians, Side Path, and Retaining Wall.** The roundabout, central island, median areas, roundabout side path and retaining wall to be constructed on STH 138 will be constructed under a Work in Right of Way Permit, and maintained by the City. Desired landscaping features for the central island and medians of the roundabout will also be constructed under a Work in Right of Way Permit, and maintained by City. Approval of submitted final roundabout plans to the State will incorporate review and approval of landscaped features for the central island.
4. **Path Signing.** Path signage will be under a Work in Right of Way Permit, and maintained by the City. Any additional signing desired by the City, if approved by the State, shall be provided and financed by the City.
5. **Side Path, Central Island, Median and Retaining Wall Maintenance.** For purposes of this agreement, maintenance shall mean keeping all existing surfaces, signing and marking in good repair; repair of damage due to unauthorized use, affects of climate and inclement weather, vandalism, graffiti or theft; removing dirt and debris from the path surface; removing litter from the paved surface and nearby adjacent grassed areas; mowing grass areas within 7 feet of the shared use path, sealing pavement cracks, keeping landscaping within the maintenance limits in healthy and neat condition; keeping all drainage ditches in good working condition; and keeping drainage structures within the maintenance limits free of debris and in good repair. The roundabout sidepath shall be maintained by the City year round, including snow and debris removal. Maintenance of the retaining wall shall include, but not be limited to, keeping wall and wall drainage in good working condition. Through the routine maintenance agreement with Dane County, the State shall maintain the driving lanes of STH 138 and USH 51, which includes the driving lanes of the STH 138 roundabout that are outside connecting highway limits.
6. **Shared Use Path Maintenance.** The City shall maintain the Path, at its own expense. For purposes of this agreement, maintenance shall mean keeping all existing surfaces, signing and Path marking in good repair; repair of damage due to unauthorized use, vandalism, graffiti or theft; removing dirt and debris from the path surface; sealing pavement cracks, removing litter from the paved surface and nearby adjacent grassed areas; mowing grass areas to a minimum width of seven feet; keeping any other landscaping in healthy and neat condition; keeping all drainage ditches in good working condition; and keeping drainage structures free of debris and in good repair. The City shall be responsible for any other maintenance needs that are not listed above and within the Path corridor. Winter maintenance shall be at the discretion of City.

7. **Use of Path.** The use of the Path by the City shall be for bicycle and pedestrian transportation and may also include public access for recreational activities, including bicycling, pedestrian use and skating, as defined in Wis. Stat. sec. 895.52.
8. **Prohibition of Motorized Vehicles.** Use of this Path by motorized vehicles of any type, except as needed for maintenance, rehabilitation or emergency rescue purposes, is prohibited, except for motorized wheelchairs. The City at its discretion may prohibit electric personal assistive mobility devices, as defined in state statute 340.01 (15pm), within their respective jurisdictions.
9. **Path Corridor Encroachments.** The City shall be responsible for keeping the Path corridor right-of-way free of encroachments.
10. **Path, and Roundabout Rehabilitation.** The City shall resurface or replace, at its own expense, timeline, and as it deems necessary, paved surfaces within the Path segments defined by Exhibit A; with the exception of path segments crossing the paved surfaces of STH 138 and USH 51. The State shall, at its own expense and timeline, be responsible for replacement or resurfacing of the roundabout roadway surface and pavement where path segments mentioned above cross STH 138.
11. **Path Fees.** The City shall not charge fees for the use of the Path.
12. **Removal of Equipment.** All Path signs, lighting and appurtenances, which remain the property of the City, shall be removed by the owner, at their own expense, upon termination of this Maintenance Agreement.
13. **Enforcement.** Promulgation and enforcement of noise, littering and loitering restrictions and the prohibition of motorized vehicles on and along the Path shall be the sole responsibility of the City. The City may pass such ordinances and resolutions as they deem appropriate to govern these restrictions on the Path, and may use such methods as they deem appropriate to assure compliance with said restrictions. Any other restrictions proposed by the City shall require written concurrence from the State.
14. The City and State agree to conduct their activities along and on the Path so as not to endanger any person or property thereon. The parties agree that each party shall be responsible for its own acts or omissions and those of its officers, employees and agents, and those of its boards, commissions, agencies and officials, by reason of liability imposed by law, attributable to such acts or omissions to the extent provided by law. No indemnity shall apply to or from either party to the other except as required under state law. Nothing in this paragraph is intended to, nor shall be construed as, imposing any standard of liability to third parties beyond that provided by applicable law. Nothing in this paragraph is intended to, nor shall be construed as, a waiver of any immunity or defense the State or City would otherwise have.
15. **Wisconsin Department of Transportation (WisDOT) Property Rights.** This Agreement is not a lease and does not convey or transfer any ownership or rights of ownership in WisDOT right-of-way to the City. This instrument is a permit and the extent of the permit is to allow the use of the Path temporarily for certain activities as set forth herein. The State retains all rights of property ownership, and only the State can grant an invasion of said ownership rights.

