

**Memorandum of Agreement for Stormwater Detention Pond Construction and Maintenance**  
between  
**City of Appleton and Wisconsin DOT**  
10/16/2017

Project ID 1517-07-04 & 1517-75-73  
USH 10 – USH 10/STH 441  
USH 10  
Winnebago County

**Introduction**

This Memorandum of Agreement (MOA) documents decisions and responsibilities agreed to by the Wisconsin Department of Transportation (Department); and the City of Appleton (Municipality); through each agency undersigned duly authorized officers or officials.

The purpose of the MOA is to specify:

- Construction responsibilities of the Department
- Repair responsibilities of all parties
- Maintenance responsibilities of all parties
- Land ownership responsibilities of all parties
- Land use change responsibilities of all parties

**Project Concepts**

As part of the US 10/ WIS 441 Tri-County Expansion Project, under construction project ID 1517-75-73 (the “Project”), which is currently scheduled to be completed by October of 2019 the Department will construct a stormwater detention pond and related stormwater management facilities, as more fully described herein (the “Detention Pond”) near the northwest quadrant of the WIS 441 / US 10 (Oneida St) interchange in order to meet Wisconsin Department of Natural Resources (DNR) stormwater quality requirements.

The Municipality expressed interest in the Detention Pond and recognizes a cost savings would result from the additional stormwater quality improvement on the watershed within their boundaries that would be treated at the Detention Pond. This will reduce or eliminate their need to construct separate stormwater pond in the area or construct more costly measures such as biofilters or underground storage. Hence, the municipality is willing to perform routine maintenance of the Pond at no cost to the Department.

**WisDOT Detention Pond Construction Responsibilities**

The Department shall complete construction of the Detention Pond, with the exception of final planting, funded 100% by the Department to provide a greater than 80 % total suspended solids (TSS) reduction in accordance with the current WinSLAMM computer model and current Wisconsin Department of Natural Resource guidance documents. The Department shall be responsible for securing any additional right-of-way and other property owner approvals necessary to construct and maintain (for both the Department and Municipality) the Detention Pond covered by this MOA. The Department shall construct the herein described Detention Pond as part of the Project.

The Department will provide the Municipality with final design quantity and quality computer models and any associated maps/documentation for the Detention Pond

The Department shall provide as-built plans to the Municipality and demonstrate that it was constructed and performs as intended under the project plans and specifications, and the terms of this Agreement, following completion of the Detention Pond.

#### **Municipal Detention Pond Construction Responsibilities**

The Municipality shall be solely responsible for completing the final planting and management of the planting establishment period at the Detention Pond after completion of other construction by the Department.

#### **Detention Pond Repair Responsibilities**

The Department shall be responsible for the reconstruction or repair of the Detention Pond in the event of a catastrophic flood, failure, or substantial destruction of the Detention Pond at its sole cost and expense during and after the construction of the Project. This includes any necessary replacement of pipe, inlets, manholes, or endwalls and the repair and replacement of backflow preventers.

#### **Municipal Detention Pond Maintenance Responsibilities**

Once construction of the Project is complete, the Municipality agrees to provide future maintenance of the Detention Pond at their sole cost and expense to ensure that the Detention Pond operates properly. The Municipality agrees to provide for all regular operation and maintenance of the Detention Pond.

Operation and maintenance activities include, but are not limited to, the following:

1. Mowing and trimming of vegetation around the Detention Pond.
2. Regular inspection of the Detention Pond embankments, discharge pipe, and ditches for wear and damage. Copies of inspection reports will be provided to the Department if requested.
3. Perform any repairs that do not require replacement of pipes, inlets, manholes, endwalls, or check valves.
4. Confirm every five years that the Detention Pond is operating effectively and achieving the required stormwater quality and total suspended solids (TSS) reduction of greater than 80% in accordance with the current WinSLAMM computer model and current Wisconsin Department of Natural Resource guidance documents.
5. Vegetation & Noxious Weeds Management of the Detention Pond
6. Algae management of the Detention Pond
7. Erosion Control of the Detention Pond
8. Nuisance wildlife management of the Detention Pond
9. Mosquito Control of the Detention Pond
10. Work or maintenance that may be necessary to maintain reasonable ingress and egress to the Detention Pond site.

The Municipality will take over routine maintenance of the pond in September of 2019 after the Department's contractor completes construction.

#### **WisDOT Detention Pond Maintenance Responsibilities**

The Department will be responsible for ownership, operation, and maintenance of pipes, inlets, manholes, endwalls, or check valves that tie into the pond but are located outside of the pond berm.

The Department also agrees to provide for dredging of soil and debris accumulation from the pond and main sedimentation basin such that the pond continues to improve storm water quality of the area runoff. The Department agrees to take ownership of any dredged material and will dispose or manage the material as required under Chapter NR 528 of the Wisconsin Administrative Code. The cost share for this dredging shall be split between the Municipality and the Department based on estimated TSS loading generated as shown in the table below. The cost share between the Department and the Municipality shall be apportioned to the Department for 32% of the dredging costs and the Municipality for 68% of the dredging costs. The Department’s participation in such costs is subject to the availability of funding.

**Estimated Annual TSS Load Generated (LBS)**

Pond	City of Appleton	WisDOT	Total
5	24,569	11,453	36,022
	68%	32%	100%

**Detention Pond Underlying Land ownership**

Following construction of the detention pond, the Municipality agrees to give ownership of the portion of the Detention Pond built on the Municipality-owned parcel so that pond ownership is not split between Municipality and Department right-of-way. Attached as Exhibit A is the legal description of the Municipal Property upon which a portion of the Detention Pond will be built (herein the “Municipal Property”). Upon completion of the Detention Pond, the City of Appleton will draft a legal description providing for the transfer of sufficient real estate from the Municipal Property to accommodate the Detention Pond, access for maintenance and improvement of the Detention Pond as required under this Agreement, and for any other reasonable requirements the Department deems necessary. The transfer of the Detention Pond and underlying real estate shall occur 60 days after written notice by the Department that the Detention Pond is complete. This transfer will occur at no cost to the Department and is subject to applicable Wisconsin law.

**Terms Survive Transfer**

The terms of this Agreement shall survive the Detention Pond transfer of ownership from the Municipality to the Department. All terms and rights in this Agreement shall remain in full force and effect after such transfer for so long as the Detention Ponds are used.

**Department Rights**

In the event the Municipality fails to adhere to their obligations described in this Agreement, the Department may, but shall not be obligated to, complete any needed repairs or maintenance to the Detention Pond that the Department determines in its sole and reasonable discretion, are necessary for the proper operation of said Detention Ponds. The Municipality agrees that if the Department incurs costs because of the Municipality’s failure to adhere to the obligations in this Agreement, the Department has the right to set off such amounts from any other amounts owed by the Department to the Municipality.

**Land Use Changes Affecting Stormwater Runoff**

The Department and the Municipality will re-evaluate land use within the Detention Pond drainage basin a minimum of every 5 years and if either the Department or the Municipality become aware of any proposed significant land use changes within the associated Detention Pond drainage basin, all parties agree to cooperate to try and minimize the potential for additional runoff that might cause the pond to

provide less than 80% TSS reduction. The Municipality agrees that any repair, construction, or maintenance of the Detention Pond required as a result of surrounding land use changes shall be undertaken at their sole cost and expense.

**Approval of Memorandum of Agreement**

This Agreement is made by the undersigned under proper authority to make such Agreement for the Municipality and upon acceptance by the State shall constitute agreement between the Municipality and the State.

**Additional Costs**

Nothing in this Agreement referencing costs that could be or will be incurred by the Municipality is intended to limit the Municipal’s ability to pass said costs on to others as within their authority.

**Miscellaneous Provisions**

- a. This Addendum and Agreement supersedes any other previous agreement(s) between the Parties.
- b. The parties executing this Agreement represent and warrant that each have the authority for their respective parties to undertake the obligations contained in this Agreement. This Agreement is effective on the date the document is duly executed by all Parties hereto. This Agreement will be null and void if not duly executed by all signatories by \_\_\_\_\_, 2017.
- c. This Agreement may be executed in counterparts, and when taken together, shall be deemed one Agreement.
- d. This Agreement shall be construed according to the internal laws of the State of Wisconsin.
- e. The provisions of this Agreement are intended to be enforceable between the Parties and the Parties’ respective successors and assigns. Nothing herein shall limit the statutory obligations and privileges of WisDOT, and nothing in this Agreement shall prevent WisDOT from revising or revoking any permitted access points should the terms of this Agreement be breached or as otherwise permitted by law.
- f. In the event of a dispute, the Parties shall meet and attempt to resolve the dispute informally. In the event any terms of this Agreement are violated, WisDOT may take action to enforce its rights under this Agreement through judicial proceeding or other method of dispute resolution.
- g. This Agreement shall be recorded in a manner agreed to by all parties, to ensure all affected parties have full and equal access to this Agreement.

Signed for and in behalf of the City of Appleton:

\_\_\_\_\_  
Signature Title Date

---

Signature

---

Title

---

Date

---

Signature

---

Title

---

Date

Signed for and in behalf of the Wisconsin Department of Transportation:

---

Printed Name

---

Title

---

Date

---

Signature