

Maintenance Agreement

Between

The Wisconsin Department of Transportation

and

The City of West Allis

This agreement, made and entered into by and between the State of Wisconsin Department of Transportation, hereinafter called the Department, and the City of West Allis, hereinafter called City or West Allis, provides for the maintenance of context sensitive solutions (CSS) design features built as part of the Zoo Interchange Project along Greenfield Ave (STH 59) between the I-894 NB off-ramp and 98th St. The maintenance area is shown in the Exhibit 1 Streetscaping Plan, which is attached hereto and incorporated into this agreement by reference.

1. General conditions from the Department

- A. This agreement is created to address maintenance responsibilities for CSS Features proposed as part of the Zoo IC Phase I and Phase 2 projects (Project ID Nos. 1060-33-80/81) within the limits specified. CSS Features include:
 - Decorative Retaining Wall (R-40-XXX), including City emblems and other decorative features of the wall;
 - Trees, Shrubs, and Perennials;
 - Any uplighting installed by the City;
 - Traffic signal cabinet artwork; and
 - Any other community sensitive features within the boundaries described in Exhibit 1.
- B. West Allis agrees that no advertising of any kind will be allowed on CSS Features installed as part of this agreement.
- C. West Allis will be responsible to perform all of the maintenance work as specified below. West Allis shall not contract out the maintenance work within this agreement without the prior approval of the Department. West Allis shall not defer maintenance to volunteer groups without the prior approval of the Department
- D. In the event West Allis fails to maintain CSS Features as required below, the Department, after sixty (60) days written notice, may remove the features and bill West Allis for the removal, disposal and restoration costs.

- E. West Allis shall provide six (6) months notice to the Department prior to removal of any CSS Features. This provision does not apply to the removal and replacement of plant material that has died.
 - F. The Department anticipates construction or installation of the CSS Features will occur in 2014 and 2015. The Department will include a 2-year warranty period requirement for all plant material installed under the initial construction projects.
 - G. The Department will not replace plant material that dies after the 2-year warranty period.
 - H. The Department will not reimburse West Allis for costs associated with maintaining items associated with this agreement.
2. Specific maintenance duties for West Allis will include the following items:
- A. Perform all Basic Maintenance, as defined below, within the maintenance limits.
 - B. Maintain the CSS Features on wall R-40-XXX. This includes without limitation graffiti removal, wall stain maintenance, and maintenance of the decorative West Allis emblem.
 - C. Maintain the structural components of wall R-40-XXX, including the wall's footing, facing, backfill, drainage, and all other structural components, starting at a time after WisDOT crews inspect and approve the wall as part of the Zoo Core 2 project. WisDOT will give the City six (6) months notice prior to when the wall will be transferred to West Allis for maintenance. After transfer to the City, the City shall perform all required replacements of wall sections, or if necessary replace the entire wall, at no cost to the Department.
 - D. Replace any dead or damaged plant material at the appropriate planting season for the species. Replacements shall be of similar plant material that has similar attributes, size, and shape and preapproved by either the City of West Allis forester or Department.
 - E. Repair drive over tire ruts in the area outlined in Exhibit 1 by filling with topsoil to match adjoining grade, seeding and mulching.
 - F. Replace mulch in planter beds and around trees a minimum of every 2 years.
 - G. Perform spot weed control, in the mulched tree circles and perennial/grass planting beds, three times per year either mechanically or using a Glyphosate product.
 - H. Maintain and pay the operation costs associated with the R-40-XX lighting system.

- I. Maintain trees in the area outlined in Exhibit 1 by pruning a minimum every five (5) years. Prune trees to achieve safe visibility for pedestrians, bicyclists, and motorists
3. **“Basic Maintenance” defined.** As used in this agreement, Basic Maintenance is defined to include:
 - a. Mowing all ground-cover grass areas within the maintenance limits and keeping ground-cover grass areas within the maintenance limits in healthy and neat condition;
 - b. Collecting and disposing of paper, highway debris, and all other litter within the maintenance limits at least once every other month;
 - c. Performing winter maintenance, such as snow and ice removal, on all sidewalk areas within the maintenance limits.
4. The Municipality and WisDOT agree to conduct their activities in the maintenance limits 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, if any; and shall be responsible for any loss or expense (including costs, damages and attorney fees) by reason of liability imposed by law, attributable to such acts or omissions to the extent provided by 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 of Wisconsin or the Municipality would otherwise have.
5. **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 Municipality. WisDOT retains all rights of property ownership, and only WisDOT can grant an invasion of said ownership rights. WisDOT retains full and final authority regarding the sale or disposal of the right-of-way or any portions thereof. WisDOT 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. This agreement is subject to existing permits.
6. **Term.** This agreement shall be effective from the date written above until terminated mutually by both parties in writing.
7. **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.
8. **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.

9. **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.
10. **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 maintenance limits.
11. **Approval.** This agreement is subject to the terms and conditions above and is made by the undersigned under the proper authority to make such a commitment for the City of West Allis and upon acceptance by the Department shall constitute agreement between the City of West Allis and the Department.

FOR THE STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION:

Recommended for Approval:

WisDOT SE Region Operations, Maintenance Supervisor Adrian Lopez, P.E.	Date
---	------

Approved:

WisDOT Southeast Region Director Brett Wallace, P.E.	Date
---	------

FOR THE MUNICIPALITY
THE CITY OF WEST ALLIS, WISCONSIN

<i>By:</i>	Dan Devine Mayor	Date
------------	---------------------	------

<i>Attest:</i>	Monica Schultz City Clerk	Date
----------------	------------------------------	------

NOTE: City comptroller countersignature may be required under 62.09(10)(f)

Approved by Resolution No. _____ dated _____

Approved as to form:

Scott Post
City Attorney

Date