

**MEMORANDUM OF UNDERSTANDING REGARDING COLLABORATION AND
THE FUNDING OF CERTAIN PROGRAMMING (2021-2026)**

Between the City of Madison and Sustain Dane, Inc.

THIS AGREEMENT, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “City”), and Sustain Dane, Inc., a Wisconsin non-stock corporation (hereinafter referred to as “Sustain Dane”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, Sustain Dane is a local Madison nonprofit whose mission is to inspire, connect, and support people to accelerate sustainable actions for community wellbeing, and in pursuit of this mission works with businesses and organizations to increase education about and actions in holistic sustainability - the intersection of environmental health, equity and social wellbeing, and a just economy; and,

WHEREAS Sustain Dane’s work with local businesses, organizations, and community partners provides overall sustainability project management, planning and coordination of educational sessions, linkages with local resource and incentive providers, facilitation of peer learning and mentorship, and more; and ,

WHEREAS, the City is a sponsor of Sustain Dane and, since 2007 has financially supported various programs run by Sustain Dane, including the rain barrel program, the MPower Champions Program, the Sustainable Business Network, Accelerate Sustainability Workshops, and Green Team Roundtables; and,

WHEREAS, under the MPower Champions Program, MPower Business Champions collectively realize an annual reduction of 18.9 million kWh saved, 60 million lbs. of CO2 emissions avoided, and \$2 million dollars saved each year; and,

WHEREAS, the Sustainable Business Network (SBN) has over 150 businesses, organizations, and individuals as members, including the City, and compliments Sustain Dane programs such as the MPower Champions Program by providing a network for MPower Alumni and others that want to stay current and connected to a sustainable community; and,

WHEREAS, in 2020 Sustain Dane built on the success of MPower and SBN in ways that enhance sustainability education and implementation in the business sector, provide a more robust program offering, reduce barriers to participation, and increase engagement, participation, and diverse inclusion in the sustainability movement; and,

WHEREAS, Sustain Dane now seeks continued collaboration and financial assistance from the City to support its programs, including the Accelerate Sustainability Workshops, Green Team Roundtables and the Sustain Dane Network; and,

WHEREAS, by expressing a commitment to present and future funding of Sustain Dane's programs, the City will assume a leadership role in climate change mitigation and preparedness, positioning the City and the region's businesses and organizations to thrive in the future, demonstrating its commitment to innovation and accessible programming. This commitment will ensure that Madison continues to be attractive to people and businesses by supporting a healthy the environment, the competitiveness of local businesses, and meaningful connections among the City's residents.

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 "Memorandum of Understanding Regarding Collaboration and the Funding of Certain Programming (2021-2026)" (the "MOU") is to set forth the terms and conditions upon which the City will financially contribute to certain programs of Sustain Dane from 2021 through 2026.
2. Term. This MOU shall take effect as of the Effective Date designated above and remain in effect through December 31, 2023. The Parties may renew this MOU for an additional three-year term (from January 1, 2024 through December 31, 2026) by mutual written agreement with 60 days written notice. This MOU may be terminated by either party with 10 days written notice to the other.
3. Financial Assistance. Subject to the annual budget approval of the City's Common Council, the City agrees to provide Sustain Dane financial assistance in the amount of \$40,000 annually to support the collaborative framework and associated programs identified herein, including the Accelerate Sustainability Workshops, Green Team Roundtables, the Sustain Dane Network, and other programs that City and Sustain Dane agree to include moving forward. In the absence of any budget authority, the City has no obligation to make this annual payment to Sustain Dane.
4. Statement of Principle. The City and Sustain Dane (the "Parties") agree to support common elements and shared goals of the City's Sustainability Plan and 100% Renewable Madison Report. The Parties acknowledge that there may be specific areas where common, mutual objectives are not identifiable or are otherwise not feasible.
5. Areas of Collaboration. The Parties have identified certain areas of common interest with high potential for constructive collaboration, which include:
 - a. Businesses and organizations forming green teams/sustainability committees and taking sustainable actions.
 - b. Promotion of energy and water efficiency, expansion of solar and other renewables, waste reduction, recycling improvement, sustainable food systems, alternative transportation, and equity and wellness.
 - c. Increase of racial and social equity.

