

2000 WASTEWATER AGREEMENT

BETWEEN

CITY OF FOND DU LAC, WISCONSIN,

AND

OUTLYING SEWER GROUP

Effective
January 1, 2000

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 AND
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2000 WASTEWATER AGREEMENT

BETWEEN

CITY OF FOND DU LAC, WISCONSIN,

AND OUTLYING SEWER GROUP

THIS REVISED WASTEWATER SERVICES AGREEMENT (the "2000 Wastewater Agreement") is made and entered into this 1st day of January, 2000, by and between the parties hereto and is intended to supersede the 1977 Wastewater Agreement. The parties to the 2000 Wastewater Agreement are the City of Fond du Lac, Wisconsin, a municipal corporation organized and existing under the laws of the State of Wisconsin ("City"), and the following:

Village of North Fond du Lac
Town of Fond du Lac
Town Sanitary District No. 1 of the Town of Fond du Lac
Town Sanitary District No. 2 of the Town of Fond du Lac
Town Sanitary District No. 3 of the Town of Fond du Lac
Town Sanitary District No. 4 of the Town of Fond du Lac
Town of Empire
Town Sanitary District No. 1 of the Town of Empire
Town Sanitary District No. 2 of the Town of Empire
Town Sanitary District No. 3 of the Town of Empire
Town of Taycheedah
Sanitary District No. 1 of the Town of Taycheedah
Town of Friendship
Consolidated Sanitary District No. 1 of the Town of Friendship
Town Sanitary District No. 2 of the Town of Friendship
Town of Calumet
Sanitary District No. 1 of the Town of Calumet

collectively referred to herein as the "Outlying Sewer Group."

WITNESSETH

WHEREAS, the Parties, and each of them, acknowledge and agree that based on their powers to contract, they enter into this intergovernmental agreement relating to wastewater services under the specific authority granted by secs. 66.30, Stats. and generally under Chapters 66, 62, 61 and 60, Stats. as appropriate.

I. DEFINITIONS

For purposes of this agreement, the following terms have the meanings defined below unless the context requires otherwise:

1.1 1977 AGREEMENT

The "Agreement for Transportation and Treatment of Wastewater Between the City of Fond du Lac and the Village of North Fond du Lac, Sanitary District No. 1 of the Town of Taycheedah, Town Sanitary District No. 1 of the Town of Fond du Lac, Sanitary District No. 2 of the Town of Fond du Lac."

1.2 2000 REGIONAL SERVICE AREA PLAN OR "RSAP"

The 2000 Regional Service Area Plan (sometimes referred to as RSAP) was developed concurrently with the 2000 Wastewater Agreement, and guides improvements to the Regional System over a 20-year period. The 2000 RSAP identifies Connection Points, 20-year and 50-year Design Flows, the Regional Service Area and needed improvements to Regional Interceptors and Shared Sewers. The 2000 RSAP has not been submitted to or approved by outside reviewing or approving authorities. The Parties anticipate that facilities plan amendments will be necessary from time to time to implement the planning, improvements and connections contemplated by the RSAP. All future facilities plan amendments must be consistent with the 2000 RSAP, or an amendment thereto.

1.3 2000 WASTEWATER AGREEMENT

This document consisting of 76 pages, together with all attachments and/or exhibits as referenced herein.

1.4 AVERAGE DAILY FLOW

In general, the average wastewater flow rate over a calendar day (midnight to midnight), expressed in million gallons per day (MGD) or cubic feet per second (cfs);

or the total volume of wastewater discharged over a calendar day, expressed in million gallons (MG).

1.5 AVERAGE DAILY DESIGN FLOW

The flow parameter used in determining Water Pollution Control Plant (WPCP) Capacity Allocations, consisting of:

1.5.1 Domestic, commercial, and normal institutional (DC&I) flow, based on projected population times a per capita flow allowance that includes normal infiltration;

1.5.2 Special institutional flow allowances as necessary, estimated individually;

1.5.3 Industrial flow allowances as necessary, estimated individually.

1.6 CAPACITY ALLOCATION

The right granted to a Party under the 2000 Wastewater Agreement to discharge wastewater to a Shared Sewer owned by another Party, to the Regional Interceptors, or to the Water Pollution Control Plant, up to certain limits of flow and pollutant loadings. Water Pollution Control Plant flow and loading Capacity Allocations are based on Average Daily Design Flow; Shared Sewer and Regional Interceptor flow Capacity Allocations are based on Peak Design Flow.

1.7 CITY

The City of Fond du Lac, Wisconsin, or the Common Council for the City of Fond du Lac, or its designated representatives.

