

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2018-21**

**RESOLUTION APPROVING AMENDMENT No. 1 TO THE INTERMUNICIPAL
COOPERATION AGREEMENT BETWEEN THE VILLAGES OF DEFOREST AND
WINDSOR**

WHEREAS, the Town of Windsor, Village of DeForest and Windsor Sanitary District No. 1 entered into an Intermunicipal Cooperation Agreement (the "Agreement") on April 2, 2012 relating to the provision of water and sanitary sewer service to certain areas in the Village of DeForest and Town of Windsor; and

WHEREAS, the Town of Windsor was subsequently incorporated as the Village of Windsor and the Village of Windsor is now the successor to the Town of Windsor and to Windsor Sanitary District No. 1; and

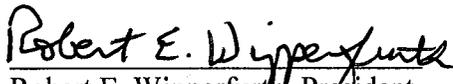
WHEREAS, a disagreement arose between the Village of DeForest and the Village of Windsor regarding the proper method of calculating charges for sewer service under the Agreement; and

WHEREAS, the parties resolved their disagreement and have prepared Amendment No. 1 to the Agreement, attached hereto as Exhibit A, to clarify the charging methodology.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Windsor that Amendment No. 1 to the Intermunicipal Cooperation Agreement, attached hereto as Exhibit A, is approved and the Village President and Clerk are authorized to execute said amendment on behalf of the Village.

The above and foregoing resolution was duly adopted by the Village Board of the Village of Windsor, Dane County, Wisconsin at a meeting held on the 19th day of March, 2018, by a vote of 5 in favor and 0 opposed.

VILLAGE OF WINDSOR


Robert E. Wipperfurth, President

Attested by:


Christine Capstran, Clerk

AMENDMENT NO. 1 TO

INTERMUNICIPAL COOPERATION AGREEMENT

This Amendment No. 1 (the "Amendment") is made and entered into this 6 day of March, 2018, by and between the Village of DeForest ("DeForest"), a municipal corporation located in Dane County, Wisconsin; and the Village of Windsor ("Windsor"), a municipal corporation located in Dane County, Wisconsin.

WITNESSETH:

WHEREAS, there was executed on April 2, 2012, an Intermunicipal Cooperation Agreement, bearing said date (the "Agreement") by and between DeForest, the Town of Windsor (the "Town"), and Windsor Sanitary District No. 1 (the "District"), which agreement relates to the provision of public water and sanitary services to certain geographic areas; and

WHEREAS, subsequent to the execution of the Agreement, the Town was incorporated so that Windsor is now the successor to the Town and to the District for all purposes, including that of the Agreement; and

WHEREAS, a dispute has arisen between DeForest and Windsor concerning a provision of the Agreement relating to the determination of the "applicable MMSD rates for domestic wastewater" as referenced in section 4.4.2 of the Agreement; and

WHEREAS, the parties hereto desire to resolve such dispute upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, as well as other good and valuable consideration moving from each party to the other, DeForest and Windsor specifically agree as follows:

Section 1. Nature of Instrument and Recitals. This Amendment amends and supplements the Agreement. In the event of any conflict between the terms and provisions of this Amendment and the Agreement, the terms of this Amendment shall control. Any capitalized terms set forth herein shall have

control. Any capitalized terms set forth herein shall have the meanings set forth in the Agreement, unless a different definition is set forth herein. The recitals here to are hereby incorporated by reference.

Section 2. Compromise. The parties agree that the terms contained in this Amendment represent a compromise to resolve a dispute concerning the interpretation of a provision of the Agreement; and constitutes a reasonable settlement of that dispute. Neither the terms nor the form of this Amendment are intended to constitute a concession by either party regarding the validity of its interpretation of the original terms.

Section 3. Applicable MMSD Rate. For purposes of Section 4.4.2 of the Agreement, the phrase “applicable MMSD rates for domestic wastewater” shall mean: The District’s sewer service charge rates for wastewater flow and loadings as determined under Chapter 9 of the MMSD Sewer Use Ordinance (the “Ordinance”) and set forth in the annual rate notification by MMSD to all of its “Community Customers” as defined in the Ordinance (hereafter, the “Sewer Service Charge Rates”).

