

1                                   **AGREEMENT BETWEEN THE CITY OF WAUWATOSA AND THE**  
2                                   **VILLAGE OF ELM GROVE TO ALLOW A WATER EXTENSION FOR A WATER SYSTEM**

3  
4 This agreement (“Agreement”) is made by and between the City of Wauwatosa (“Wauwatosa”) and the Village of  
5 Elm Grove (“Elm Grove”).

6  
7 Whereas, Wauwatosa owns and operates a municipal water utility; and

8  
9 Whereas, Wis. Stats. Sec. 66.0301 allows Wauwatosa and Elm Grove to contract for the furnishing and the receipt  
10 of services respectively; and

11  
12 Whereas, Wis. Stats. Sec. 66.0813 allows a municipality that owns a municipal water utility to provide service  
13 outside its municipal boundaries; and

14  
15 Whereas, Elm Grove desires to allow Wauwatosa to provide retail water service in Elm Grove for the purpose of  
16 serving the Caroline Heights LLC and related single family development (Collectively SSND Projects); and

17  
18 Whereas, Wauwatosa is willing to supply SSND Projects with retail water service as defined by the terms of this  
19 Agreement; and

20  
21 Now therefore, in consideration of the mutual covenants expressed herein, it is agreed as follows:

22  
23 **I. Recital:**

24  
25 A. All recitals contained above are hereby incorporated and made a part of this Agreement.

26  
27 **II. Definitions:**

28  
29 A. Adequate Water Service - Water services as stated in Sections III and IV of this Agreement of  
30 Standard Quality Water at a pressure to satisfy the requirements as identified in Wisconsin  
31 Administrative Code NR 810.10 - Distribution system normal pressure, and NR 810.11 -  
32 Distribution system fire flow pressure for the area specific to Exhibit A.

33  
34 B. Commission - the Public Service Commission of the State of Wisconsin

35  
36 C. Connection Mains – Those water mains to be installed within Wauwatosa in order to provide  
37 connections to Water Distribution Facilities. The Connection Main will extend from approximately  
38 118<sup>th</sup> Street and Watertown Plank Road to the Elm Grove Village limits. A second connection  
39 main will extend from a Wauwatosa water main to the Elm Grove Village limits near 124<sup>th</sup> Street  
40 and Christine Drive. The diameter of the Connection Main is still to be determined but will be  
41 between sixteen-inches (16”) and twenty-inches (“20”) inclusive. As shown on Exhibit A.

42  
43 D. DNR the Department of Natural Resources of the State of Wisconsin.

44  
45 E. Elm Grove Customers – Water customers in Elm Grove who receive retail water service from  
46 Wauwatosa.

47  
48 F. Water Distribution Facilities – Those water supply facilities and associated infrastructure  
49 (including mains, valves, pumps, tanks, hydrants and other related appurtenances) to be constructed  
50 in Elm Grove to provide retail water service to Elm Grove Customers.

51  
52 G. Emergency - A situation affecting the operation of the Wauwatosa Water Utility, caused by an act

53 of God (e.g. severe drought, flood, tornado, lightning strike and severe weather) or circumstances  
54 beyond the control of the Wauwatosa Water Utility including but not limited to terrorism,  
55 vandalism or loss of power, which results in Wauwatosa being incapable of meeting the  
56 requirements of water service to Elm Grove Customers as specified in this Agreement and using  
57 generally accepted practices and procedures for water utilities. This includes circumstances leading  
58 to a loss of supply or pressure in Wauwatosa or malfunctions of Wauwatosa's infrastructure, which  
59 also prevent delivery of water to Wauwatosa's customers.  
60

61  
62 H. Parties – Wauwatosa and Elm Grove collectively.

63  
64 I. Party – Either Wauwatosa or Elm Grove individually.

65  
66 J. Standard Quality Water - Water that meets the current quality standards of federal and state  
67 agencies having authority to establish water quality standards that uniformly apply to Wauwatosa  
68 and its customers and as those standards may be amended from time to time.  
69

70 **III. Elm Grove Agrees That:**

71  
72 A. This Agreement and the provision of water to Elm Grove Customers by Wauwatosa shall be subject  
73 to applicable rules and regulations of the Wauwatosa Water Utility, as amended from time to time,  
74 that are uniformly imposed by Wauwatosa throughout its service area including prohibitions  
75 against cross connections, but specifically excluding rules and regulations which relate solely to  
76 private well operation, time of connection to the municipal water system, and other items that may  
77 interfere with the continued operation of private wells in Elm Grove and that are not contradictory  
78 to DNR accepted standards and regulations. Elm Grove agrees that it will continue to maintain a  
79 well permitting ordinance at least as restrictive as Elm Grove Ordinance 283-5 in effect on the  
80 effective date. When appropriate or required by law, rules and current regulations applicable to  
81 private well operation, connection requirements, and other items that may impact the continued  
82 operation of private wells in Elm Grove shall be subject to approval by any state or federal  
83 governmental agency having jurisdiction.  
84

85 B. The rates or charges for water service to Elm Grove Customers shall be the same as those  
86 established by the Commission for retail water service to customers within the City of Wauwatosa,  
87 unless mutually agreed to by the Parties.  
88

89 C. Elm Grove agrees to advance Wauwatosa any unpaid water service charges imposed by Wauwatosa  
90 on Elm Grove Customers that are not paid within the required time limit, in accordance with the  
91 billing practices of Wauwatosa and the Commission tariffs approved by the Commission. Elm  
92 Grove shall pay Wauwatosa the unpaid charges incurred by Elm Grove Customers within 30 days  
93 of notification from Wauwatosa of the unpaid amounts due. In exchange, such unpaid charges shall  
94 be assigned to Elm Grove for collection purposes. Wauwatosa, upon the request of Elm Grove, will  
95 shut off water service to such delinquent customers per PSC regulations.  
96

97 D. Elm Grove shall limit water service as follows:

98  
99 1. No water sold to Elm Grove Customers under this Agreement may be re-sold on a wholesale  
100 or retail basis to any other municipality or to any properties in another municipality with the  
101 exception of temporary water provided in the event of a crisis.

102  
103 2. Water service shall be initially limited to the request for the SSND Projects and any required  
104 mains as determined by Wauwatosa, up to and including oversizing required to service

105 possible future expansion into Elm Grove. Elm Grove properties located adjacent to the water  
106 mains installed in this initial phase may be serviced by Wauwatosa upon Wauwatosa's  
107 consent.  
108

- 109 3. In the event that water service is sought to be either extended or enlarged in any manner, there  
110 shall be a future separate agreement for the providing of retail water to other areas within the  
111 corporate boundaries of Elm Grove.  
112

113 E. Construction of Facilities  
114

- 115 1. Wauwatosa shall design and construct or cause to construct such facilities as are deemed  
116 necessary to provide water to the SSND Projects properties, the water mains of which that  
117 will be in Elm Grove are shown on Exhibit A hereto. Elm Grove retains the right to  
118 approve the design, location and placement of the Water Distribution Facilities.  
119
- 120 2. Upon completion of construction Wauwatosa shall supply as-built drawings to Elm Grove  
121 in an electronic format in accordance with Elm Grove standards. No water service  
122 plumbing permits shall be issued by the Elm Grove inspection services until the as-built  
123 drawings have been approved by Wauwatosa. No plumbing permits shall be issued to any  
124 customer until Elm Grove has been notified by Wauwatosa that the facilities are available  
125 for connection.  
126

- 127 F. By this Agreement, Elm Grove shall allow Wauwatosa full access to Elm Grove rights-of-way for  
128 the purposes of maintaining and operating said Water Distribution Facilities.  
129