1.8 COLLECTION SYSTEM

The local sewer mains and laterals, including pump stations and force mains, together with future extensions, regulated by the respective municipalities within the Regional System. The City of Fond du Lac's Collection System includes the Regional Interceptors.

1.9 CONNECTION POINT

The point at which one Party's Collection System discharges to another Party's Collection System or to a Regional Interceptor.

1.10 DESIGN FLOW

See Average Daily Design Flow and Peak Design Flow.

1.11 DIRECT CONNECTION

A building lying within one Party's jurisdiction whose sanitary sewer lateral is connected to a sewer owned by another Party.

1.12 DOMESTIC WASTEWATER

The liquid and water-borne wastes from residences, commercial buildings, institutions, and industrial establishments generated by personal activities (from sources such as kitchens, bathrooms, lavatories, and toilets). Domestic wastewater does not include process wastewater from industrial establishments, nor does it include infiltration, or inflow.

1.13 EXCEEDANCE RATIO

A Connection Point's Peak Design Flow divided by its Average Daily Design Flow.

1.14 GROWTH AREAS

City Growth Areas and Town Growth Areas as established by the 1996 Intergovernmental Agreement or as amended.

1.15 INFILTRATION

Water that enters a sewerage system (including sewer service connections) from the ground, through such sources as defective pipe, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

1.16 INFILTRATION/INFLOW

The total quantity of water from both infiltration and inflow without distinguishing the source.

1.17 INFLOW

Water that enters a sewerage system (including service connections) from such sources as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between

storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

1.18 1996 INTERGOVERNMENTAL AGREEMENT

The " 1996 Intergovernmental Agreement Among the City of Fond du Lac and the Towns of Fond du Lac, Empire, Taycheedah and Friendship and the Respective Town Sanitary Districts to Provide for Orderly Growth and Development Within Agreed-Upon Municipal Boundaries," adopted by the City of Fond du Lac on February 28, 1996 and signed by all parties on July 4, 1996; and subsequent amendments.

1.19 MAXIMUM HOURLY FLOW

In analyzing flow metering data, the highest hourly flow over a given period, where hourly flow is the average of the recorded flow rates beginning at the top of each hour.

1.20 NORTH FOND DU LAC EXTRATERRITORIAL AREA

The geographic area within the Town of Friendship that is regarded as a potential growth area for the Village of North Fond du Lac and which has been identified in the 2000 RSAP for purposes of assigning rights to capacity in Regional Facilities.

1.21 OPERATION AND MAINTENANCE

The annual expenditure for labor and non-labor costs incurred during the normal course of providing sewage treatment services. It excludes those eligible replacement items that have been paid from the "Equipment Replacement Fund" and excludes facilities outlined in section 7.1.

1.22 OUTLYING SEWER GROUP (OSG)

The following entities or their governing bodies as appropriate:

- Village of North Fond du Lac
- Town of Fond du Lac
- Town Sanitary District No. 1 of the Town of Fond du Lac
- Town Sanitary District No. 2 of the Town of Fond du Lac
- Town Sanitary District No. 3 of the Town of Fond du Lac
- Town Sanitary District No. 4 of the Town of Fond du Lac

Town of Empire
Town Sanitary District No. 1 of the Town of Empire
Town Sanitary District No. 2 of the Town of Empire
Town Sanitary District No. 3 of the Town of Empire
Town of Taycheedah
Sanitary District No. 1 of the Town of Taycheedah
Town of Friendship
Consolidated Sanitary District No. 1 of the Town of Friendship
Town Sanitary District No. 2 of the Town of Friendship
Town of Calumet
Sanitary District No. 1 of the Town of Calumet

1.23 PARTY

The entities participating in this 2000 Wastewater Agreement, consisting of the City of Fond du Lac and each of the individual members of the Outlying Sewer Group. Future Parties may be added from time to time consistent with the provisions of this Agreement.

1.24 PEAK DESIGN FLOW

The flow parameter used in determining required sewer capacities and Capacity Allocations for Shared Sewers and Regional Interceptors consisting of the following:

1.24.1. Peak domestic, commercial, and normal institutional, equal to average daily DC&I (see Average Daily Design Flow) times a peaking factor based on population, using the formula appearing in the *Recommended Standards for Wastewater Facilities* published by the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers ("Ten States Standards"):

$$\text{Peaking Factor} = (18 + P^{1/2}) / (4 + P^{1/2}), \text{ where } P = \text{population in thousands}$$

1.24.2. Peak special institutional flow allowances as necessary, estimated individually; and

1.24.3. Peak industrial flow allowances as necessary, estimated individually.

1.25 POLLUTANT PARAMETER

BOD, TSS, Total-P, TKN, or any other pollutant subject to the terms and conditions of this Agreement as required by applicable regulations.