Section 4. Installation of Flow Meter and the Effect Thereof. MMSD has advised the parties that MMSD intends to install a metering/measuring wastewater flow meter (the “Flow Meter”) at the point of connection between the DeForest Sewer Facilities and the Windsor Sewer Facilities, which point has now been identified as R-164, at such time as there is adequate flow for the Flow Meter to operate. MMSD anticipates that this will occur when there are approximately 50 residential units located in Bear Tree Windsor-South, which units are connected to and discharge wastewaters into the public sewers. (There may be an additional point of connection between the respective Sewer Facilities depending upon development in the southeastern section of Bear Tree Windsor-South, but its location is unknown at this time. Nevertheless, the Agreement and this Amendment shall apply to such unknown connection, once it is installed.) The parties agree that, following installation of a Flow Meter at the applicable point of interconnection, whether by MMSD or Windsor, (1) the parties will have access to data based on actual measurements of the volume and loadings of the wastewater passing through the applicable point of

interconnection, and (2) by applying the District's Sewer Service Charge Rates (*see* Section 3 above) to the actual measurements of the volume and loadings, the parties will be able to calculate actual sewer service charges for Bear Tree Windsor-South. When actual volume and loadings of the Bear Tree Windsor-South wastewater are measured by a Flow Meter, then the Parties agree:

a) To jointly request that MMSD invoice Windsor directly for the wastewater flows and strength determined by the Flow Meter at the respective point of connection to the DeForest Sewer Facilities.

b) If MMSD does invoice Windsor directly, then Windsor shall pay directly to MMSD all such amounts so invoiced.

c) If MMSD does not invoice Windsor directly, but instead invoices DeForest for the wastewater from Bear Tree Windsor-South, then the parties shall calculate the sewer charges based on wastewater flows and strength determined by the Flow Meter in the manner set forth above. Based on said calculations, Windsor shall pay said amount to DeForest and DeForest shall pay said amount to MMSD.

d) Windsor shall pay to DeForest the 20% surcharge described in section 4.4.3 of the Agreement, as modified by this Amendment. Such payment shall be made at the same time as Windsor pays the applicable invoice to MMSD or DeForest, which payment shall be made in the manner described in the subsections b) and c) above.

e) If, during any billing period after the installation of the Flow Meter, the Flow Meter is removed, becomes inoperable, or is otherwise unable to produce accurate information regarding the volume and loadings of wastewater from Bear Tree Windsor-South flowing to connection point

R-164, then the calculation of sewer service charges to be paid by Windsor shall be determined as provided in Section 5 as if the Flow Meter had not been installed. This paragraph shall only apply for such time as the Flow Meter, or a suitable replacement flow meter installed by MMSD or Windsor, is not installed and measuring the effluent flows and loadings at connection point R-164.

Section 5. Prior To Installation of Flow Meter. As of this date, wastewater flows from Bear Tree Windsor-South are included within invoices periodically submitted to DeForest by MMSD; and as a result, Windsor must reimburse DeForest as provided for herein. The Parties confirm that prior to installation of the Flow Meter, the volume of wastewater flows from Bear Tree Windsor-South shall be determined in the manner provided for in Section 4.4.1.3 of the Agreement, i.e. metered water consumption. Once so determined, the volume shall be multiplied by the District Sewer Charge Rate applicable to volume. With respect to loadings, the parties agree that the following domestic strength parameters shall be utilized: BOD (200 mg/l); TSS (250 mg/l); Nitrogen (40 mg/l); and Phosphorus (10 mg/l). These domestic strength parameters shall then be multiplied by the District Sewer Rate Charges applicable to said parameters. The total of the foregoing (ie. District Sewer Charge Rates based upon flow and loadings) shall be the base amount that Windsor is required to reimburse DeForest. This total is also subject to the surcharge as hereinafter provided. Attached as Exhibit 1 is an example of the foregoing based upon MMSD 2018 Sewer Charge Rates. Prior to installation of the Flow Meter, no customer located in Bear Tree- South will be allowed to connect to a public sewer which carries wastewater flows to the Bear Tree Parkway Sewer Extension or the Extension Sewer Main, except residential uses or uses with an equivalent effluent strength.

Section 6. Surcharge. For purposes of Section 5 above and Section 4.4.3 of the Agreement, the actual payment by Windsor to DeForest shall equal 1.30 times the amount of the sewer service charges as

determined pursuant to Section 5. When the Flow Meter has been installed at the point of interconnection, and the charges for treatment of Windsor effluent are able to be determined based on wastewater flows and strength as measured by the Flow Meter, the surcharge of 30% shall cease; and Windsor shall pay directly to DeForest thereafter, a surcharge of 20% of the sewer service charges for such effluent.

Section 7. Catch Up Payment. The parties agree that Windsor has now paid the full amounts owed for 2016 and 2017.

Section 8. Ratification. Except as stated herein, all of the terms and provisions of the Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written above.

VILLAGE OF WINDSOR

VILLAGE OF DEFOREST

By: Robert Wipperfurth
Robert Wipperfurth, President

By: Judd Blau
Judd Blau, President

Attest:

Attest:

By: Christine Capstran
Christine Capstran, Clerk

By: LuAnn Leggett
LuAnn Leggett, Deputy Admin./Clerk