

**TEMPORARY LIMITED EASEMENT**

**THIS TEMPORARY LIMITED EASEMENT**, is made by and between the Madison Metropolitan Sewerage District (hereinafter referred to as “MMSD”), and the County of Dane (hereinafter referred to as the “County”).

**RECITALS**

**WHEREAS**, the County wishes to enter upon and use a portion of MMSD’s property located in the City of Madison, Dane County, Wisconsin as described and depicted on the attached Exhibit “A” (the “Premises”) for a storage and dewatering area as part of Dane County’s Yahara River Sediment Removal from Lake Monona to Lake Waubesa.

**WHEREAS**, MMSD wishes to accommodate the County’s request for a temporary easement for the purposes described in this Easement, pursuant to the terms and conditions set forth herein:

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MMSD and the County agree as follows:

1. Grant of Easement. MMSD hereby grants to the County a non-exclusive Temporary Limited Easement (“Easement”) for the Premises as shown in Exhibit A to allow the County to access the Premises and engage in the following activities on the Premises:

- (a) Excavation of dewatering area for dewatering and storage of sediment;
- (b) Storage of sediment and material taken from waterways and dewatering of said material;
- (c) Removal of materials by the County or its assigns after dewatering;
- (d) Storage of equipment including vehicles associated with the sediment removal project; and
- (e) Final grading of dewatering and stockpile sites after materials are removed.

2. Term. This Easement shall be in effect for two (2) years commencing on the 14th day of October, 2019 (the “Effective Date”), and ending the 13th day of October, 2021. MMSD may terminate this Easement at any time upon sixty (60) day advance written notice to the County.

3. Construction Plan. Prior to the Effective Date of this Easement, the County has submitted and MMSD has approved, a plan describing the intended placement and construction

Name and Return Address County of Dane Attn: Real Estate Coordinator 5201 Fen Oak Drive, #208 Madison, WI 53718
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Tax Parcel No's.
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of any items on the Premises. The plan shall not permit the removal of trees except in the west drying bed area and a small corridor needed for inlet and outlet piping to a dewatering basin. Prior to any tree removal, plans and field markings shall be approved by MMSD. No deviations from this plan shall be allowed except with the prior approval of MMSD. Thirty (30) days prior to the termination of this Easement, the County shall remove all structures and material placed on the Premises. If the County's structures remain on the Premises following termination, (1) title to the structure and material shall vest in MMSD; or (2) MMSD may remove the structure and material and the County shall be responsible for all costs thereof. This Easement is contingent upon MMSD's approval of the plan.

4. Use of the Premises.

(a) The County and its designees shall at all times comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to the County's activities pursuant to this Easement and shall obtain all permits, licenses and orders required to conduct any such activities. The County shall, at its expense, obtain, maintain, and display on the Premises all necessary permits, including City of Madison erosion control permits, to perform the dewatering work on the Premises. The County shall maintain the Premises in a safe condition at all times.

(b) While in use for dewatering, the County shall inspect the Premises weekly and following any rain event of greater than 1/2". All stumps, waste materials and other debris shall be disposed of by the County as required by any applicable permit or as directed by MMSD.

(c) Use of pesticides and herbicides shall only be allowed with the prior written approval of MMSD which shall not be unreasonably withheld, delayed or denied. Any pesticides or herbicides used as part of a management plan must conform to the Forest Stewardship Council list found at <https://ic.fsc.org/en/our-impact/program-areas/forest-program/pesticides>.

5. Limitations on Use.

(a) No Disposal. The placement of dredge materials at the Premises is not intended to provide for the disposal of such materials and such placement shall not be construed as disposal of those materials.

(b) Samples Required. The County and/or its contractor shall collect a core sample from any materials proposed to be placed at the Premises. The County shall arrange for the core sample to be analyzed for nutrients (e.g. Phosphorus) and contaminants (heavy metals, PCB, PAH) as required by WDNR, Chapter 30 permitting requirements. Dane County shall collect at minimum 1 sample per month that shall be analyzed for Chlorides. The sample shall be collected in the dewatering basin prior to outlet discharge.

(c) No Hazardous Waste. No materials that contain hazardous substances in quantities sufficient to constitute a hazardous waste may be placed at the Premises.

(d) No Interference. The County shall not place any materials at the Premises that cause or contribute to a plant upset, interference with wastewater treatment processes or equipment, or a violation of MMSD's WPDES permit.

6. Termination of the Easement. The County shall restore the Premises to conditions existing at the signing of this Easement, which shall include restoring the Premises to the agreed upon elevation, planting to restore the Premises to prairie, and repairing any damage or wear and tear caused to the access road.

7. Indemnification. The County agrees to save, keep harmless, defend and indemnify MMSD and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Easement or omissions of County's employees, agents, representatives or contractors. County shall have the authority and right to remove any persons or party not in compliance of any safety rule, policy or procedure, including any MMSD representatives or agents.

8. Non-Discrimination. In connection with the performance of work under this Easement, the County agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation, arrest or conviction record or national origin. This provision 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. Except with respect to sexual orientation, the County further agrees to take affirmative action to ensure equal employment opportunities. The County agrees to post in a conspicuous place available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

9. Miscellaneous.

(a) Nothing in this Easement shall supersede any easements previously granted on the Premises. This Easement sets forth the entire understanding of the parties and no prior oral representations or understandings between the parties related to the subject matter of this Easement shall be of any force or effect. This Easement may only be amended by a writing signed and acknowledged by the County and MMSD. Both parties have been represented by legal counsel and have had the opportunity to consider the provisions set forth herein. This Easement shall be construed without consideration as to who may have served as the drafting party.