- 130 G. Water customers in Elm Grove shall apply to Elm Grove for water service plumbing permits for  
131 water lateral installation. Water laterals on private property shall remain privately owned and, as  
132 such, all installation and replacement costs shall be the sole responsibility of the property owner.  
133 Water lateral material type shall be HDPE unless an alternate material type is approved, in writing  
134 by Wauwatosa. After Elm Grove notifies Wauwatosa that the private plumbing installation has  
135 passed Elm Grove's inspection, Wauwatosa shall install the water meter. All water meter  
136 installation shall be conducted by Wauwatosa.  
137

- 138 H. Elm Grove shall not construct any additional Water Distribution Facilities without a separate  
139 agreement with Wauwatosa. Prior to any future agreement, Wauwatosa shall determine whether  
140 increased demands caused by such Water Distribution Facilities would require additional capital  
141 expenditures by either Party and whether cost sharing for improvements to Wauwatosa water  
142 system are necessary. Elm Grove shall not construct or place any Water Distribution Facilities into  
143 service until such time as Wauwatosa confirms it is able to provide service. All drawings and  
144 specifications for Water Distribution Facilities, including but not limited to future booster stations,  
145 storage facilities and all other major distribution improvements and water main extensions in Elm  
146 Grove, must conform to the Wisconsin Department of Natural Resources standards. Such drawings  
147 and specifications for Water Distribution Facilities shall be submitted to both Parties for approval  
148 prior to the time construction contracts are awarded or materials are purchased.  
149

- 150 I. Wauwatosa may place restrictions upon the use of water by Elm Grove Customers as a result of an  
151 occurrence that is an Emergency or is related to a failure of Wauwatosa's facilities. Wauwatosa  
152 shall give customers and Elm Grove as much prior notice as is reasonably possible of any such  
153 restrictions and shall apply any restrictions upon Elm Grove Customers equally with customers  
154 located in Wauwatosa.  
155

- 156 J. Elm Grove agrees to defend and hold harmless Wauwatosa from those claims or causes of action  
157 arising from Elm Grove's negligence, intentional actions, or breach of the covenants contained in  
158 this Agreement or liabilities which may be incurred by Wauwatosa arising from the making of this  
159 Agreement except those arising from or related to the acts, omissions or negligence of Wauwatosa's  
160 agents, employees, contractors or officials and officers. The indemnity provisions and the  
161 limitations therein of the Agreement shall survive the termination of this Agreement and shall  
162 continue in full force and effect.  
163
- 164 K. Elm Grove shall grant permits to Wauwatosa at no fee as needed for construction, operation, and  
165 maintenance of the Water Distribution Facilities and agrees it will not tax Wauwatosa for any  
166 facilities owned by Wauwatosa within Elm Grove.  
167
- 168 L. To assure jurisdictional enforcement authority, Elm Grove shall adopt the provisions of  
169 Wauwatosa's water utility ordinance and associated rules and policies related thereto specific to  
170 water customers as amended from time to time which will be the same as apply to water customers  
171 in Wauwatosa unless it contradicts any provision of this Agreement.  
172  
173

174 **IV. Wauwatosa Agrees as Follows:**  
175

- 176 A. Wauwatosa agrees to provide Adequate Water Service, including fire hydrants, to Elm Grove  
177 Customers, as defined by the terms of this Agreement.  
178
- 179 B. SSND Projects water service shall be designed to supply water at a quantity to meet proposed peak  
180 hourly demand, or projected maximum day demand plus needed fire flow, whichever is greater.  
181 Peak hourly demand, maximum day demand and minimum fire flow shall be defined for the SSND  
182 Projects based on calculations by Wauwatosa followed by approval by Elm Grove.  
183
- 184 C. Wauwatosa agrees to pay all oversizing and related costs, including, but not limited to, costs for  
185 the construction of any improvement, equipment, fixture or operational system that is determined  
186 to be necessary for providing water service to water customers in Wauwatosa and any other  
187 expenses as may be mutually agreed by the Parties.  
188
- 189 D. Wauwatosa warrants and represents that all water delivered under this Agreement shall meet all  
190 applicable state and federal drinking water regulations and quality standards.  
191
- 192 E. Wauwatosa agrees to defend and hold harmless Elm Grove from those claims or causes of action  
193 arising from Wauwatosa's negligence, intentional actions, or breach of the covenants contained in  
194 this Agreement or liabilities which may be incurred by Elm Grove arising from the making of this  
195 Agreement except those arising from or related to the acts, omissions or negligence of Elm Grove's  
196 agents, employees, contractors or officials and officers. The indemnity provisions and the  
197 limitations therein of the Agreement shall survive the termination of this Agreement and shall  
198 continue in full force and effect.  
199
- 200 F. Wauwatosa will provide to Elm Grove, within 10 business days of filing, a copy of any application  
201 to the Commission to adjust its water rates.  
202
- 203 G. Wauwatosa shall provide the same level of retail water services to Elm Grove Customers that it  
204 provides to customers within Wauwatosa which services include the operation, repair and  
205 maintenance of the Water Distribution Facilities, customer billing, and any needed flushing or  
206 sampling.  
207

- 208 H. After the Water Distribution Facilities are constructed and transferred to Wauwatosa, Wauwatosa  
209 shall be responsible for the inspections up to and including the water shut off valve for each  
210 property served. Wauwatosa shall not be responsible for the inspection of plumbing facilities on  
211 private property, with the exception of the water meter.  
212
- 213 I. Interconnection by Wauwatosa through Elm Grove to other municipalities may be allowed only  
214 with Elm Grove's consent.  
215

216 **V. Conditions Precedent:**  
217

- 218 A. The Parties recognize that it is necessary for Elm Grove and Wauwatosa to accomplish certain  
219 procedural steps before this Agreement can be effective.  
220
- 221 B. Wauwatosa will seek to satisfy the following conditions as soon as feasible.  
222
- 223 1. Enter into an agreement with the Developers of the SSND properties that will be contingent  
224 upon approval of this agreement.  
225
  - 226 2. Obtain the necessary approvals from the Commission for extending retail water service to Elm  
227 Grove, for constructing all facilities necessary to provide service to Elm Grove Customers, and  
228 to complete any needed Wauwatosa system improvements identified ; and  
229
  - 230 3. Obtain the necessary approvals from the Wisconsin Department of Natural Resources, the City  
231 of Milwaukee, and Milwaukee Water Works for the extension of retail water service into Elm  
232 Grove.  
233
  - 234 4. Completed hydraulic analysis demonstrating the ability to service all properties eligible for  
235 water service under this agreement.  
236

237

238 **VI. Wauwatosa and Elm Grove Hereby Mutually Agree:**  
239

- 240 A. This Agreement is subject to the approval of the Common Council of Wauwatosa and Village  
241 Board of Elm Grove, and after execution by the Parties, Wauwatosa shall file a copy of the  
242 Agreement with the Commission. Approval of the governing bodies of both communities shall be  
243 evidenced by adoption of appropriate resolutions approving this Agreement.  
244
- 245 B. This Agreement shall be effective on the date (herein "Effective Date") upon which the  
246 Commission sanctions this Agreement as acceptable in such manner as the Commission shall deem  
247 appropriate and the conditions precedent in Section V have been satisfied.  
248
- 249 C. This Agreement shall be governed by, construed, and enforced under and in accordance with the  
250 laws of the State of Wisconsin.  
251
- 252 D. This Agreement shall remain in full force and effect for an initial term of fifty (50) years from the  
253 Effective Date, and shall automatically renew for subsequent ten-year periods. Any Party wishing  
254 to not renew this Agreement at the conclusion of the initial term, or any subsequent ten-year term,  
255 must submit to the other Party and the Commission a written notice of non-renewal at least 12  
256 months prior to the date the Agreement would otherwise automatically renew.  
257
- 258 E. Termination of this Agreement requires the mutual consent of both Parties. A Party shall give or  
259 withhold its consent in writing within 90 days of being formally requested to give its consent. The