1.26 PURCHASER

Any Town, Village, or Sanitary District, whose sewers discharge to the City of Fond du Lac's Water Pollution Control Plant and who has purchased the right to discharge its waste to the Regional System up to a specified Capacity Allocation. The purchase of a Capacity Allocation does not impart an ownership interest in facilities.

1.27 REGIONAL, INTERCEPTOR

The three federally-funded interceptor systems constructed in 1977. Specifically, these include the West Scott Street interceptor, from Van Dyne Road (approximately 500 feet north of Scott Street) to Doty Street; the Harbor View Drive (formerly Oregon Street) interceptor, from Winnebago Drive to Doty Street; and the 48-inch interceptor on the west side of Doty Street, from Harbor View Drive to the Water Pollution Control Plant. The Parties may agree to designate future interceptor sewers as Regional Interceptors.

1.28 REGIONAL SERVICE AREA

The Fond du Lac Regional Sewer Service Area as designated in the 2000 Regional Service Area Plan and included as Exhibit 1 in the Technical Guidance Manual. The Regional Service Area may change due to amendments or updates to the 2000 RSAP. The Regional Service Area is separate from and does not necessarily coincide with the boundaries of the Sewer Service Area designated in the Areawide Water Quality Management Plan.

1.29 REGIONAL SYSTEM

The Fond du Lac Regional Wastewater collection and treatment system, consisting of the Purchasers' Collection Systems and the WCTS.

1.30 REPLACEMENT FUND

The annual contribution to the DNR-mandated "Equipment Replacement Fund." An annual contribution is made to this fund for the purpose of accumulating cash during the useful life of the treatment facility for the replacement of equipment that is needed to maintain the capacity and performance for which the treatment facility was

designed and constructed. Typically such replacement equipment has a service life that is materially shorter than the expected service life of the wastewater treatment plant.

1.31 SHARED REGIONAL FACILITIES

Those components of the Regional System whose capital costs are shared by certain Parties; specifically the Regional Interceptors and the Water Pollution Control Plant. The Parties may agree to designate future facilities as Shared Regional Facilities.

1.32 SHARED SEWER

Any sewer, other than a Regional Interceptor, owned and maintained by a Party that carries wastewater generated outside that Party's boundaries, except for City-owned sewers that carry only City waste and waste from non-City buildings with direct lateral connections to City sewers.

1.33 TECHNICAL GUIDANCE MANUAL

The manual initially prepared and periodically updated by the Technical Standards Committee. The Technical Guidance Manual, among other things, prescribes design and construction specifications for Shared Sewers and related facilities.

1.34 TOWN PLANNING AREAS

Those areas so designated by the 1996 Intergovernmental Agreement and authorized amendments thereto.

1.35 USER

Any source of Wastewater introduced into the wastewater system through a sewer connection.

1.36 USER CHARGE

The charges that are levied on users of the Regional Facilities per connection, per unit of flow, and per pound of pollutant. These charges, when applied to the billable units of flow and pounds of pollutants, will generate the revenues needed to pay for the costs associated with conveying and treating sewage.

1.37 WASTEWATER

The liquid and water-borne wastes from residences, commercial buildings, industrial facilities, and institutions, together with any infiltration/inflow that may enter the sanitary sewer system.

1.38 WASTEWATER COLLECTION AND TREATMENT SYSTEM (WCTS)

The portions of the Regional System owned by the City of Fond du Lac, comprising the City's Collection System, the Regional Interceptors and the WPCP.

1.39 WATER POLLUTION CONTROL PLANT (WPCP)

The City of Fond du Lac Water Pollution Control Plant.

1.40 WPDES PERMIT

Any or all of the Wisconsin Pollutant Discharge Elimination System permits issued by the DNR to the City for WCTS during the term of this Agreement.

II. ADDITIONAL PARTIES

Additional Parties may be added to the 2000 Wastewater Agreement only with the written consent and approval of the then-current Parties; provided, however, that the consent of any Party may not be unreasonably withheld and provided the following conditions are met:

2.1 The proposed additional Party agrees in writing to be bound by the terms of this 2000 Wastewater Agreement.

2.2 The proposed additional Party is located: (1) within a Town Growth Area or a Town Planning Area as defined in the 1996 Intergovernmental Agreement; and (2) within the Regional Service Area designated in the 2000 RSAP or an amendment thereto approved by the City and all other Parties directly affected (i.e., those whose conveyance system or Capacity Allocations may be affected) by the amendment. The following are exempt from criterion (1) above, but are not exempt from criterion (2): (a) Johnsborg Sanitary District; (b) Sanitary District No. 3 of the Town of Taycheedah (St. Peter);(c) potential additional parties that are located within a town that is a party to the 1996 Intergovernmental Agreement if no Town Growth Areas or Town Planning Areas have been established for the Town; and (d) new sanitary districts located outside of a City Growth Area and beyond the boundaries of a Town

Growth or Town Planning Area, if the sewer extensions will serve existing development only, consistent with the Town's comprehensive plan.

