

**AGREEMENT FOR THE ESTABLISHMENT AND OPERATION
OF THE ROCK RIVER TMDL GROUP**

WHEREAS, a group of municipalities in Eastern and South Central Wisconsin which own Publicly-Owned Treatment Works (POTWs) and/or Municipal Separate Storm Sewer Systems (MS4s) and discharge to waters in the Rock River basin, (hereafter "THE ROCK RIVER TMDL GROUP" or simply "the Group") wish to join together to jointly participate in the Rock River TMDL process and develop information and projects that will assist in achieving their objectives for the Rock River; and

WHEREAS, Wis. Stat. § 66.0301, entitled "Intergovernmental cooperation," provides that any municipality may contract with other municipalities for the furnishing of services, and the joint exercise of any power or duty required or authorized by law;

WHEREAS, said section also allows for the creation of a commission to administer joint projects;

WHEREAS, the Wisconsin Department of Natural Resources and the U.S. Environmental Protection Agency have announced that they are developing a total maximum daily load (TMDL) for phosphorous and sediment in the Rock River basin.

WHEREAS, the parties desire to create and become the initial members of a group that can jointly participate in the Rock River TMDL process, gather information, and undertake projects and activities that will further the interests of the member communities relative to the TMDL process; and

WHEREAS, the parties desire to create a commission that will administer such participation, information gathering, projects and activities;

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

1. **CREATION AND NAME; PUBLIC CHARACTER; PURPOSES; POWERS.**

a. Goals of the Inter-Municipal Group. The parties hereby agree to cooperate to exercise their municipal powers jointly for:

(1) the participation in and investigation of the Rock River TMDL process and analysis of selected water quality issues in the Rock River basin;

(2) contracting with consultants, legal counsel, and other parties to further that participation, investigation, and analysis;

(3) the communication of those goals, investigations and analyses to the Wisconsin Department of Natural Resources (DNR) and other pertinent agencies, units of local government, and non-governmental organizations and entities;

b. Commission. The parties also agree that there is hereby created a committee of representatives of members, which will be a commission within the meaning of Wis. Stat. § 66.0301, to administer the joint activities of the Group, which shall be formally referred to as THE ROCK RIVER TMDL COMMITTEE, and referred to in this Agreement as the "Committee." This Committee shall operate as a governmental body under Wis. Stat. § 19.82(1).

c. Purposes of the Committee. The Committee shall administer all aspects of the participation, investigations, and analyses of the Rock River TMDL process which may be duly determined by the Committee as appropriate in the pursuit of the objectives of the Group.

d. Powers. The Committee shall have the following powers:

- (1) To make, amend and repeal bylaws, rules, regulations, rates, charges and other rules of service.
- (2) To invest funds not required for immediate disbursement in properties or securities as permitted by state law.
- (3) To make and execute contracts and other instruments of any name or type necessary or convenient for the exercise of the powers granted herein, including contracts with engineers, legal and other consultants.
- (4) To accept contributions of capital from member communities.
- (5) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the Committee and the parties and to carry out the purposes and powers granted to it by this Agreement.
- (6) To sue, and be sued, complain and defend in all courts, and also, appear in or before applicable governmental agencies.

The Committee shall not have the power of taxation.

e. Limitation on Financial Commitments. Notwithstanding any other provisions in this Agreement, the Committee shall not have the authority to commit the Group, or any of its members, to any financial responsibility, whether by contract or otherwise, that would exceed an amount of \$5,000.00 in any single calendar year for any single member, without first having on the file in the records of the Group, a legally effective resolution or other action of the governing body (or duly authorized commission

or committee) of that member which authorizes the member to contribute an amount in excess of these limits.

f. Limitation on Initiating Legal Proceedings. Notwithstanding any other provisions in this Agreement, the Committee shall not have the authority to commit the Group, or any of its members, to the initiation of any lawsuits or contested case hearings without first having on the file in the records of the Group, a legally effective resolution or other action of the governing body (or duly authorized commission or committee) from each member voting for the authorization of such legal proceedings.

2. MEMBERS.

a. In General. The members of the Group created by this Agreement are the Wisconsin municipalities which have duly executed identical counterparts or copies of the Agreement pursuant to Section 3 hereof (the "parties" or "members"). Municipalities include cities, towns, villages, sanitary districts, municipal utilities or metropolitan sewerage districts within the State of Wisconsin.

b. MS4 Communities. Where a municipality operates a POTW and holds an MS4 permit, the municipality shall be treated as a single member unless the municipality chooses to be treated as two members. Where a MS4 municipality is part of a larger urbanized area (such as in the greater Madison area) and does not operate its own POTW, the municipality may opt to be treated as a separate member or it may join with other MS4 municipality within that urbanized area and be treated as a single member.

c. Changes in Membership. Additional Wisconsin municipalities may become members of the Group by becoming parties to this Agreement pursuant to

Section 9. Members may cease to be members and parties to this Agreement pursuant to Section 11 hereof.

d. Non-Governmental Entities. Non-governmental entities may not become members without a majority vote of the Committee and a legal opinion that the addition of such member will not jeopardize the status or operation of the Group.