(b) If any term or condition of this Easement shall be deemed invalid or unenforceable, the remainder of this Easement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected

thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

(c) If a suit is brought to enforce this Easement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

(d) This Easement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

(e) This Easement may be executed in counterparts, but such counterparts, taken together, shall constitute one agreement.

[Signature Pages Follow]

COUNTY OF DANE

(SEAL)

By \_\_\_\_\_  
Scott McDonell, County Clerk

STATE OF WISCONSIN    )  
  ) ss.  
COUNTY OF DANE        )

Personally came before me on this \_\_\_\_ day of \_\_\_\_\_, 2019, the above named Scott McDonell, as Dane County Clerk, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

MADISON METROPOLITAN SEWERAGE  
DISTRICT

(SEAL)

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

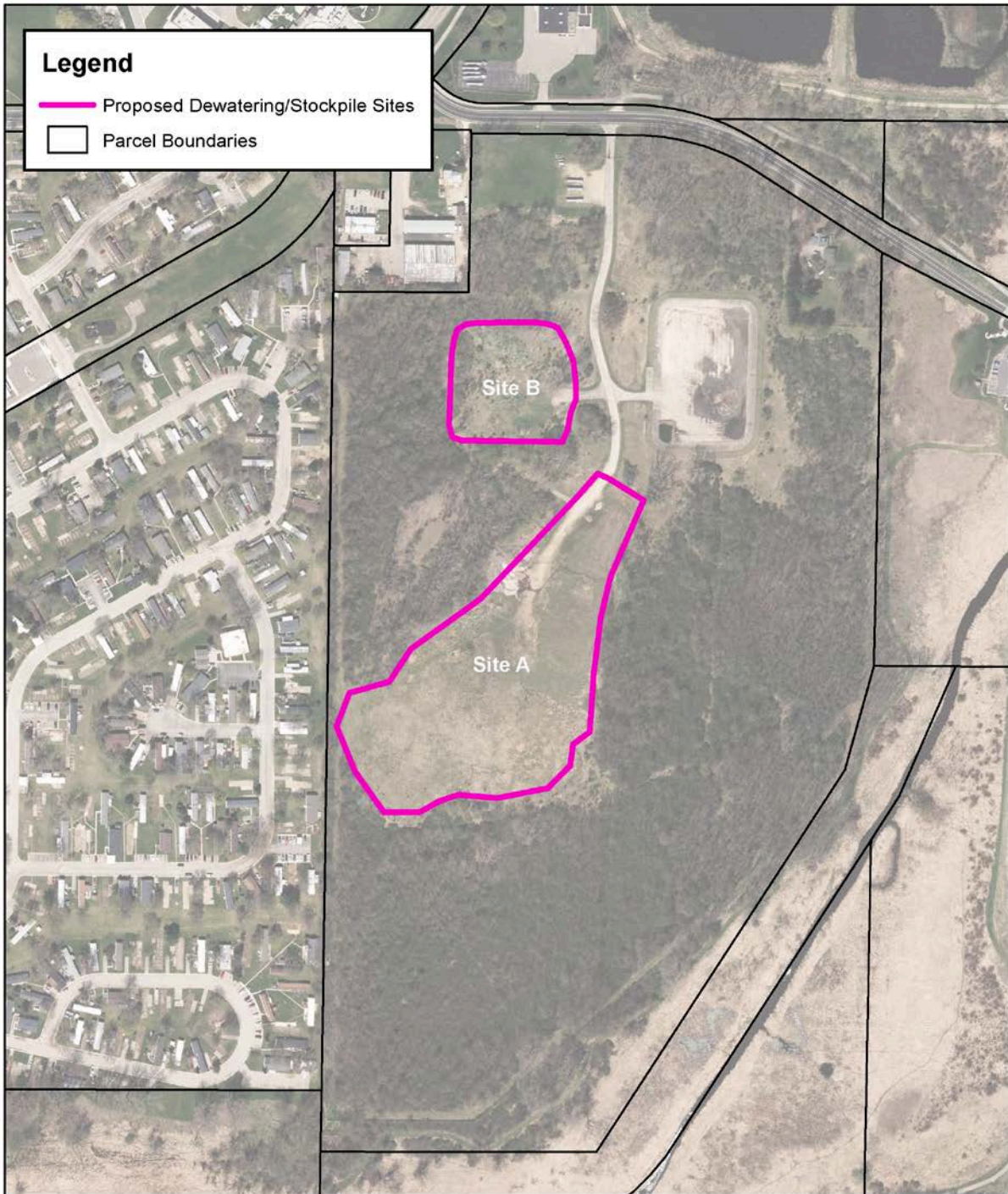
STATE OF WISCONSIN    )  
  ) ss.  
COUNTY OF DANE        )

Personally came before me on this \_\_\_ day of \_\_\_\_\_, 2019, the above named \_\_\_\_\_ of Madison Metropolitan Sewerage District, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

This instrument drafted by:  
County of Dane / SJ Smith

EXHIBIT A



Yahara River Sediment Removal  
Lake Monona to Lake Waubesa  
Proposed Dewatering Site