16. The State retains the authority for the issuance of permits to allow a public or privately owned utility the right to construct, operate, and maintain a utility facility over, across, upon, and within WisDOT right-of-way. If a permit affecting the maintenance items is issued under this paragraph, it shall be a condition of the permit that use of the right-of-way needed for the Path shall not be impaired, the utility permittee shall repair said right-of-way and return it to its pre-existing condition, normal wear and tear considered, as soon as possible.
17. The State shall provide the City with written notice prior to the issuance of any permit affecting the maintenance items and shall coordinate with the City on matters pertaining to utility permit applications.
18. The State retains full and final authority regarding the sale or disposal of the right-of-way or any portions thereof. Furthermore, this Agreement is subject to existing permits.
19. The State retains the right to close all or any portion of the Path at any time if it needs the right-of-way for future highway improvements or other operational needs, without compensating the City for relocating the Path should the City decide to do so.
20. **Term.** The term of this Maintenance Agreement shall be twenty (20) years from the Effective Date. This Agreement shall automatically be renewed under the same terms and conditions for additional five (5) year terms not exceeding four (4) additional five (5) year terms at the request of either party.
21. **Applicability.** If any term, covenant, condition, or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent, be held invalid or unenforceable, the remainder of the Agreement, or the application of such term or provision (or remainder thereof), to parties and circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
22. **Changes.** No term or provision of this Agreement, or any of its attachments, may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by all parties to this Agreement.
23. **Non-Discrimination.** The parties agree to abide by their own respective non-discrimination policies and procedures during the term of this agreement. Further, the parties agree that this agreement does not subject any party to another's jurisdiction for the administration of such matters.
24. **Entirety.** The Agreement together with any documents referred to herein contain the entire Agreement of the parties and supersedes any and all prior Agreements and draft Agreements, or oral understandings between the parties regarding the Path and the maintenance items.
25. **Notices.** Any notice required to be made in writing or any filing required to be made with any party to this Agreement shall be sent to the following addresses:

**For the State:**

Regional Director  
WisDOT Southwest Region  
2101 Wright Street  
Madison, WI 53704

**For the City of Stoughton:**

Mayor  
381 East Main Street  
Stoughton, WI 53589

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

**WISCONSIN DEPARTMENT OF TRANSPORTATION, STATE OF WISCONSIN:**

\_\_\_\_\_  
Wisconsin Department of Transportation  
Southwest Region Director  
David Vieth

\_\_\_\_\_  
Date

**CITY OF STOUGHTON,**  
a Wisconsin municipal corporation

By: \_\_\_\_\_

Donna Olson, Mayor

Date of Execution: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lana C. Kropf, City Clerk

Countersigned:

\_\_\_\_\_  
Laurie Sullivan, Finance Director

Approved as to Form:

