

ESCROW AGREEMENT TO ASSURE  
DISTRIBUTION OF EXPENDED FUNDS

This Escrow Agreement is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Monona Bank (“Agent”), and the Village of Cottage Grove, Wisconsin (“Municipality”).

RECITALS

WHEREAS, pursuant to the Project Plan for its Tax Incremental District No. 5 (“TID No. 5”) which was created under Section 66.1105, Wis. Stats., the Municipality is undertaking certain public works or improvements and will be incurring certain other costs described on Exhibit A to this Agreement (collectively, the “Projects”); and

WHEREAS, the Municipality has entered or will enter into the contracts described in Exhibit B hereto (referred to collectively as the “Contracts”) with respect to the Projects and has incurred other obligations with respect to the Projects as described on Exhibit B; and

WHEREAS, the Village’s engineer supervising the Projects (the “Engineer”) and staff of the Municipality have estimated that the cost of completion of the Projects is \$1,000,000.00; and

WHEREAS, in order to expend funds for the purpose of paying costs of the Projects prior to May 19, 2026, the Municipality has decided to deposit such funds into an escrow account for disbursement while the Projects are being completed; and

WHEREAS, the Municipality has appointed Monona Bank as the Escrow Agent to hold and administer the Escrow Account herein established with the funds of the Municipality.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Escrow Deposit.** Concurrently with the execution of this Agreement, the Municipality has deposited \$450,000 of funds of the Municipality, to be held and used by Escrow Agent, together with any investment income accruing thereto, in escrow only as herein set forth for the express purpose of paying for all materials, labor, and other expenses toward satisfaction of the monetary obligations the Municipality has under the terms of the Contracts and paying other costs of the Projects as described on Exhibit B. The Municipality relinquishes any and all claim it may have to the funds constituting the escrow deposit or to the return of said funds deposited into the Escrow Account prior to the termination of this Agreement, and thereby the Municipality is deemed to have expended funds toward the payment of costs of the Projects herein described. The Municipality agrees that if at any time it shall appear to Escrow Agent that such escrow deposit will not be sufficient to make a payment required under the terms of the Contracts, the Municipality will, upon notice by the Escrow Agent, make such payment out of its funds on hand to the extent necessary to meet fully the payments required under the Contracts.

2. **Acceptance of Escrow.** The Escrow Agent acknowledges receipt of the escrow deposit hereunder and accepts the responsibilities imposed on it, as Escrow Agent, by this Agreement.

3. **Application of Escrow Deposit.** There is hereby created by the Municipality and ordered established with the Escrow Agent an account designated “Village of Cottage Grove - TID No. 5 Escrow Account” (the “Escrow Account”).

The Escrow Agent shall deposit the amount described above in the Escrow Account to be distributed and invested as follows:

(a) **Investment of Escrow Deposit.** The Escrow Agent shall hold the deposit in an interest-bearing account for such period of time as there are monies left in the Escrow Account and under the terms and conditions herein.

(b) **Distribution of Escrow Account With Respect to the Contracts.** Funds on deposit in the Escrow Account in a total amount of \$450,000 will be applied to the payment of costs of the Contracts described on Exhibit B.

(i) The Escrow Agent shall look only to the Village Administrator for an indication that payment on the Contracts is due and that release and distribution of funds in the Escrow Account is to be made.

(ii) The Village Administrator will indicate that payment is due in accordance with the payment terms and conditions of the Contracts. The Contracts are incorporated in their entirety into this Escrow Agreement and made a part hereof. The Escrow Agent shall have no responsibility for the terms of the Contracts other than to release and distribute the funds in accordance therewith as indicated by the Village Administrator.

(iii) The Village Administrator will perform its obligations for inspection and approval of the performance on the Projects as provided for in the Contracts. Upon observation and in accordance with the schedule of payments agreed to in the Contracts, the Village Administrator will determine whether the performance is in accordance with the Contract documents. The Village Administrator will submit to the Escrow Agent a Certificate for Payment (the “Certificate”) a form of which is attached hereto as Exhibit C for such amount as the Village Administrator determines is properly due. If, upon receipt of the Certificate, the Escrow Agent concludes that the Certificate is a genuine and valid original or copy thereof, the Escrow Agent shall release and distribute appropriate funds to the parties who are entitled thereto under the terms and conditions of the Contracts as indicated by the Village Administrator.

(iv) When the Projects have been completed under the terms of the Contracts and the proper time for retainage, if any, has expired, the Village Administrator will, unless there is any failure of performance, submit a final Certificate for Payment to the Escrow Agent when such payment is due and the Escrow Agent shall release and distribute funds accordingly.

**4. The Escrow Agent.**

(a) Escrow Agent's Fee. The Escrow Agent shall be paid a fee of \$                      for the performance of its services hereunder.

(b) Reporting. The Escrow Agent shall, in the month of February of each year while this Agreement is in effect and as soon as practicable after the termination of this Agreement, forward to the Municipality a report of the receipts, income, if any, and payments of and from the Escrow Account during the preceding calendar year, including in such report a statement, as of the end of the preceding calendar year, regarding the manner in which it has carried out the requirements of this Agreement. The Municipality shall have the right, at any time during business hours, to examine all of the Escrow Agent's records regarding the status and details of the Escrow Account.

(c) Separate Funds; Accountability. The Escrow Agent shall keep all monies deposited hereunder, and all interest thereon and profits therefrom, if any, at all times in the special fund and separate trust account, wholly segregated from all other funds; shall never commingle such deposits with other funds; and shall never at any time use, loan, or borrow the same in any way. Nothing herein contained shall be construed as requiring Escrow Agent to keep the identical monies, or any part thereof, received from or for the Municipality's account, on hand, but monies of any equal amount shall always be maintained on hand as funds held by Escrow Agent and a special account thereof, evidencing such fact, shall at all times be maintained on the books of Escrow Agent. In the event Escrow Agent is unable or fails to account for any property held hereunder, such property shall be and remain the property designated to be used as herein described and if, for any reason, such property cannot be identified, all other assets of Escrow Agent shall be impressed with a trust for the amount thereof and the parties to whom the property is owing and due shall be entitled to the preferred claim upon such assets enjoyed by any trust beneficiary. Property held by the Escrow Agent hereunder shall not be deemed to be a banking deposit of the Municipality, and the Escrow Agent shall have no right or title with respect thereto (including any right of set-off) and the Municipality shall have no right of withdrawal thereof.

(d) Liability. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the Municipality of any of its obligations, or to protect any of the Municipality's rights under any of the Municipality's contracts with or franchises or privileges from any state, county, municipality, or other governmental agency, or with any person. The Escrow Agent shall not be liable for any act done or step taken or omitted by it, as Escrow Agent, or for any mistake of fact or law, or for anything which it may do or refrain from doing in good faith and in the exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Agreement, except for its negligence or its default in the performance of any obligation imposed upon it hereunder. The Escrow Agent is authorized to act upon any document believed by it to be genuine and purporting to be signed by the proper party or parties and will incur no liability in so acting. The Escrow Agent shall not be responsible in any manner whatsoever for the recitals or statements contained herein, including without limitation those as to the sufficiency of the escrow deposit to

accomplish the purposes hereof or in any proceedings taken in connection therewith, but they are made solely by the Municipality.

(e) Resignations: Successor Escrow Agent. The Escrow Agent may at any time resign by giving not less than 60 days written notice to the Municipality. Upon giving such notice of resignation, the resigning the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent. Such court may thereupon, after such notice, if any, as it may deem proper and prescribes, appoint a successor escrow agent of comparable qualifications to those of the resigning Escrow Agent. The resignation of the Escrow Agent shall take effect only upon the appointment of a successor escrow agent and such successor escrow agent's acceptance of such appointment. Any successor escrow agent shall be a state or national bank, have full banking and trust powers, and have a combined capital and surplus of at least \$5,000,000. Any successor escrow agent shall execute, acknowledge and deliver to the Municipality and to its predecessor escrow agent an instrument accepting such appointment hereunder, and thereupon the resignation of the predecessor escrow agent shall become effective and such successor escrow agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as escrow agent herein: but nevertheless, on written request of the Municipality or on the request of the successor escrow agent, the escrow agent ceasing to act shall execute and deliver an instrument transferring to such successor escrow agent, upon the terms herein expressed, all the rights, power, and duties of the escrow agent so ceasing to act. Upon the request of any such successor escrow agent, the Municipality shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor escrow agent all such rights, powers and duties. Any predecessor escrow agent shall pay over to its successor escrow agent a proportional part of the escrow agent's fee hereunder.