260 other terms herein notwithstanding, Elm Grove may terminate this Agreement at any time with a  
261 one-year notice, without consequence upon being able to receive Lake Michigan water directly  
262 from the City of Milwaukee.  
263

- 264 F. The Parties agree to act in good faith and use due diligence in meeting their respective obligations  
265 under this Agreement.  
266
- 267 G. Upon termination or non-renewal of this Agreement, Wauwatosa shall transfer to Elm Grove  
268 ownership of all Water Distribution Facilities which it owns at that time, along with all documents  
269 related to those Water Distribution Facilities and the operation of those Water Distribution  
270 Facilities in Elm Grove; with reasonable compensation to Wauwatosa for the costs of such Water  
271 Distribution Facilities that were paid for by Wauwatosa which costs have not been recovered  
272 through water rates or other charges assessed to Elm Grove Customers or Elm Grove property  
273 owners.  
274
- 275 H. This Agreement may be executed in counterparts, which together shall constitute a single contract.  
276
- 277 I. If the Parties are unable to resolve a dispute within 90 days over the terms and conditions of this  
278 Agreement, either Party may seek relief from a court of competent jurisdiction in Milwaukee or  
279 Waukesha County, Wisconsin as determined by the aggrieved Party.  
280
- 281 J. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of  
282 the Parties hereto, but neither this Agreement or any of the rights, interest, or obligations hereunder  
283 shall be assigned by either of the Parties hereto without the prior written consent of the other Party.  
284
- 285 L. Except as provided herein, this Agreement (including any Schedules and Exhibits) constitutes the  
286 complete agreement between the Parties related to retail water service and supersedes all prior  
287 agreements relating to the subject matter hereof.  
288
- 289 M. Section headings are for convenience only and shall not affect the meaning or construction of any  
290 provision hereof.  
291
- 292 N. Failure or delay by a Party to exercise a right, privilege or power hereunder shall not operate as a  
293 waiver thereof nor prevent the exercise of such right, privilege or power thereafter. Any waiver of  
294 any provision hereof must be in writing signed by the Party making such waiver.  
295
- 296 O. In the event any provision or portion of this Agreement is determined to be invalid or unenforceable  
297 for any reason, in whole or in part, the remaining provisions of this Agreement shall nevertheless  
298 be binding upon the Parties with the same effect as though the invalid or unenforceable part had  
299 been severed and deleted. The respective rights and obligations of the Parties shall survive the  
300 termination or non-renewal to the extent necessary to the intended preservation of such rights and  
301 obligations.  
302
- 303 P. No changes, modifications or amendments to this Agreement shall be effective or binding unless  
304 made in writing and signed on behalf of the Parties to this Agreement.  
305
- 306 S. All notices, requests, demands, and other communications under this Agreement shall be in writing  
307 and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested  
308 to the following addresses:  
309

310 City of Wauwatosa  
311 Director of Public Works

312  
313  
314  
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322  
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335

7725 West North Avenue  
Wauwatosa, WI 53213

Village Manager  
Village of Elm Grove  
13600 Juneau Blvd.  
Elm Grove, WI 53123

Dated on this 29<sup>th</sup> day of March 2022.

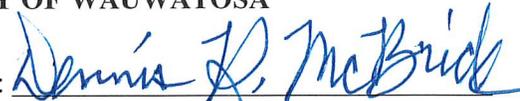
**VILLAGE OF ELM GROVE**

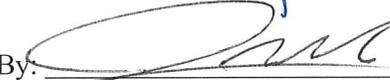
By:   
Neil H. Palmer, Village President

By:   
David De Angelis, Village Manager

ATTEST:   
Sandee Policello, Village Clerk

**CITY OF WAUWATOSA**

By:   
Dennis McBride, Mayor

By:   
James Archambo, City Administrator

ATTEST:   
Steven Braatz, City Clerk

**EXHIBIT LISTING**

EXHIBIT A            Map of Water Service Area