- 2.3 The City and all other Parties directly affected agree that sufficient capacity exists in the Shared Sewers and Shared Regional Facilities to accommodate an additional Party.

III. TERM

3.1. EFFECTIVE DATE

This Agreement is effective and binding on the Parties as of January 1, 2000 ("Effective Date").

3.2. TERM

The term of this Agreement is for as long as the members of the Outlying Sewer Group are dependent upon the City for the transportation and treatment of their Wastewater, but in no case less than 20 years. The Parties acknowledge that the 2000 RSAP is intended to guide improvements to the Regional System over a 20-year period. The Parties further acknowledge the need for their ongoing review of the 2000 RSAP and other matters covered by this Agreement. Notwithstanding the preceding sentence, any Party may reopen this Agreement in 2019 for the purpose of negotiating changes to its terms, with the exception of the duration of the Agreement. It may not be presumed that the various Capacity Allocations for the Wastewater Collection and Treatment System, the Shared Regional Facilities, the Shared Sewers, or the Regional Service Areas, all as are identified in the various exhibits to this Agreement, will be sufficient for any Party in 2019. Accordingly, all rights are reserved to seek modifications to these Capacity Allocations between the effective date of this Agreement and 2019.

3.3. EXCLUSIVITY DURING TERM

During the term of this Agreement, non-City Parties must obtain all their sanitary sewer service only from the City. No Party may provide sanitary sewer service to entities who are not Parties to this Agreement except as provided in sections 3.3.1 through 3.3.3 below. Nothing in section 3.3 affects the rights under this Agreement to add new Parties or affects the rights of Parties to pursue amendments to the Regional Service Area.

- 3.3.1. The City may contract with non-Parties to process their hauled waste.

- 3.3.2. The City may contract with sovereign or dependent sovereign Indian nations or tribes to process their waste if the source of the waste is within a City Growth Area. A sanitary district or village may contract with sovereign or dependent sovereign Indian nations or tribes to accept their waste if the source of the waste is within its boundaries or outside of a City Growth Area and within the Regional Service Area or an approved amendment thereto.
- 3.3.3. The City may contract with other non-Parties if it obtains the express written consent of all parties to the Agreement.

IV. REGIONAL SERVICE AREA

4.1 APPROVED REGIONAL SERVICE AREA

The area to be served under the 2000 Wastewater Agreement is limited to those lands as described in Exhibit 1 attached (the "Regional Service Area Plan").

4.2 AMENDMENTS TO REGIONAL SERVICE AREA PLAN

Any requests for amendment of the 2000 Regional Service Area Plan must be made in writing to all directly affected Parties and the City, with a copy going to any other Party requesting a copy of the amendment. No such amendment may be granted unless it has been approved by all directly affected Parties and the City. Approval or denial must be based upon the overall functioning and capacity of the Shared Regional Facilities, the applicant's record of compliance with the 2000 Wastewater Agreement and such other relevant factors as set forth in section II above and may not unreasonably be withheld. Proposed amendments to the 2000 Regional Service Area Plan shall be submitted for review as follows:

4.2.1 Notice of Intent.

The Party or entity (the "Applicant") proposing the amendment must submit a Notice of Intent to the Utilities Director not less than two weeks prior to the next scheduled Technical Standards Committee monthly meeting, for placement on the agenda. The Notice of Intent must at a minimum describe the proposed amendment, state the reason an amendment is required, and identify all affected Parties. The Utilities Director must forward a copy of the Notice of Intent to all directly affected Parties together with the date of the Technical Standards Committee meeting at which it will be discussed. The Technical Standards Committee and all affected Parties must provide their preliminary comments on the proposed amendment to the Applicant at the Committee meeting.

4.2.2 Amendment Report.

After the Technical Standards Committee meeting to review the Notice of Intent, the Applicant must prepare an Amendment Report meeting the minimum content requirements set forth in the Technical Guidance Manual and the relevant requirements of the Wisconsin Department of Natural Resources under the Wisconsin Administrative Code for facilities plan amendments (even if such a facilities plan amendment is not proposed or required). The Applicant must submit the Amendment Report to the Utilities Director for review. The City must review the Amendment Report within 15 days and must either recommend it to the Committee for approval or return it to the Applicant with comments for resubmittal. If the City recommends disapproval of the proposed amendment, it must state its reasons therefore in writing, which reasons must be solely sewer service related or based on the City's evaluation of sound engineering judgment and practices and the factors set forth in section 4.2. If the Applicant has resubmitted the Amendment Report after receiving the comments of the City and the City still does not approve the Report, it must nonetheless be submitted to the Technical Standards Committee for review.

4.2.3 Technical Standards Committee Review.

Once the Amendment Report is forwarded to the Committee, the Committee must either recommend it to the affected Parties for ratification or return it to the Applicant with comments for resubmittal. If the Committee recommends disapproval of the proposed amendment, it must state its reasons therefore in writing, which reasons must be solely sewer related or based on the Committee's evaluation of sound engineering judgment and practices and the factors set forth in section 4.2. If the proposed amendment is ratified by the Committee, all affected Parties must issue a letter to the Applicant approving the amendment.

4.2.4 Party Support for Proposed Amendments.

No Party may request, nor in any way support, in any forum or manner (other than among the Parties to this Agreement), a facilities plan amendment unless it is consistent with the RSAP or unless a corresponding amendment to the RSAP has first been approved under the procedures set forth in this section 4.2. No Party may oppose, in any forum or manner, a facilities plan amendment that is consistent with the RSAP or an approved amendment thereto.

V. CURRENT WATER POLLUTION CONTROL PLANT (WPCP), REGIONAL INTERCEPTOR AND SHARED SEWER CAPACITY ALLOCATIONS

5.1 CURRENT WATER POLLUTION CONTROL PLANT AND REGIONAL INTERCEPTOR CAPACITY ALLOCATIONS

The purchased Capacity Allocations for the Shared Regional Facilities are set forth in the attached Exhibits 2 and 3, which are incorporated herein by reference. Until such capacity needs to be replaced, each Party may use its existing purchased Capacity Allocations in the current Shared Regional Facilities pursuant to the terms and conditions of this Agreement, subject however, to the Maximum Discharge Limits ("MDLs") as set forth below.

5.2 CURRENT SHARED SEWER CAPACITY ALLOCATIONS

The Parties recognize that the purchase of capacity in Shared Regional Facilities does not include capacity in Shared Sewers. Shared Sewer capacity must be separately purchased. Some Parties have previously purchased certain capacity in Shared Sewers. The existing Shared Sewer capacity purchases and allocations are set forth in the attached Exhibit 4, incorporated herein by reference. Until such capacity needs to be replaced, each Party may use its existing Shared Sewer purchased capacity pursuant to the terms and conditions of this Agreement, subject however, to the MDLs as set forth below.

5.3 MAXIMUM DISCHARGE LIMITS (MDLS) FOR EACH COLLECTION SYSTEM CONNECTION POINT

The Parties recognize that in addition to current WPCP capacity limits, each segment of the Collection System also has limitations on its capacity to handle wastewater. The Parties agree that each Connection Point in the Regional System has been established and that service areas and capacity limits have been designated for each such Connection Point.

5.3.1 Connection Points and Collection System Service Areas Established.

The 2000 RSAP establishes all present and currently identified future Collection System Connection Points and delineates a service area for each Connection Point. The 2000 RSAP also identifies the required capacity at each Collection System Connection Point for each Party based on planned service area and existing and anticipated land uses. No connection may be made and no area may be served unless it is consistent with the 2000 RSAP

(or an approved amendment thereto) and the procedures for connection set forth in section 13 and in the Technical Guidance Manual are followed.

5.3.2 Average Daily and Peak Design Flows Assigned.

The 2000 RSAP assigns Average Daily Design Flow limits and Peak Design Flow limits for each Connection Point which limits are incorporated herein by reference.

5.3.3 Maximum Discharge Limits (MDLs) Set For Each Connection Point.

5.3.3.1 The Maximum Discharge Limit (MDL) for each Connection Point is determined by multiplying the Connection Point's Exceedance Ratio (Peak Design Flow divided by Average Daily Design Flow) by the Average Daily Flow metered at the Connection Point over the preceding 12 quarters or the period of record, whichever is shorter. The MDL for each Connection Point must be recalculated each quarter as additional flow meter data becomes available. A clearwater reduction charge is incurred in accordance with section 10.7 below for each day that the Maximum Hourly Flow metered at a Connection Point exceeds the MDL or if bypassing occurs within the Connection Point's service area.

5.3.3.2 Because of seasonal fluctuations in the Town of Calumet, maximum discharge limits for the Town of Calumet and Sanitary District No. 1 of the Town of Calumet (referred to collectively as "Calumet") are based on seasonal averages of metered flow over the previous three years. The summer average is based on flows metered during the second and third quarters (April through September). The winter average is based on flows metered during the fourth and first quarters (October through March).

5.4 TRANSFERS OF CONNECTION POINT CAPACITY ALLOCATIONS; MODIFICATION OF CONNECTION POINT LOCATIONS AND/OR CONNECTION POINT SERVICE AREAS

Any proposed transfer of Capacity Allocation in a Connection Point or related Shared Regional Facilities or Shared Sewers from one Party to another, and any modification of a Connection Point location or a Connection Point service area must be reviewed by the Technical Standards Committee for its impact upon the Shared Regional Facilities or Shared Sewers related to the Connection Point. If the Committee determines that the total combined Capacity Allocations of the transferring Party and

the receiving Party in the Connection Point, the Shared Regional Facilities, and Shared Sewers will not be exceeded as a result of the proposed transfer, the Committee must issue a "no adverse impact" determination, and the Parties may proceed with the transfer. If the Committee determines that the proposed Capacity Allocation transfer, modification of a Connection Point location, or modification of a Connection Point service area will have an adverse impact upon the Shared Regional Facilities or Chaired Sewers related to the Connection Point, the transfer or modification may be made only after the 2000 RSAP has been amended in accordance with the procedure set forth in this Agreement.

The committee shall review all proposed transfers and issue its determination within 30 days of receipt of the request for such determination.

Associated cost adjustment payments for any permitted Capacity Allocation transfers must be handled by the Parties in accordance with section 14 of this Agreement.

5.5 ADJUSTMENT OF LAND USES WITHIN CONNECTION POINT SERVICE AREA

A Party may adjust the land uses within the service area for a Connection Point without amending the 2000 RSAP provided the overall assigned Capacity Allocation remains the same. Capacity may be moved from one location to another within a Connection Point's service area, but the overall Capacity Allocation may not be increased without an RSAP amendment. An increase in density at one location must be offset by a comparable reduction in density elsewhere within the Connection Point's service area or by a comparable reduction in the areas served by the Connection Point so that the Party's overall necessary Connection Point Capacity Allocation is not increased. Any adjustments that would require an increase in a Party's Connection Point Capacity Allocation require an amendment to the 2000 RSAP.

VI. SHARED SEWERS

6.1 CONSTRUCTION OF NEW SHARED SEWERS

When a new Shared Sewer is built, the Party first requiring sewer service (the "Initiator") must build the sewer in a manner consistent with the 2000 RSAP. Other Parties connecting to the new Shared Sewer (the "Using Parties") must reimburse the Initiator for Shared Sewer use based on capacity needed and pursuant to the procedures set forth below. The Initiator's design must provide capacity for the Peak Design Flow required by each potential Using Party in accordance with the adopted

2000 RSAP. The Initiator's planning and design of the new shared sewer must follow the sewer system connection procedures in section XIII.

6.2 COST SHARING FOR NEW SHARED SEWERS

A Using Party of a Shared Sewer must pay a portion of Shared Sewer costs in accordance with this section. A Using Party's portion consists of the eligible shared costs of the Shared Sewer as set forth below, multiplied by the Using Party's percentage share. The Using Party's share is determined by the ultimate Peak Design Flow required for the Using Party's designated service area (as delineated by the 2000 RSAP), as a percentage of the Shared Sewer's Total Peak Design Flow. If the Shared Sewer's Total Peak Design Flow, the Using Party's Peak Design Flow, or both, change along the length of the Shared Sewer, the Using Party's cost share must be calculated separately for each such segment. All Shared Sewers are eligible for reimbursement, including 8-inch diameter sewers. If the actual constructed sewer capacity exceeds its Total Peak Design Flow, due to topographic or other physical constraints, each Using Party's cost share must be based on its percentage of the Total Peak Design Flow, not the actual capacity.

6.2.1 Eligible Shared Costs.

The Initiator's costs eligible for sharing with a Using Party include the following (interest earned by the Initiator on debt proceeds during construction must accrue to the benefit of all Using Parties and must be applied to reduce the eligible project costs):

6.2.1.1 Construction cost of the main sewer and manholes, lift stations and force mains, including backfill and surface restoration;

6.2.1.2 Engineering, consisting of specific project design and engineering services during construction, including inspection;

6.2.1.3 Financing, consisting only of the Initiator's debt interest (over the life of the debt issue) attributable to the construction of the Shared Sewer;

6.2.1.4 Easement acquisition costs;

6.2.1.5 Bond issuance costs and bond counsel fees;

6.2.1.6 Legal fees related to preparation and review of documents pertaining to financing, construction, and easement acquisition;

6.2.1.7 An administrative fee equal to 2% of eligible construction cost.

6.2.2. Documentation of Costs.

6.2.2.1. The Initiator must follow the standard construction bid item format in the Technical Guidance Manual, and must track engineering and other project costs so that the eligible costs of the Shared Sewer can be readily determined. If the Shared Sewer is part of a larger construction project, the Initiator's eligible engineering, financing, and legal costs must be apportioned according to the ratio of the Shared Sewer's construction cost to the total project construction cost. A Using Party is entitled to review any records related to Shared Sewer construction costs at any time upon reasonable request.