3. AUTHORITY OF MEMBERS TO PARTICIPATE.

a. Resolutions. This Agreement is entered into pursuant to authority granted under Wis. Stat. § 66.0301. By resolution of its governing body, each member has authorized and directed the representative of the member to enter into this Agreement on behalf of the member. The authorizing resolution for each party to this Agreement shall:

- (1) Agree to the terms and conditions of this Agreement;
- (2) Authorize and direct the appropriate municipal officers of the member to execute this Agreement on behalf of the member; and
- (3) Appoint the member's representatives in all business matters to be conducted by the member.

b. A certified copy of the authorizing resolution and a duly executed copy of this Agreement for each party to this Agreement shall be maintained on file with the Committee.

c. All municipalities which are included as members when this Agreement is originally executed by the deadline of February 28, 2007, shall be considered "original" members or parties for purposes of the Agreement, and all other

municipalities which later become members shall be deemed "additional" members or parties.

4. SELECTION AND REMOVAL OF MEMBERS OF THE COMMITTEE; VOTING BY MEMBERS OF THE COMMITTEE.

a. Original Members of the Committee. The Committee shall consist of one member from each original member community, selected by that member community at its discretion. The term of such members of the Committee shall be indefinite, subject only to recall by the member community under sub. C. below. In the event that other municipalities join the Group, a member of the joining municipality shall be added to the Committee to represent each additional municipality.

b. Executive Committee. If the total number of municipalities in the Group exceeds twenty (20), then the Committee shall determine by bylaws to form a smaller Executive Committee. The bylaws may authorize the Executive Committee to exercise any or all of the powers of the Committee on behalf of the Group.

c. Replacement of a Member of the Committee. A member community may remove or replace its member of the committee at will, with or without cause, at any time. Notice in writing, signed on behalf of the member community and delivered to the Secretary of the Committee shall constitute removal or replacement of a member of the Committee.

d. No Compensation. The members of the Committee shall serve without compensation, provided, however, that the Committee shall have discretion to reimburse members of the Committee for reasonable expenses incurred for special services to the Committee.

e. Quorum. A majority of the members of the Committee shall constitute a quorum. No business may be conducted in the absence of a quorum.

f. Voting. The members of the Committee shall vote upon matters in the following manner:

(1) Voting in General. Unless otherwise expressly provided by this Agreement, the bylaws, or some other subsequent action of the Committee, all votes shall be by a majority of the members of the Committee present at a meeting where there is a quorum. Each member of the Committee shall have one vote, and a majority of members of the Committee present and voting shall be necessary for any action by the Committee.

(2) Voting On Facilities, Borrowing Of Funds, Expenditures Of Capital Or Other Major Commitments Beyond Contracts With Consultants. The majority of activities of the Group are anticipated to be sharing of services and information among members, and the joint hiring of consultants to prepare studies and information that may be of use in the Rock River TMDL process. The Committee may only commit the assets of the Group, in an amount in excess of \$5,000.00 (as an aggregate amount contributed by all members toward Group expenses) on a cumulative basis in any year, with the approval of two-thirds (2/3) majority of all members of the Committee present at a meeting where there is a quorum. In any event, such approvals are subject to the limitations on financial commitments in section 1.e., above.

(3) Non-Governmental Members. Non-governmental members shall not have the right to vote unless otherwise expressly provided by the bylaws or some other subsequent action of the Committee.

5. **OFFICERS.**

a. **Officers of the Committee.** The Officers of the Committee are a President, a Vice-President, a Secretary, a Treasurer and such other Officers as the Committee may designate. The President, Vice-President, Secretary and Treasurer shall be elected by the members of the Committee from among the members of the Committee and shall serve indefinitely until the Committee calls for a new election of officers, or the Committee adopts Bylaws which call for some other term of office.

b. **Dual Signature Required.** The signatures of two officers shall be required on all forms of payment, and all legally binding documents executed in the name of the Committee or the Group.

c. **Duties.** Unless otherwise determined by the Committee, the duties of the officers shall include the following:

(1) **President.** The President shall be the principal executive officer of the Committee and shall preside at all meetings of the Committee.

(2) **Vice-President.** In the absence of the President, or in the event of his or her inability or refusal to act, the Vice-President shall perform the duties of the President.

(3) **Secretary.** The Secretary shall keep minutes of the meetings of the Committee in one or more books provided for that purpose; see that all notices are duly given in accordance with this Agreement, or as required by law; and be custodian of the Committee's records.

(4) Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Committee; have charge of the financial records of the Committee.

d. Removal. An officer may be removed from office with or without cause upon a majority vote of the members of the Committee.