- d. Economic development and financial benefits from sustainability.
- e. Expansion of alternative transportation, including the use of electric vehicles.
- f. Intersection of climate, health, and equity.
- g. Expansion of solar and other renewables in the community.
- h. Increasing education about sustainability research, framework plans, climate change, successful case studies, innovative actions and community well-being.

The Parties acknowledge that these areas of collaboration are subject to ongoing modifications, consistent with the City and Sustain Dane's mutual objectives and available resources.

6. Collaborative Planning. City staff and the Executive Director of Sustain Dane shall meet regularly to discuss the collaboration areas set forth in this MOU, or otherwise agreed upon. At a minimum, these meetings should occur quarterly, and other persons may be invited to assist in these meetings. The purpose of the meetings will be to prioritize the focus areas identified in this MOU, or otherwise agreed to, and gather information, identify projects and develop strategies for jointly implementing projects identified herein. The Parties acknowledge that in some instances approved projects may become the subject of separate agreements authorized and executed outside the framework of this MOU.
7. Annual Report. Sustain Dane will provide the City's Sustainability Program Coordinator an annual progress report, by December 31 of each year. This report shall include a written summary of Sustain Dane's work with area businesses and organizations, insights about areas of opportunity and challenges for community partners to increase their level of sustainability, project plans, milestones, achievements and any new areas of collaboration. In addition, periodic updates regarding projects and initiatives being developed in accordance with this MOU shall be provided to City staff and/or the Sustainable Madison Committee. The Parties may create other opportunities to share information.
8. Board of Directors Approval. The City and Sustain Dane acknowledge that Sustain Dane is a nonprofit subject to its Bylaws and Board of Directors. The Parties acknowledge that in carrying out this MOU, Board of Director approvals may be necessary; and therefore, certain of SD's commitments in carrying out projects and initiatives developed in accordance with this MOU will be contingent on the Board of Director's approvals.
9. Public Support. The City agrees, when possible, to educate through its network about positions before legislative or regulatory bodies that are, in the City's judgment, consistent with the cooperative intent of this MOU. Sustain Dane is an education non-profit and is not able to lobby or advocate for policies.
10. Non-Discrimination. In the performance services under this Agreement, Sustain Dane agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge,

physical appearance, sexual orientation, gender identity, political beliefs or student status. Sustain Dane 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, sexual orientation, gender identity or national origin.

11. Liability. Each party shall be responsible for 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.
12. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by United States mail at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the date of postmark, if sent by certified mail, postage prepaid, addressed to:

<u>Name</u>	<u>Address</u>
City of Madison	Stacie Reece Sustainability Program Coordinator 210 MLK Jr. Blvd., Room 403 Madison, WI 53703
Sustain Dane	Claire Schaefer Oleksiak PO Box 144 Madison, WI 53701

13. Affirmative Action.
 - a. The following language applies to Sustain Dane if Sustain Dane employs fifteen (15) or more employees (MGO 39.02(9)(c).):

Sustain Dane agrees that, within thirty (30) days after the effective date of this Agreement, Sustain Dane will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Agreement is still in effect, or if the City enters into a new Agreement with Sustain Dane, within one year after the date on which the form was required to be provided, Sustain Dane will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

Sustain Dane further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of Sustain Dane are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. Sustain Dane agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by Sustain Dane, and if the referral is timely. A referral is timely if it is received by Sustain Dane on or before the date stated in the notice.

The Department will determine if Sustain Dane is exempt from this Subsection at the time the Request for Exemption in Subsection b. is made.

b. Articles of Agreement, Request for Exemption, and Release of Payment.

These “ARTICLES OF AGREEMENT” apply to all parties who enter into leases, contracts or agreements with the City, unless determined to be exempt under the following table and procedures or as otherwise provided for by City ordinance:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with City*	\$50,000 OR MORE Aggregate Annual Business with City*
14 or fewer	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

* As determined by the City Finance Director

** As determined by the Department of Civil Rights

(1) Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in section 13.B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights (“Department”) makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 13.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City in the calendar year. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 13.B.(5) UPON**

REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

Sustain Dane shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of Sustain Dane. Sustain Dane agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

Sustain Dane shall in all solicitations or advertisements for employees placed by or on behalf of Sustain Danes state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

Sustain Dane shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of Sustain Dane's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This article applies only to non-public works contracts.)

Sustain Dane agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The contractor warrants and certifies that, one of the following paragraphs is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Sustain Dane believes it is exempt from filing an Affirmative Action Plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Sustain Dane is not exempt, the Articles of Agreement will apply.
- D. Sustain Dane believes it is exempt from filing an Affirmative Action Plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in Sec. 39.02(9)(a)2. If the City determines that Sustain Dane is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

Sustain Dane will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of Sustain Dane's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or

Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare Sustain Dane ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

Sustain Dane shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

14. Ban the Box - Arrest and Criminal Background Checks.

a. Definitions. For purposes of this section:

“Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

b. Requirements. For the duration of this Contract, Sustain Dane shall:

- (1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant's arrest and conviction record, as defined herein.
- (2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
- (3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
- (4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
- (5) Comply with all other provisions of Sec. 39.08, MGO.

c. Exemptions. This section does not apply when:

- (1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
- (2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. c. 1. or 2. above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, Sustain Dane is exempt from this section for the position(s) in question.

15. Binding on Parties; Amendments. This Agreement shall be binding on the Parties hereto, and cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties hereto unless the same is in writing and is signed by both the Parties or their authorized agents.
16. Third Party Rights. This Agreement is intended to be solely between the Parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the Parties.
17. Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the

resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

18. Status of Parties. It is agreed that Sustain Dane is not an employee or representative of the City, and that any persons who Sustain Dane utilizes and provides for services under this Agreement are employees or volunteers of Sustain Dane and are not employees or volunteers of the City of Madison. In addition, it is agreed that by working with and funding certain programs of Sustain Dane as set forth herein, that the City is not granting Sustain Dane the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Sustain Dane arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
19. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Sustain Dane 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 Sustain Dane 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.
20. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the Parties that all other provisions of this Agreement remain in full force and effect.
21. Agreement Governed by Laws of Wisconsin. This Agreement shall be deemed executed in the City of Madison and in the State of Wisconsin and governed by the laws of the State of Wisconsin.
22. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of Sustain Dane represents and warrants that he has been duly authorized to bind Sustain Dane and sign this Agreement on Sustain Dane's behalf.
23. Entire Agreement. The entire agreement of the Parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the Parties.
24. Counterparts; Electronic Delivery. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all

requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

Sustain Dane, Inc.

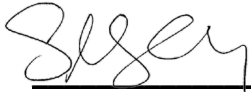


4/29/2021

Claire Schaefer Oleksiak, Executive Director

Date

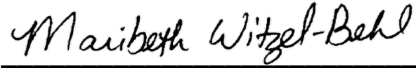
CITY OF MADISON



Satya Rhodes-Conway, Mayor

05/05/2021

Date



Maribeth Witzel-Behl, City Clerk

4/29/2021

Date

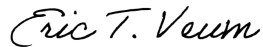
Countersigned:



David P. Schmiedicke, Finance Director

05/05/2021

Date



Eric Veum, Risk Manager

5/3/2021

Date

Approved as to form:



Michael Haas, City Attorney

5/5/2021

Date

Execution of this Agreement by City was authorized by Resolution Enactment No. RES 21-00206, ID No. 64257, adopted by the Common Council of the City of Madison on March 16, 2021.