6.2.2.2. The Initiator must submit project closeout records to the City of Fond du Lac's Utilities Director within 30 days of project completion (final payout). Project closeout records must include record drawings of the completed construction; tabulation of final payment quantities and amounts; tabulation of associated project costs, separately identifying costs eligible and ineligible for sharing as set forth above; the cost sharing calculations for all Using Parties of the Shared Sewer; and the term of and lifetime interest rate charged on the Initiator's debt issue for the project.

6.2.2.3. A using Party may, in writing, request that the Initiator include wyes, risers, laterals, or additional special fittings or items in the initial Shared Sewer construction project, provided that the Using Party agrees in writing at the time of the request to pay 100% of the cost of such special items within 30 days of Initiator requesting such payment in writing upon completion of the project. The Initiator must then include the Using Party's requested items in the construction design unless it is impossible to do so.

6.3 TRANSFER OF OWNERSHIP OF SHARED SEWER

For Shared Sewers passing through another Party's 2000 RSAP designated service area (i.e., the Using Party is downstream of the Initiator), ownership of the Shared Sewer originates with the Initiator. As connections are made within the Using Party's service area, the Using Party must assume ownership of, and maintenance responsibility for, the portion of the Shared Sewer it is using. Ownership will change

at the first manhole upstream of the Using Party's furthest upstream connection. The Parties recognize that the Using Party's ownership of the Shared Sewer may not coincide with the Using Party's accumulated payments for the sewer. For example, if the first connection is made near the upstream end of the Using Party's service area, the Using Party may assume ownership of 100% of the Shared Sewer before having made any payments to the Initiator. This, however, will not relieve the Using Party of its obligation to reimburse the Initiator for 100% of its design capacity over the payment term that the Using Party has elected under section 8.

6.4 COST SHARING FOR EXISTING SHARED SEWERS

6.4.1. Purpose.

Cost sharing of Shared Sewers built prior to 1997 is a means by which the owner of a Shared Sewer is reimbursed by a Using Party for the Owner's cost of providing capacity for the Using Party's flows.

6.4.2. Formula for Using Party's Share.

The Using Party's cost share is determined at the time of connection, using the following formula:

$$\frac{\text{Using Party's Peak Flow}}{\text{Sewer Peak Design Flow}} \times \text{Value of Shared Sewer}$$

6.4.3. Value of Existing Shared Sewers.

The value of an existing Shared Sewer is the adjusted original project cost. The original project cost is the sum of the original construction cost plus "other project costs" identified in sections 6.2.1.2, 6.2.1.4, 6.2.1.6 and 6.2.1.7. Other project costs" are added at 20% of construction cost unless actual costs are known. The original project cost is reduced by the amount of any federal and state grants to determine the "net local share project cost." The net local share project cost must be escalated to the time of the Using Party's connection using the US Bureau of Labor Statistics US City Average All Items Consumer Price Index (CPIU, 1967=100), then depreciated using straight-line depreciation over an assumed 100-year service life. The value of the existing Shared Sewer is the depreciated adjusted net local share project cost.

6.4.4. Adjustment for Special Assessments.

If the Using Party is purchasing capacity in the existing Shared Sewer to service properties annexed to the Using Party, the net local share project cost must be reduced by the amount of any special assessment(s) paid by current or previous owners of the annexed property that were applied to the eligible original project costs. Any contractual payments received by the Owner as a contribution toward the eligible project costs of the Shared Sewer shall be treated in the same manner as a special assessment for purposes of calculating the net local share project cost.

Example: The original project cost was \$4,000. After deducting 75% grant payments, the Owner's local share cost was \$1,000, of which \$600 was collected by special assessments. Ten properties were assessed for the project and 3 have since annexed to the Using Party. The Using Party's capacity share in the Shared Sewer is 25%. The Shared Sewer is 20 years old (80 years remaining service life), and CPI ratio since the year of construction is 2.5.

The local share cost is reduced by the amount of special assessments collected from properties that have annexed:

$$(3 \text{ annexed} / 10 \text{ assessed}) \times \$600 \text{ collected} = \$180.$$

The net local share project cost is $\$1,000 - 180 = \820 .

