

**AGREEMENT TO CONTROL THE CONTRIBUTION OF POLLUTANTS
IN THE STORM SEWER SYSTEMS BETWEEN
THE CITY OF MADISON
AND
THE UNIVERSITY OF WISCONSIN-MADISON**

THIS AGREEMENT, executed by the City of Madison, Wisconsin, a municipal corporation, hereinafter referred to as “MADISON”, and the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison, hereinafter referred to as “UNIVERSITY”, acting by and through its authorized agents shall become effective upon execution by both parties:

WITNESSETH:

WHEREAS, MADISON, and UNIVERSITY, have jointly obtained Wisconsin Pollutant Discharge System permit number WI-S058416-4 (hereinafter, “the Permit”) along with their co-permittees, enabling them to discharge storm water from all portions of their municipal separate storm sewer systems pursuant to Chapter 283, Wis. Stats., and Wisconsin Administrative Code Chapter NR 216; and

WHEREAS, under the authority of Sec. 283.33(2)(b), Wis. Stats., and as required by Parts of 2.10, 2.12, and 4.6.2 of the Permit, MADISON and UNIVERSITY agree to enter into an inter-municipal agreement to control the contribution of pollutants from one Party’s connected municipal separate storm sewer system to the other; and

WHEREAS, Sec. 66.0301, Wis. Stats., authorizes towns, villages, cities, and other governmental units and regional planning commissions to contract for the joint exercise of any power or duty required or authorized by a statute; and

WHEREAS, the governmental units which are parties hereto are authorized by statute to exercise the power implicit herein; and

WHEREAS, MADISON and UNIVERSITY agree it would be to the mutual benefit of the parties to control the contribution of pollutants from one municipal sewer system to the other.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, MADISON and UNIVERSITY do, pursuant to the provisions of Wisconsin Statutes, agree as follows:

I. DEFINITIONS

For purposes of this AGREEMENT, the following definitions obtain:

(a) “MADISON Permit Area” means those lands within the municipal boundaries of the City of Madison, including UNIVERSITY lands located outside of the UNIVERSITY Permit Area, for which MADISON is responsible under the Permit.

(a) “Illicit discharge” has the meaning provided in Wisconsin Administrative Code section NR 216.002(11) and Part 7.7 of the Permit.

(b) “UNIVERSITY lands” means lands owned by, leased by, or otherwise under the control of the Board of Regents of the University of Wisconsin System which are within the geographic area covered by the Permit (See Attachment B).

(c) “Campus Development Plan Boundary” means the boundary limits of interest related to land development on the main campus for achieving the mission of the University. Not all lands within this boundary are owned by the Board of Regents of the University of Wisconsin System, but this line is the identified campus boundary (Refer to Attachment B).

(d) “UNIVERSITY Permit Area” means the contiguous geographic area generally defined as the area north of University Avenue, west of N. Park Street, east of the Village of Shorewood Hills boundary (north of Colgate Road), and east of University Bay Drive, Lake Mendota defines the northern edge of the UNIVERSITY permit area. The majority of land within this area is property of the Board of Regents of the University of Wisconsin System with a portion being within the Village of Shorewood Hills on the west side of campus.

II. PERMITTED RESPONSIBILITIES

(a) MADISON will manage, inspect, and report all above ground and underground storm water conveyance into, out of, or through the MADISON Permit Area.

(b) UNIVERSITY will manage, inspect, and report all above ground and underground storm water conveyance into, out of, or through the lands within the UNIVERSITY Permit Area.

(c) UNIVERSITY will determine the applicability, implementation, and management of SWPPPs from all applicable lands or operations of the UNIVERSITY, including outside its permit jurisdictional area and within the MADISON Permit Area.

III. ENFORCEMENT JURISDICTION

(a) Jurisdiction to enforce the terms of the Permit is based on the ownership or control of the property from which the storm water discharges originate. If an illicit discharge originates from UNIVERSITY lands, UNIVERSITY shall have enforcement responsibility for such illicit discharge, even if the discharge occurs in the MADISON Permit Area. If the lands from which an illicit discharge originates are not owned by, leased by, or otherwise subject to the control of UNIVERSITY, MADISON shall have enforcement responsibility for such illicit discharge, even if the discharges occurs in the UNIVERSITY Permit Area. Questions about jurisdiction over a particular piece of property may be resolved by contacting the individual designated for this purpose on the current contact list attached to this AGREEMENT as Attachment A. Nothing in this AGREEMENT shall be construed to waive or cede any jurisdiction that MADISON or UNIVERSITY may possess.

