

## MEMORANDUM OF UNDERSTANDING

Between the City of Sun Prairie and the Dane County Drainage Board  
For 2019 through 2027 Calendar Years

**THIS MEMORANDUM OF UNDERSTANDING** ("MOU"), by and between the City of Sun Prairie, a Wisconsin municipal corporation having an address of 300 E. Main Street, Sun Prairie, WI 53590 (hereinafter referred to as "City") and the Dane County Drainage Board, a court appointed county board created under Wis. Stat. 88.17, having an address of c/o Attorney John C. Mitby, 33 E. Main Street, Madison, WI 53703 (hereinafter referred to as the "Board"), is effective upon the date that both parties have signed hereunder.

### RECITALS

**WHEREAS**, the land within the City of Sun Prairie, Dane County, Wisconsin, comprises 36% of the watershed of Dane County Drainage District 8 ("District 8") and 56% of the watershed of Dane County Drainage District 9 ("District 9"). The main drains and laterals of District 8 and District 9 are more clearly identified on the map attached as Exhibit A; and

**WHEREAS**, the Board is a local government entity responsible for operating all drainage districts within Dane County including, District 8 and District 9. The Board's duties include maintenance and repairs of district drains, levying assessments for cost on landowners within the districts, and conducting all affairs regarding the operation of the districts in accordance with Wis. Stats. Chapter 88 and ATCP 48; and

**WHEREAS**, both the City and Board recognize the benefits that City residents receive from living in a drainage district, the effect the City's stormwater system has on the district's drains, and the importance of the Board's inspections to ensure the continued successful operation of the districts; and

**WHEREAS**, the City and Board desire to enter into the MOU to ensure payment of the assessments for cost for property located within the City boundaries and maintenance of the drains and ditches subject to City surface runoff and sewage treatment output.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, the City and Board agree as follows:

### AGREEMENT

- I. Incorporation of Recitals. The recitals above are true and correct and are incorporated herein in their entirety.

## II. Term.

This MOU shall be in effect from 2019 through 2027. Unless terminated under Section III of this MOU, the MOU may be renewed for a 5-year term or a new MOU with similar terms and conditions may be executed with the mutual agreement of City and Board upon written request of either party no later than 1 year prior to expiration of the term. Either party may elect to not renew the MOU for a new 5-year term. The decision to renew or not renew this MOU is not reviewable. The Parties shall inform each other of their intent to renew within 30 days of receipt of the other's notice of its intent to renew the MOU.

## III. Termination.

Either Party may terminate this MOU prior to the end of the term by giving notice in writing to the other party with reason for termination. The parties shall mediate or otherwise resolve the reason for termination within 60 days of the offending party receiving written notice. After 60 days, if parties are unable to mediate or otherwise resolve the reason for termination, the MOU shall terminate after a second 60 day period. At the end of the second 60-day period, all provisions of this MOU shall be immediately revoked except for any outstanding assessments owed by the City for District 8 and District 9. Upon termination of this MOU, all outstanding assessments for cost shall be paid in accordance with this MOU and subsequently the Parties shall revert to following Wis. Stat. Ch. 88 and ATCP 48 as amended from time to time.

## IV. Assessments For Cost.

1. The City shall be assessed 45% of the assessments for cost for operation of District 8 and District 9. Operation is defined as any and all activities and actions under Wis. Stat. Ch. 88 and ATCP Ch. 48 that the Board may perform. The Board shall send a single invoice to the City. The City shall pay the invoice by the following August 1<sup>st</sup>. In the event a project by the Board for which the City has been invoiced does not move forward, the Board shall refund the City the invoiced amount less any costs already incurred. The Board shall not assess individual homeowners located within both the City and District 9 during the term of this MOU. A list of homeowners will be provided and amended from time to time.
2. The City shall not be subject to annual financial contributions for the length of the MOU that is not part of an assessment for cost as described in Section IV.1 from the Board.
3. The Board shall provide notification by July 1<sup>st</sup> of the year prior to planned, non-emergency maintenance or repair resulting in assessments greater than \$25,000 for projects in the Districts to the City to incorporate funding of

future assessments for cost into the City's 5-year Capital Improvement Plan. The Board shall not be required to provide prior notification for assessments for cost for emergency maintenance and repair work.

V. Discharge into Districts.

The MOU is based upon the City's representation that it is putting surface runoff and sewage treatment output in the drains and ditches.

VI. Maintenance of Ditches.

1. The Board shall perform annual inspections in District 8 and District 9. The Board shall provide notice of the date and time of the annual inspection of District 8 and District 9 two weeks prior to inspection so the City may send a representative to attend the inspections.
2. An annual maintenance plan (which shall include but not be limited to mowing, spraying, trimming, weeding and sapling treatment) shall be reviewed and approved by the City to prevent tree and brush growth and maintain bank stabilization in accordance with Wis. Stats. Ch. 88 and ATCP Ch. 48. The maintenance plan shall be prepared by the Board based on annual inspections and shall be provided to the City within 30 days after the inspections.

VII. Obligations of City.

1. The City shall provide to the Board and keep the Board updated with the current name(s) and contact information of the City's representative(s) for the purposes of this MOU.
2. The City shall meet with Board, or a representative of the Board, annually to discuss conditions and needs of District 8 and District 9 in October beginning October 2019 unless a different time is mutually agreed upon.
3. The City shall remain open to discussions on widening of corridors on City owned parcels based on site conditions not allowing for proper drainage work permitted under Wis. Stat. Ch. 88 and ATCP Ch. 48.
4. The City shall offset future increases to the flow of the sanitary district and City expansion by the continued installation of stormwater facilities that the City is requiring as part of City ordinances that are collectively reducing flows leaving the City. Additionally, if the discharge increases by 10% the Parties shall meet within 60 days of discovery of the increase to discuss the causes of the increase and to discuss revision of the City's contribution under Section VI.1 to reflect the increase.

5. The City recognizes and accepts that the Board is bound by state law and regulations including Wis. Stats. Ch. 88 and ATCP Chapter 48 and the actions it may take are limited by such laws and regulations.
6. The City shall provide the Board yearly updates by July 1<sup>st</sup> of each year prior to meeting contemplated in Section VII.2 on sanitary flows and City expansion within the watershed. City shall also provide data from the sanitary treatment plant regarding sanitary flows. Parties shall also attempt to determine stormwater flows if such data is available. . The City shall provide its stormwater plan, stormwater plans for new subdivisions, and stormwater protocols to the Board if such plan and protocol exist.

VIII. Obligations of Board.

1. Board shall provide to City and keep City updated with the current name(s) and contact information of the Board representative(s) for the purposes of this MOU.
2. The City shall meet with Board, or a representative of the Board, annually to discuss conditions and needs of District 8 and District 9 in October beginning October 2019 unless a different time is mutually agreed upon.
3. The Board shall provide notices of all meetings held for District 8 and District 9 to the City.
4. The Board accepts the City's current Stormwater Management Ordinance as outlined in Chapter 15.30 of the Code of Ordinances.
5. The Board shall recognize future stormwater projects completed by the City that provides benefits to lands located downstream from the City.
6. The Board shall provide construction plans and cost estimates to the City prior to bidding for any non-emergency project requiring a bid that will involve an assessment for costs. The Board shall allow City representatives to enter properties with the purpose of inspecting the work being performed.
7. Any contractors retained to do work shall be insured. In addition, if work is occurring on City owned property, the insurance requirements will meet those as required by Form E (attached).
8. The Board's contractors shall provide lien waivers to the City upon project completion. City payment for their assessment portion shall be made to

the Board within 30 days of final project inspection and acceptance along with receipt of all lien waivers.

IX. Non-Waiver/No Assumption of Duty.

City and Board do not waive and specifically reserve, their right to assert any and all affirmative defenses and limitations of liability as set forth in Wisconsin Statutes, Chapters 893 and 895 and related statutes.

X. Miscellaneous.

1. Compliance with Law. The Parties will perform their respective obligations under this MOU in compliance with Wis. Stat. Ch. 88 and ATCP Ch. 48 and all other applicable state and federal laws, rules, and regulations ("Law" or "Laws"), and in such a manner so as not to cause the other Party to be in violation of Law.
2. Entire Agreement/Amendment. This MOU embodies the entire agreement between the Parties and may be changed only by written amendment hereto, signed by both parties and approved by the City and Board.
3. Disputes. Any dispute or action between the parties arising from a decision or order by the Board shall be resolved in accordance with Wis. Stat. Ch. 88 and ATCP Ch. 48 except for the events described in Section III.
4. Status of Board. It is agreed that the Board does not represent the City, and that any persons who the Board utilizes and provides for services under this MOU are representatives of the Board and are not employees, representatives, or volunteers of the City of Sun Prairie. Simultaneously, it is agreed that the City does not represent the Board, and that any persons who the City utilizes and provides for services under this MOU are representatives of the City and are not employees, representatives, or volunteers of the Board.
5. Assignment. Neither party may assign this MOU or any of its rights or obligations hereunder without the prior written consent of the non-assigning party. Any such assignment or delegation to a third party without written consent of the non-assigning party will be void.
6. Assignability and Subcontracting. Neither party shall assign any interest or obligation under this MOU without the other party's prior written approval. All of the services provided for hereunder shall be performed by Board and its representatives.

7. No Third Party Reliance. No provision of this MOU is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person other than the parties hereto.
8. No Realty. It is expressly understood and agreed that this MOU is not a lease or a conveyance of realty, but merely a granting to Board the right to and maintain City property, District 8, and District 9 for the purposes set forth herein.
9. Amendments. This MOU shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this MOU may only be made by a written amendment, signed by the duly authorized agent or agents of the Board and approved by the Common Council.
10. Not Construed Against Drafter. The Parties acknowledge that no provision of this MOU will be interpreted in favor of, or against, any of the Parties hereto because any such Party or its counsel participated in the drafting thereof or because any such provision is inconsistent with any prior draft hereof or thereof.
11. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Board shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Board therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
12. Severability. Should any part, term or provision of this MOU be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof will remain in full force and effect and will in no way be invalidated, impaired or affected thereby.
13. Survivability. Any right or obligation of the parties under this MOU that, by its nature, should survive termination or expiration of this MOU will survive termination of this MOU.

14. Section Headings. The section headings in this MOU are inserted for convenience only and shall not limit or expand the scope or content of the provisions following such headings.
15. Notices. All notices under this MOU (except day-to-day communications) must be made in writing and will be effective (1) upon receipt when delivered in person or by a nationally recognized next-day courier service, or (2) five (5) days after being mailed certified mail (return receipt requested) to the address of the party listed in Section X.17 . Notice given by Board may also be made in writing and transmitted via email to an address of an appropriate contact person(s), with receipt of electronic evidence that the email was delivered.
16. Counterparts. This MOU may be executed in one or more counterparts, which may be transmitted by facsimile or electronic mail, and each of which will be deemed to be an original copy of this MOU and all of which, when taken together, will be deemed to constitute one and the same agreement.
17. Contact Information. The principal contacts for this MOU are:

**BOARD**

John C. Mitby or Elizabeth L. Spencer  
33 East Main St., Ste 400  
Madison, WI 53703  
Tel (608) 257-0945  
Fax (608)257-5764  
[jmitby@hurleyburish.com](mailto:jmitby@hurleyburish.com)  
[espencer@hurleyburish.com](mailto:espencer@hurleyburish.com)

**CITY**

Adam Schleicher or Tom Veith  
300 E. Main Street  
Sun Prairie, WI 53590  
Tel (608) 825-1170  
Fax (608) 825-1194  
[aschleicher@cityofsunprairie.com](mailto:aschleicher@cityofsunprairie.com)  
[tveith@cityofsunprairie.com](mailto:tveith@cityofsunprairie.com)

Either Party may change its address or contact information by providing written notice to the other party.

IN WITNESS WHEREOF, CITY and BOARD have caused this MOU to be executed in their respective names and their respective duly authorized representatives on the Effective Date.

CITY OF SUN PRAIRIE, WISCONSIN  
By: Paul T. Esser  
Paul T. Esser  
Its: Mayor

DANE COUNTY DRAINAGE BOARD  
By: Scott Ringelstetter  
Scott Ringelstetter  
Its: Chairman of the Board

By: Leonard R. Massie  
Leonard R. Massie, Board Member

By: Paul Maly  
Paul Maly, Board Member