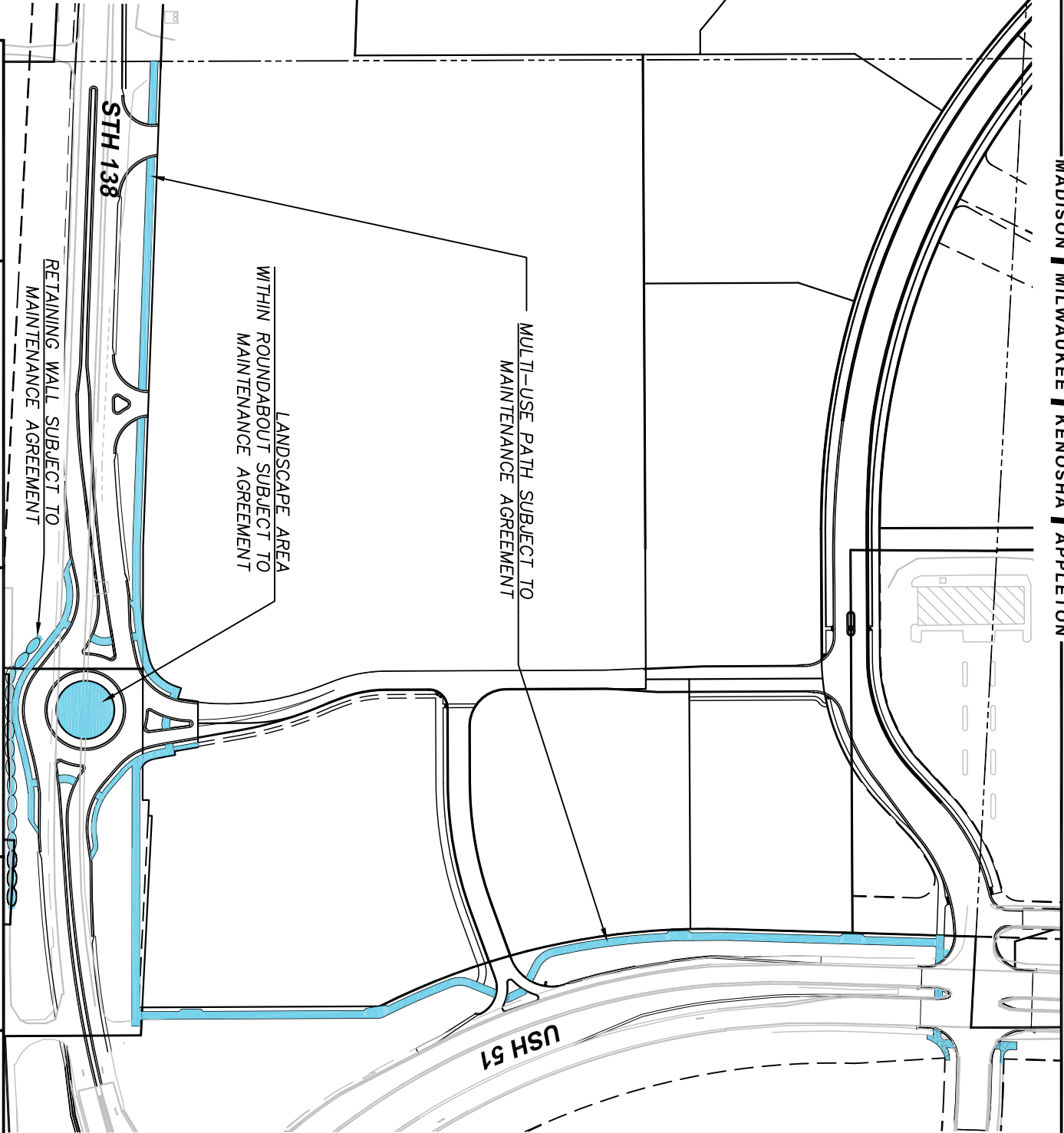
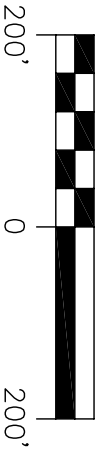
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Matthew P. Dregne, City Attorney



MADISON | MILWAUKEE | KENOSHA | APPLETON

north

SCALE IN FEET



**JSD** Professional Services, Inc.  
Engineers • Surveyors • Planners  
MADISON REGIONAL OFFICE  
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VERONA, WISCONSIN 53593  
608.848.5060 PHONE | 608.848.2255 FAX  
[www.jsdinc.com](http://www.jsdinc.com)

PROJECT:

KETTLE PARK WEST -  
COMMERCIAL CENTER

SHEET TITLE:

KPW MULTI-USE PATH  
MAINTENANCE  
EXHIBIT

JSD PROJECT NUMBER:

09-3951E

SHEET NUMBER:

EX. A

DRAWN BY: APPROVED:

AJW

DATE:

04/21/2015  
REV: 07/13/2015