(b) In the case where an illicit discharge is detected within a storm sewer under the control of MADISON or UNIVERSITY but neither of the Parties is able to positively identify the source of the discharge, the Parties shall work cooperatively to determine the actions to best resolve the situation.

IV. JOINT SAMPLING OF POLLUTANTS

The Parties shall discuss at the Permit term meeting provided for by Article IX of this AGREEMENT, below, whether joint sampling of shared storm sewer systems is appropriate for the upcoming year. Any proposed sampling of connected storm sewers will be included in either the MADISON or UNIVERSITY Annual Report required by the Permit. The proposed sampling should be included in the UNIVERSITY Annual Report if it occurs within the UNIVERSITY Permit Area. All joint sampling not within the UNIVERSITY Permit Area should be included in the MADISON Annual Report. Cost-sharing for any proposed sampling shall be determined by mutual agreement of the parties at the time it is proposed.

V. PLANNING PROCESS TO PREVENT POLLUTANTS IN STORM WATER FROM NEW DEVELOPMENT WHICH DISCHARGE TO SHARED STORM SEWERS

MADISON and UNIVERSITY shall meet periodically to discuss storm water discharge issues related to new development. These meetings will be conducted by the existing UNIVERSITY/MADISON Joint Public Works Staff Group. Consult Attachment A for the name of the person(s) to be contacted for placing storm water-related issues on the Working Group agenda.

VI. GENERAL NOTIFICATION PROCEDURES

The chain of communication for resolving general issues relating to the Permit is set forth in the current contacts list, attached to this AGREEMENT as Attachment A. Attachment A shall be revised and updated as needed.

VII. NOTIFICATION PROCEDURES FOR ENFORCEMENT OF ILLICIT DISCHARGES

Each Party agrees to notify the other Party of illicit discharges that it discovers, or of which it otherwise has knowledge, for which the other Party may have enforcement and/or clean up responsibility, according to the procedures set forth in this Article VII, below. No notification to the other Party is required for illicit discharges that are entirely contained within the discovering Party's storm sewer system, and which do not otherwise merit notification.

(a) In the case of an illicit discharge which originates from UNIVERSITY lands and which discharges directly to a storm sewer or property within the MADISON Permit Area, the Party which discovers the discharge shall notify the other Party in accord with the current contact list attached to this AGREEMENT as Attachment A.

(b) In the case of an illicit discharge which originates from property under the jurisdiction of MADISON and which discharges directly to a UNIVERSITY storm sewer or to UNIVERSITY lands, the Party which discovers the discharge shall notify the other Party in accord with the current contact list attached to this AGREEMENT as Attachment A.

(c) In the case that either Party discovers an illicit discharge to one or both of the Parties' storm sewer systems from a source that cannot be positively identified, both Parties shall work cooperatively to determine the actions to best resolve the situation.

VIII. COST SHARING

(a) Notwithstanding any responsibility of third parties for the cleanup and remediation costs of illicit discharges as provided for under Wis. Stat. Ch. 292, and except as provided in Articles III (b) and VIII (b) of this AGREEMENT, as it relates to responsibility between themselves, each Party is responsible for the cleanup and remediation costs of illicit discharges to their respective lands or storm sewer systems.

(b) Where illicit discharges originate from the jurisdiction, as defined in Article III (a), above, of one Party (“the discharging Party”) and flow to or otherwise impact the jurisdiction of the other Party (“the non-discharging Party”), the discharging Party, in the absence of or in addition to the third party responsible for the illicit discharge, shall be responsible for the costs incurred in cleanup and remediation of the illicit discharge. The discharging Party shall not exceed the prevailing rates in the community for cleanup and remediation, and is subject to the appropriation of necessary funds. Where the circumstances allow, the non-discharging party shall offer the discharging Party the opportunity to consult or assist in the cleanup and remediation.

(c) The Parties’ proportional share of the costs of any joint sampling, joint clean-up activities, or any other costs resulting from this AGREEMENT that are not provided for by (a) or (b), above, shall be allocated according to the mutual agreement of the Parties.

IX. AGREEMENT REVIEW

The Parties shall meet no less than every five (5) years, or once per Permit term, to mutually review the AGREEMENT and discuss issues pertaining to the AGREEMENT.

X. NOTICES

All notices hereunder and communications with respect to this AGREEMENT shall be directed by email or United States mail, postage prepaid and addressed as follows:

If to MADISON	City Engineer City County Building 210 Martin Luther King Jr. Boulevard, Room 115 Madison, WI 53703
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If to UNIVERSITY	Assistant Vice Chancellor UW-Madison Environment, Health & Safety Department 30 East Campus Mall Madison, WI 53715
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or to such other addresses that either party shall designate by written notice.

XI. PERFORMANCE

Each party certifies it possesses legal authority to enter into this AGREEMENT, and that the persons identified in Article X are duly authorized as agents by the Parties to act in connection with this AGREEMENT and to provide all required reports and such additional information as may be requested.

XII. LIABILITY

Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or 893.82 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.

XIII. THIRD PARTY RIGHTS

This AGREEMENT is intended to be solely between the parties hereto. No part of this contract 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.

XIV. BINDING ON PARTIES

This AGREEMENT 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 unto less the same be in writing signed by the duly authorized agent or agents who executed this AGREEMENT or their successors.

XV. 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.

XVI. NO WAIVER

No failure to exercise, and no delay in exercising, any right, power, or remedy hereunder on part of MADISON or UNIVERSITY 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 of default specified in such waiver. 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 MADISON or UNIVERSITY 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.

XVII. AMENDMENTS

This AGREEMENT may be amended at any time upon the written agreement of the Parties.

XVIII. EFFECTIVE DATE

Upon execution by both Parties, this AGREEMENT shall become effective, and shall run concurrently with the Permit to which this AGREEMENT relates. This AGREEMENT shall be automatically renewed each time the Permit is renewed, unless either party notifies the other, prior to the Permit renewal, of its intent not to renew the Agreement.

XIX. 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 the other's jurisdiction for the administration of such matters.

XX. COUNTERPARTS; ELECTRONIC DELIVERY

This Agreement 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 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 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 caused this AGREEMENT to be executed by their proper officers.

UNIVERSITY OF WISCONSIN-MADISON

Robert Cramer, Vice Chancellor for Finance and Administration (Interim)

Date

CITY OF MADISON, WISCONSIN
A Municipal Corporation

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael R. Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-____-_____, ID
No. _____, adopted by the Common Council of the City of Madison on _____, 202__.

ATTACHMENT A

Storm Water Contacts – City of Madison and University of Wisconsin-Madison
City of Madison / UW-Madison Intermunicipal Agreement
Storm Water Permit WPDES WI-SO58416-4

The following list identifies whom to contact for various storm water permit compliance issues, as of the date of execution of the Agreement. If a condition arises that is not summarized in the table, please contact [Name], city of Madison [Title] at [Phone#]; Jeff Zebrowski, UW-Madison Chemical Hygiene Officer at (608) 890-0993; or Chris Egger, UW-Madison Environmental Compliance Specialist at (608)263-6708.

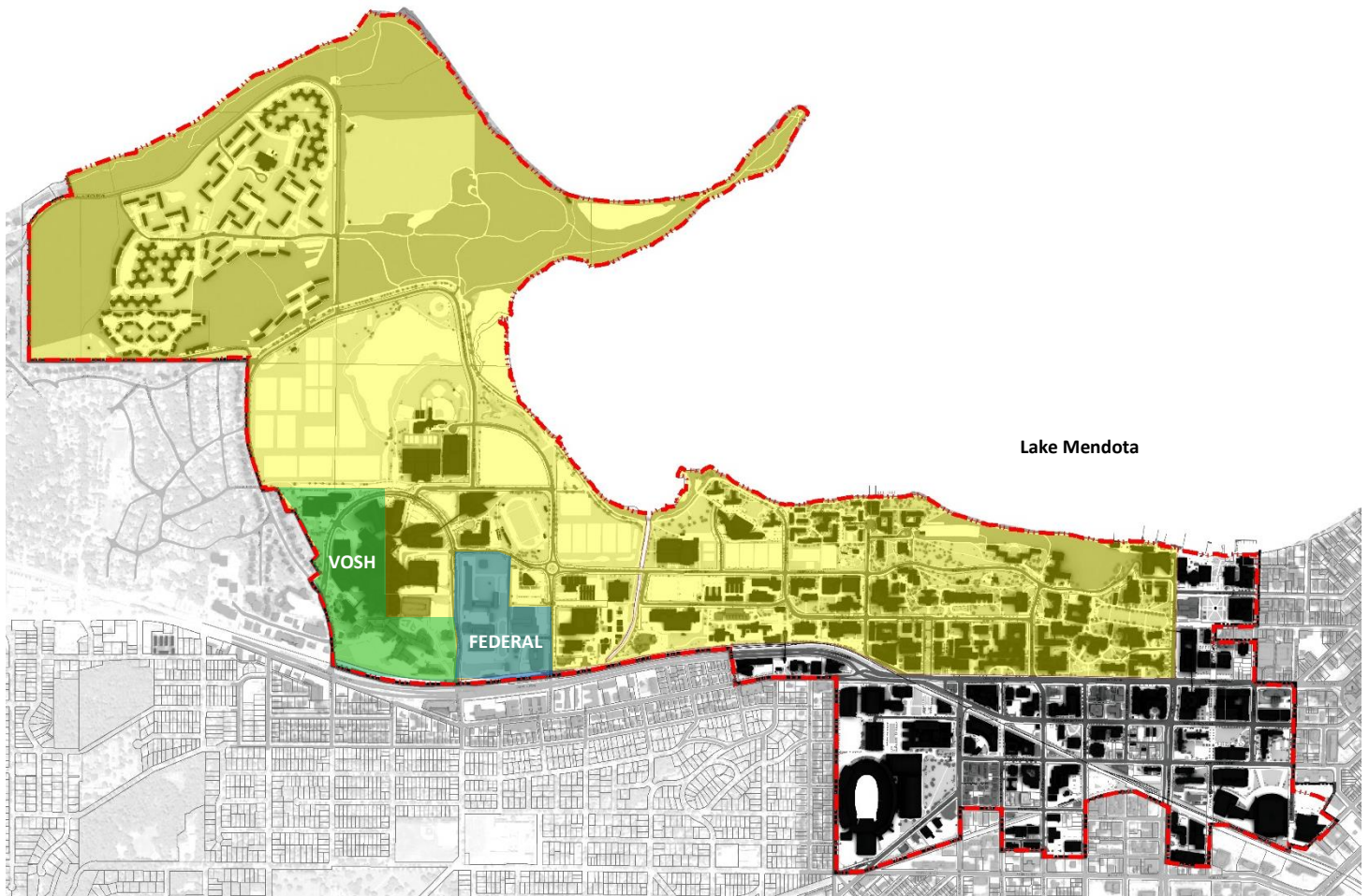
Condition / UW-Madison Contacts

After-Hours Contact: UWPD (608) 264-2677
Attorney's Office: Ben Griffiths or Brigid Daly (608) 263-7400
Emergencies: Chemical Safety Hotline (608)265-5700
Enforcement – citations, etc.: EH&S Associate Vice Chancellor [Vacant]
Erosion Control: Ellen Agnew (608)262-7266
Hazardous Substances Spills: Chemical Safety Hotline (608)265-5700
Illicit Discharge: Chris Egger (608) 263-6708
Joint Public Works Staff Group: Gary Brown (608) 263-3023
Jurisdictional Issues: Ben Griffiths or Brigid Daly (608) 263-7400
Salt/Sand Complaints: Ellen Agnew (608)262-7266
Back Up Contact for All Above: Jeff Zebrowski (608)890-0993

Condition / City of Madison Contacts

After Hours Contact - City of Madison Engineering Supervisor on Call, 608-266-4751
City Attorney's Office – Doran Viste, 608-266-4511
Emergencies - Engineering Operations, 608-266-4751
Erosion Control Enforcement – City Engineering – Greg Fries, 608-267-1199
Hazardous Substances Spill – Madison/County Health – Rick Wenta, 608- 242-6515
Salt/Sand Complaints – City Engineering – Phil Gaebler, 608-266-4059
Jurisdictional Issues – City Attorney's Office – Doran Viste, 608-266-4511
Back-up for all above Greg Fries 608-267-1199, Janet Schmidt 608-266-261-9688

ATTACHMENT B: UNIVERSITY Permit Area Boundary and Description



The UNIVERSITY Permit Area is the contiguous geographic area generally defined as the area north of University Avenue, west of N. Park Street, east of the Village of Shorewood Hills boundary (north of Colgate Road), and east of University Bay Drive, Lake Mendota defines the northern edge of the permit area. The majority of land within this area is property of the Board of Regents of the University of Wisconsin System with the following exceptions:

- Portion of land within the Village of Shorewood Hills, as identified in green. (VOSH)
- Portion of federally owned lands (i.e. VA Hospital and USDA), as identified in blue. (Federal)

The Campus Development Plan Boundary (dashed line) means the boundary limits of interest related to land development on the main campus for achieving the mission of the University. Not all lands within this boundary are owned by the Board of Regents of the University of Wisconsin System, but this line is the identified campus boundary.

The non-shaded area within the Campus Development Plan Boundary depicted above includes UNIVERSITY lands within the MADISON Permit Area. Lands in this area include Board of Regents land as well as private property and City of Madison right-of-way.