

AGREEMENT TO ALLOW SANITARY SEWER DISCHARGE AT WELL 19
Between the City of Madison and the University of Wisconsin-Madison

THIS AGREEMENT, entered into by and between the City of Madison, a Wisconsin municipal corporation (hereinafter referred to as “City”), and the Board of Regents of the University of Wisconsin (“University”), is effective as of the date by which both parties have signed hereunder.

RECITALS

WHEREAS, the University owns the lands located at 2526 Lake Mendota Drive in Madison, WI (the “Property”), which lands are subject to an easement granted to the City (Doc. No. 1227865) that allows the use of the land for public water supply purposes. The City has built and operates a public drinking water well, booster pump and storage facility on the Property (“Well 19”). Well 19 provides safe drinking water to the public, including the UW Hospital complex, most of the University complex and the Village of Shorewood Hills; and,

WHEREAS, in 2023 the City of Madison Water Utility (the “Utility”) will be installing an iron, manganese and radium treatment system (the “Treatment System”) at Well-19 to reduce the levels of these naturally occurring contaminants in the drinking water, thereby improving the water quality of the drinking water produced and stored at the facility (the “Project”); and,

WHEREAS, the Treatment System will produce discharge that needs to be disposed of in a sanitary sewer system. The City’s nearest sanitary sewer main is approximately one mile away, however the University’s sanitary sewer system, serving the nearby Eagle Heights student housing complex, is adjacent to the Property in Lake Mendota Drive. In addition, Well 19 is already connected with the University’s sewer, for relatively small amounts of daily flow to enter the system at that connection; and,

WHEREAS, it is in best interests of both the City and the University (the “Parties”) to install the Treatment System at Well 19; and

WHEREAS, the University is agreeable to allowing the City to use the University’s sanitary sewer main for the purposes of the treatment of the drinking water at Well 19, subject to the terms and conditions set forth in this agreement;

WHEREAS, Section 66.0301 Wisconsin Statutes, authorizes cities, villages, towns, counties, and other public agencies to enter into agreements for the joint exercise of any power or duty required or authorized by law.

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 Agreement to Allow Sanitary Sewer Discharge at Well 19 (the “Agreement”) is to set forth the terms and conditions between the City and the University under which the City will be authorized to discharge wastewater from the

Treatment System to be constructed at Well 19 as part of the Project. This Agreement will address the quantity of the discharge authorized, and the manner in which the Utility will pay the University for this sanitary sewer service.

2. Term. This Agreement shall remain in effect until such time as the Treatment System at Well 19 is no longer in service, or City or Madison Metropolitan Sewerage District sanitary sewer facilities are installed adjacent to the Property and other sewer connections can be made to serve the Property. Alternatively, this Agreement may be terminated upon the mutual agreement of the Parties.
3. Connection; Measurement.
 - a. Connection. As part of the Project, and to provide for the safe discharge of contaminants from the Treatment System, the University will allow the Utility to connect Well 19 to the closet connection point in the University sanitary sewer system. Once this connection is made, the University will allow the Utility to discharge wastewater from Well 19 to the University sanitary sewer system. The Utility shall bear all costs of the connection and obtain any permits or other approvals necessary for the work,
 - b. Volume. Unless advance approval in writing is obtained by the University, the Utility shall not exceed a maximum daily volume of 28,000 gallons of discharge from Well 19 (“Daily Volume”).
 - c. Holding Tank. The Daily Volume will be held in a Utility-owned and operated backwash tank on the Well 19 site.
 - d. Flow Control. The Daily Volume will be discharged from the backwash tank to the University’s sanitary sewer system at a rate and timeframe chosen by the University to lessen the impact on the University’s sanitary sewer system provided that the 28,000 gallons per 24-hours volume can be met.
 - e. Maintenance Outages. The Utility agrees to temporarily withhold its sewer discharge for maintenance or emergency repairs of the University sanitary sewer system. The Utility has the ability to hold discharge in the backwash tank for durations of up to two days. For longer outages, the Utility will temporarily shut down the well or bypass the well’s filtration system, thereby eliminating the backwash discharge. The University shall contact the 24/7 Water Utility Operator at 608-266-4665 for all requests to stop Utility sewer discharge at Well 19. For non-emergency maintenance outages, the University shall provide a minimum of three working days’ notice to the Utility.
 - f. Metering. The Utility will install, own and maintain a meter between the backwash tank and the discharge point for the purpose of recording flow rates and volumes discharged into the University’s sewer system. The meter will be fixed with an end point and will be connected to the Utility’s Advanced Metering Infrastructure (AMI) system. Data will be recorded and provided to the University for billing purposes and flow rate and timing verification.

- g. Sewer Charges. The rate for the use of the University’s sanitary sewer shall be the City of Madison Sewer Utility’s flat rate for unmetered customers, as those rates are adjusted and established by the City of Madison Common Council (2022 rates: \$0.004626 per gallon).
 - h. Credit. Rather than invoice the Utility for the monthly sewer charges, the Utility will determine the sewer charges due under this Section and credit the University’s monthly water account *<sub-account to be determined>* by the monthly sewer fee it incurs.
 - i. Records. The Utility shall provide the University with all flow, metering and billing information generated under this Section upon request.
4. 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.
5. Nondiscrimination. 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.
6. 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	General Manager, Water Utility 119 East Olin Ave. Madison, WI 53713
University of Wisconsin-Madison	Assistant Vice Chancellor UW-Madison Environment, Health & Safety Department 30 East Campus Mall Madison, WI 53715

7. Final Agreement. This Agreement entered into by the Parties on this date constitute the entire agreement of the Parties with respect to the subject matter hereof, and may only be modified or supplemented by an additional writing between the Parties. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
8. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.
9. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of City 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, 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 City or University therein. A waiver of any covenant, term of condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
10. Change in Law/Severability. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable by a change in state or federal law, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term or provision was never part of the Agreement.
11. No Third Party Beneficiary. This Agreement is intended to be solely between City and University. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement.
12. Conflict Resolution. The Parties pledge their good faith to resolve any concerns or disputes that arise regarding their respective obligations under this Agreement. Either party may at any time request a meeting with the other party to discuss a concern relating to this Agreement. Nothing in this section is intended to prevent either party from seeking any remedy available to it under this Agreement from a court of competent jurisdiction in Dane County, Wisconsin as described in Section 13. The Parties agree that specific performance is an appropriate remedy for any breach of this Agreement and that a party need not show that damages are not a sufficient remedy to obtain specific performance by the other party.
13. Enforcement. Any act by either party in violation of this Agreement shall be remedied by the courts of the State of Wisconsin. This Agreement is intended to provide both parties with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement.

14. Binding Effect. The parties have entered into this Agreement under the authority of Wis. Stat. § 66.0301(2). The parties agree that this Agreement shall be binding upon both parties.
15. Authority. Each party warrants for itself that it has complied with all applicable statutes, rules, orders, ordinances, requirements and regulations to execute this Agreement, and that the person or persons executing this Agreement on its behalf is authorized to do so.
16. 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 caused this Agreement to be executed by their proper officers on the day and year written below.

FOR THE UNIVERSITY OF WISCONSIN-MADISON

Laurent Heller
Vice Chancellor for Finance and Administration

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Hass, City Attorney

Date

Execution of this Agreement by the City of Madison is authorized by Resolution Enactment No. RES 23-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2023.