## **5. Miscellaneous.**

(a) Third-Party Beneficiary. This Agreement has been entered into by the Municipality and the Escrow Agent for the benefit of the Municipality and the parties to the Contracts and is not revocable by the Municipality or the Escrow Agent. The Escrow Account has been irrevocably pledged to the payment of the costs of completion of the Projects in accordance with this Agreement. Notwithstanding the foregoing, this Agreement shall not be construed as creating any rights in or obligations to any person other than the parties hereto.

(b) Severability. If any section, paragraph, clause or provision of this Agreement shall be invalid or ineffective for any reason, the remainder of this Agreement shall remain in full force and effect, it being expressly hereby agreed that the remainder of this Agreement would have been entered into by the parties hereto notwithstanding any such invalidity.

(c) Termination. This Agreement shall terminate on the earlier of (i) the date when all funds in the Escrow Account have been disbursed, or (ii) within three (3) business days after the Escrow Agent receives (1) a Termination Certificate, a form of which is attached hereto as **Exhibit D** from the Village Administrator certifying that the Projects have been fully completed as set forth in the Contracts and the final payments thereunder have been distributed. The parties realize that any funds as shall remain in the Escrow Account upon termination of this Agreement

shall be returned to the Municipality, under the process described in Section 3 (b)(ii) herein, after payment of any unpaid fees or expenses of the Escrow Agent. The termination of this Agreement shall not, of itself, have any effect on the Municipality's obligation to pay the sums set forth in the Contracts in accordance with the terms thereof.

(d) Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the date first above written.

\_\_\_\_\_,  
\_\_\_\_\_, WISCONSIN

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

(SEAL)

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

\_\_\_\_\_  
as Agent

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

\_\_\_\_\_

\_\_\_\_\_

(SEAL)

And: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

PROJECT COSTS

The bike path project consists of extending the Main Street Community Trail along CTH N (Main Street) from the intersection of Northlawn Drive to the existing path that exists just south of the Interstate 94 intersection. The path will consist of a 10-foot wide asphalt path with ADA crossings of the roadways. The project will include work adjacent to the path project on CTH N. A south bound turn lane extension to School Road along CTH N is proposed along with the urbanization of the roadway section immediately with the turn lane to address additional traffic volume. The pavement between the new construction at the intersection of School Road and CTH N and the concrete pavement at the intersection of Gaston Road and CTH N is being planned. Areas of the existing pavement will be removed in its entirety due to base concerns and areas will have the surface course milled and replaced. The \$450,000 is TID funded and allocated to the Main Street Community Trail portion of the project.

Community Trail Phase 2 Estimated Costs - \$600,000

School Road Turn Lane Extension and Urbanization - \$170,000

CTH N Pavement Replacement and Repair - \$230,000

TOTAL

EXHIBIT B

SCHEDULE OF CONTRACTS  
AND OTHER OBLIGATIONS

Contracts

The Contracts are contracts relating to the design and construction of the following projects:

EXHIBIT C

CERTIFICATE FOR PAYMENT

Dated \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Escrow Agent]

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Village Administrator]

Pursuant to Section 3(b)(ii) of the Escrow Agreement dated \_\_\_\_\_, 20\_\_, entered into between the \_\_\_\_\_, Wisconsin and \_\_\_\_\_ (the "Agreement"), I have performed my obligations for inspection and approval of the performance of certain contractors on certain Projects (as defined in the Agreement) as provided for in certain Contracts (as defined in the Agreement). I have determined that said performance is in accordance with the Contract for the Project.

Pursuant to the Agreement and the Contracts, I request \_\_\_\_\_ to make a check payable to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ from the funds in the \_\_\_\_\_ - Escrow Account and send to \_\_\_\_\_ at \_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_



EXHIBIT D

TERMINATION CERTIFICATE

Dated \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Escrow Agent]

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Village Engineer]

I have performed my obligations for inspection and approval of the performance of certain contractors on certain Projects as defined in the Escrow Agreement dated \_\_\_\_\_, \_\_\_\_, entered into between the \_\_\_\_\_, Wisconsin and \_\_\_\_\_ (the "Agreement") and I have determined that said performance is in accordance with the Contract for the Project and final payment on all Contracts have been distributed.

Respectfully submitted,

\_\_\_\_\_