6. CHARGES TO MEMBERS.

a. In General. Costs shall be allocated among members on the basis of the population served by the POTW or the population within the drainage area of the MS4, subject to an annual cap of \$5,000 per member. Where a municipality operates a POTW and holds an MS4 permit, the municipality shall be treated as a single member for cost allocation purposes unless the municipality chooses to be treated as two members, in which case each member will pay a member's share. Where a MS4 community is part of a larger urbanized area (such as in the greater Madison area) and does not operate its own POTW, the community may opt to be treated as a separate member or it may join with other MS4 communities within that urbanized area and be treated as a single member for cost allocation purposes. Non-governmental membership fees will be determined on a case by case basis.

b. Modifications. Cost allocations or caps may only be modified prospectively for future calendar years. Should there be a need for a surcharge for any existing calendar year; any such charges shall only be applied to members who file a written consent to pay the additional surcharge.

c. No project shall be deemed approved unless there is also simultaneous approval of the cost allocation method.

7. LIABILITY OF THE COMMITTEE.

a. Allocation of Liability. In the event any costs or expenses are imposed on the Committee as a result of any judicial or administrative proceeding or settlement thereof, and the liability is not directly attributable to the conduct of a specific member or members, the costs and expenses shall be treated as a cost of the Group to be allocated among all members. If any costs or expenses are imposed on the Group or the Committee as a result of any judicial or administrative proceeding or settlement thereof, and the liability is directly attributable to the conduct of a specific member or members, the costs and expenses shall be allocated among those members whose actions caused the imposition of the costs or expenses to the Group or Committee.

8. ADDITIONAL MEMBERS.

a. No Obligation to Serve. The Committee reserves the right to reject the application of any municipality that wishes to join as an additional member (i.e., after the initial execution period of this Agreement).

b. Additional Member's Fee. In the event additional members join the Group, the Committee may impose an "additional member fee" to recoup some or all of the costs attributable to projects that have already been undertaken by the Group, and which the Committee reasonably believes have been beneficial to the new member. Such "additional member's fee" will be identified at the time that the new community or non-governmental entity wishes to join the Group, and payment of the additional fee, if any, will be a condition of membership.

9. TERM. The term of this Agreement shall be two years from January 1, 2007. This Agreement may be renewed in one year increments by a two thirds vote by

the Committee. The Agreement shall terminate in the event that there is a two thirds vote by members to terminate the agreement.

10. WITHDRAWAL OF MEMBERS. A member may withdraw from the Agreement only if the member has paid its contribution for the year in which it is withdrawing.

11. MISCELLANEOUS.

a. Municipal Liability. Nothing in this Agreement shall constitute a waiver of any limitations on municipal liability that may exist as a matter of law, including but not limited to limitations in Wis. Stat. ch. 893.

b. Counterparts. This Agreement may be executed in counterparts, and the signatures of each party on separate copies of the Agreement shall be fully effective to bind each of them to the Agreement with any other party that signs any separate copy of the Agreement.

c. Entire Agreement. This Agreement supersedes any prior studies, memoranda, letters or oral discussions or understandings about the participation of any of the members in this joint project. This Agreement represents the entire agreement of the parties as to the organizational issues relating to the goals of the Group.

d. Amendment or Modification. No amendment or modification may be made to this Agreement except in a writing signed by a two thirds majority of all members.

e. Choice of Law. This Agreement shall, in general, be governed by and construed in accordance with the laws of the State of Wisconsin, except that, notwithstanding the foregoing, any and all questions arising pursuant to and therefore

governed by federal law applicable to the project, such as the Clean Water Act, as amended from time to time, shall apply where appropriate.

f. Exclusive Benefit. This Agreement is for the exclusive benefit of the parties and their successors in interest and shall not be deemed to give any legal or equitable right, remedy or claim to any other entity or person.

g. No Joint Venture. This Agreement does not establish or evidence a Joint Venture or partnership between the parties. No party is liable for another party's actions as a result of entering into this Agreement.

h. Succession. All the terms, provisions and conditions herein contained shall inure to the benefit of and be binding upon the parties and their respective successors and assigns, including future governing bodies of the respective member communities.

i. Notice. Any notice required or given under this Agreement shall be effective if mailed by U.S. mail, postage prepaid, to the representatives at the addresses set forth after the signatures below, or any substituted address or representative as is filed with the Secretary of the Committee.

j. Severability. In the event any of the provisions of this Agreement or the application of any provision shall be held invalid to any extent by any court having jurisdiction over this Agreement or its parties, the remainder of this Agreement and the application of its provisions shall not be affected thereby but shall remain in force and effect. In the event any provision hereof is held invalid, the parties shall negotiate such changes in this Agreement as are needed to restore the parties as closely as possible to their positions under this Agreement prior to such provision being declared invalid.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives,
have executed this Agreement on the dates set forth below to be effective as of the last
date of execution of the original members

By:

Date of Execution

(signature)

Name _____
(typed name)

Title _____

Address: