

**INTERGOVERNMENTAL AGREEMENT BETWEEN JEFFERSON COUNTY AND
THE CITY OF WATERTOWN REGARDING TECHNICAL SERVICES FOR WATER QUALITY TRADING**

This Agreement is made and entered into as of the 18th day of April, 2023, by and between the County of Jefferson, Wisconsin, (the County) and the City of Watertown, Wisconsin, (the City), to establish terms and conditions related to technical services assistance for water quality trading.

RECITALS

WHEREAS, The City has committed to Water Quality Trading to fulfill its Phosphorus and Total Suspended Solids ("TSS") compliance obligations under its Wisconsin Pollution Discharge Elimination System ("WPDES") Municipal Separate Storm Sewer System (MS4) permit and the Rock River Total Maximum Daily Load study; and

WHEREAS, The County provides planning and technical assistance to municipalities such as the City, agricultural landowners and producers for the implementation of conservation practices that reduce sediment and nutrients (including phosphorous) from entering waterways as well as distributing financial payments to agricultural landowners for the implementation of conservation practices; and

WHEREAS, The City desires to obtain assistance from the County to implement Water Quality Trading projects.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the City and the County (hereinafter referred to collectively as "Parties") do hereby covenant and agree as follows:

1. **Authority.** This Agreement is entered into pursuant to § 66.0301, Wis. Stats., regarding intergovernmental cooperation and, therefore, should be liberally construed to accomplish its intended purposes. In addition, the undersigned representatives of the City and the County represent that they have been duly authorized by their respective governing bodies to execute this Agreement.
2. **Definitions.**
 - A. "HUC 12" shall mean the 12-digit Hydrologic Unit Code subbasin.
 - B. "Project Sites" shall mean locations where conservation practices or engineered solutions can be implemented to achieve Phosphorus and TSS reductions within the Department of Natural Resources (DNR) approved TMDL subwatershed.
 - C. "Projects" shall mean conservation practices or engineered solutions that are implemented at Project Sites to achieve Phosphorus and TSS reductions within the DNR approved TMDL subwatershed.

- D. "MS4 Permit" shall mean the Municipal Separate Storm Sewer System Permit received by the City of Watertown with the most recent effective date of May 1, 2019 and as that permit may be renewed or amended to comply with the requirements of the Wisconsin Department of Natural Resources ("DNR").
 - E. "Practice Plans" shall mean plans approved by the DNR that explain how a Project will be implemented and maintained by landowners to reduce Phosphorus and TSS at the identified Project Site.
 - F. "TMDL" shall mean the Rock River Total Maximum Daily Load study approved September 28, 2011 by United States Environmental Protection Agency.
 - G. "TSS" shall mean Total Suspended Solids.
3. **Phosphorus Reduction Goal.** The goal of the Agreement is to identify and install Projects in the Rock River Total Maximum Daily Load Subwatersheds 28 and 29 within Jefferson County that result in Phosphorus and Total Suspended Solids (TSS) reductions, as calculated using SNAP Plus or other models agreed to by the City, the County and DNR, by an amount approved by the City of Watertown Public Work's Commission to comply with the City's MS4 Permit. The City reserves the right to adjust the 5-year goal amount to focus on and ensure compliance with Phosphorus discharge limits in the City's MS4 permit.
4. **Roles and Responsibilities of the County.** The County will provide the following services:
- A. Identify Project Sites that will enable achievement of the Phosphorus and TSS Reduction Goal and provide a list of such Project Sites to the City for evaluation for water quality trading for MS4 permit compliance.
 - B. Work with landowners to develop Practice Plans and submit such Practice Plans to the City for review and approval.
 - C. Draft agreements between the City and landowners for the Projects approved by the City to be installed and maintained. These agreements shall state the Phosphorus and TSS reductions generated by each Project and the number of credits available for use by the City to comply with its WPDES permit.
 - D. Attend agreement signing between the City and landowners in order to answer any questions related to the practice, installation, and maintenance.
 - E. Provide technical assistance and oversight on installation and maintenance of approved Projects.
 - F. Complete final inspection of installed projects. Complete Management Practice Registration form based on final inspection and submit to the City within 15 days of completion of inspection.

- G. Calculate modeled Phosphorus and TSS reductions for Projects based on SNAP Plus or other agreed upon models.
- H. Verify the status of installed Projects by conducting annual visits at Project Sites for the life of the Project and documenting such visits, including through photographic evidence of the Project where practicable. Communicate any maintenance needs to landowner and City.
- I. Provide an annual report to the City by February 15 of each year throughout the term of this Agreement summarizing activities conducted in the previous year, including the locations of installed Projects, the type of practices installed at each Project Site, inspections, site visits, any required or completed maintenance and other relevant information necessary for Project verification.

5. Roles and Responsibilities of the City. The City will:

- A. Review Project Sites identified by the County and determine whether to pursue identified Projects for WPDES permit compliance.
- B. Submit Management Practice Registration to DNR for final approval.
- C. Sign agreements with landowners. The agreements shall be recorded in accordance with Section 4(B) to ensure maintenance of the practices for the duration of the agreement. Written documentation of these agreements shall be submitted to the DNR as part of the Management Practice Registration.
- D. Record trade agreements between the City and landowners as a deed restriction. The agreements will be recorded with the Jefferson County Register of Deeds. Each trade agreement shall be for a term of at least 5 years and no more than 15 years.
- E. Compensate landowners for the Projects that have approved trade agreements according to the terms of each trade agreement.
- F. Compensate the County for the services identified in Section 4 according to the terms in Section 6 of this agreement.

6. Compensation for Projects, Staff Support and Related Expenses. The City shall compensate the County for services performed under this Agreement. Compensation under this Agreement shall be calculated on a time and materials basis. The County shall submit an invoice to the City quarterly.

The preliminary fee to be paid to Jefferson County is estimated not to exceed \$12,000 in the first year of the program. Future program costs will be estimated based on project work and past expenses. Actual fee will be determined by final Project costs.

7. **Performance.** Unless otherwise agreed to in writing, the County shall furnish all services, supplies, tools, and equipment to accomplish the services established in Section 4 in a professional manner.
8. **Permits, Laws, Regulations, and Public Ordinances.** The County shall obtain and comply with all federal, state, and local statutes, rules, regulations, and ordinances related to the County's performance of its services under Section 4 of this Agreement. The landowners will be required to obtain any necessary permits for installation, implementation, and maintenance of Projects in accordance with the terms of their trade agreements.
9. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other provision of this Agreement. Any void provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision deemed to be void. The parties agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of essence to this Agreement be deemed void.
10. **Challenge to Agreement.** In the event of cause of action by a third party challenging the validity or enforceability of this Agreement or any of its provisions, the County and the City shall cooperate fully to vigorously defend the Agreement. No settlement of any such action shall be permitted without the written approval of both parties. This Agreement is for the exclusive benefit of the parties and their successors and shall not be deemed to give any legal or equitable right, remedy, or claim to any other person or entity. The enforceability of this Agreement shall not be affected by changes in elected officials.
11. **Assignment.** No party shall assign any rights or responsibilities under this Agreement to a third party without the prior written consent of the other party.
12. **Termination Notice.** Either party may initiate termination of this agreement by providing notice to the other party on or before June 1 of a given year. Within 30 days of June 1 after a termination notice has been provided, the County will provide a status of all pending applications that have not resulted in a Recorded Practice Plan to the City. The County's obligations contained in Section 4 will cease upon the City's receipt of the Status update.
13. **Term.** This Agreement shall remain in effect from the date of execution until the last annual inspection has been completed for a trade agreement that was developed under the term of this Agreement.
14. **Giving Notice.** Whenever any provision of this Agreement requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to or if delivered at or sent by registered or certified mail postage prepaid to:

For the City: Stormwater Project Manager, City of Watertown, 106 Jones St., P.O. Box 477, Watertown, Wisconsin 53094-0477.

For Jefferson County: Director, Jefferson County Land and Water Conservation Department, 311 S. Center Ave., Jefferson, Wisconsin 53549.

15. Complete Agreement and Future Amendments. This document is a complete and final Agreement and supersedes any oral agreements or other negotiations which may conflict with the terms of this Agreement. Either party may request a modification of this Agreement at any time. Any modification of the terms of this Agreement shall be in writing in the form of an Addendum to this Agreement and approved by both the City and the County.

IN WITNESS WHEREOF, the Parties have caused their properly authorized representatives to execute and seal this Agreement on the date as set forth above.

CITY OF WATERTOWN

COUNTY OF JEFFERSON

By: _____
Emily McFarland, Mayor

By: _____
Benjamin Wehmeier, County Administrator

ATTEST:

By: _____
Megan Dunneisen, City Clerk

APPROVED AS TO FORM:

By: _____
Steven T. Chesebro, City Attorney

I hereby certify that there are sufficient funds available to pay the liability incurred by the City of Watertown pursuant to this agreement.

By: _____
Mark Stevens, City Treasurer