The "escalation/depreciation" factors are applied to the net cost of \$820. The adjusted project cost is $\$820 \times 2.5 = \$2,050$, and the depreciated adjusted project cost is $\$2,050 \times 0.80 = \$1,640$.

The Using Party's payment to the owner is $25\% \times \$1,640 = \410 .

If the special assessments were applied to other project costs in addition to the Shared Sewer eligible project costs, the local share cost adjustment must be based upon the ratio of Shared Sewer costs to total project costs. Using the above assumptions, also assume that the Shared Sewer cost is \$400 and the remaining \$600 local share cost is for other (non-Shared Sewer) project costs. The

special assessment ratio for the Shared Sewer local share cost is $\$400/\$1,000 = 0.40$. The local share cost adjustment is calculated as follows:

$$(3 \text{ annexed} / 10 \text{ assessed}) \times \$600 \text{ collected} \times 0.40 = \$72.$$

6.4.5. Original Construction Costs.

Original construction costs for existing Shared Sewers are obtained from tables in the Technical Guidance Manual listing the location, diameter, design capacity, year of construction, and agreed-upon original construction cost for sewers that are now shared or could reasonably be expected to be shared in the future.

6.4.6. Peak Design Flow Determination.

The Using Party's Peak Design Flow is determined as defined in section 1.25. Exceptions may be made where the Owner's original sewer design calculations used other valid methods to calculate the peak flow from the Using Party's service area.

6.4.7. Shared Sewer Peak Design Flow.

The Shared Sewer Peak Design Flow is obtained from the Owner's original sewer design calculations if available. The Parties recognize that these calculations may have used different design parameters than those defined in section 1.25 for future design flow calculations. Where the original design flow calculations for the shared sewer are unavailable, the sewer peak design flow is the sewer's design capacity, based on diameter and slope. The capacity calculation must use the average or predominant design slope for reaches that may include several manholes, ignoring steep sections that may be dictated by topography or other physical constraints.

6.4.8. Payment.

Payment for use of existing Shared Sewers must be made in a lump sum at the time of the Using Party's first use of the Shared Sewer.

6.5 REPLACEMENT OF SHARED SEWERS

When an existing Shared Sewer is replaced, the new sewer will be considered a new Shared Sewer for cost sharing purposes in accordance with the provisions of section 6.2, with the following exceptions:

6.5.1. Allocation of Costs.

If a Shared Sewer is being replaced to increase capacity, the replacement cost must be allocated to the Using Parties in proportion to their contribution toward the need for the replacement. For purposes of this section 6.5, all Parties contributing toward the need for the replacement or receiving an increased capacity allocation in the replacement sewer are referred to as "Initiators," regardless of which Party actually commences the replacement process. A Using Party that does not contribute toward the need for the replacement and that does not receive an increased capacity allocation in the replacement sewer is referred to as a "Non-Initiator." Generally, a Non-Initiator's share is the value of the life of the replacement sewer beyond the remaining life of the replaced sewer ("the extended life"). Assuming the same 100-year service life for the existing and new sewers, the extended life is equal to the age of the existing sewer at the time it is replaced. Specific allocation methods for different types of replacement projects are discussed below. This listing may not be all inclusive.

6.5.2. Replacement Solely to Accommodate Excessive I/I.

If a Shared Sewer is being replaced solely to increase capacity to handle "excessive" I/I, all Using Parties must pay, at a minimum, for the value of the extended life in the replacement sewer. The cost share of Non-Initiators may not include the cost of oversizing necessary to accommodate "excessive" I/I. The balance of the cost must be shared by the Initiators in proportion to their "excessive" I/I.

6.5.2.1. Calculation of Oversizing Cost.

The cost of oversizing is the difference between the actual replacement project cost and the calculated cost of a replacement project without oversizing. The calculated cost is the actual cost multiplied by the ratio: M_c/M_a , where M_a is unit material costs for the actual size project and M_c is unit material costs for a project without oversizing. The chart below illustrates the allocated cost of the replacement sewer:

Example for Section 6.5.2.1

Extended life = 60 years

Cost of replacement project without oversizing = \$100,000

Cost of actual project = \$ 110,000

Party	Old Peak Flow Allocation	Excessive I/I	Capacity in New Project	% of New Capacity	Extended Life Cost	% of Excessive I/I	Excessive I/I Cost	Total Cost	% of Project Cost
A	2 cfs	0 cfs	2 cfs	16.7%	$0.167 \times 100k \times 0.6 = \$10.0k$	0.0%	\$0.0k	\$10.0k	9.1%
B	3 cfs	0 cfs	3 cfs	25.0%	$0.250 \times \$100k \times 0.6 = \$15.0k$	0.0%	\$0.0k	\$15.0k	13.6%
C	1 cfs	0.8 cfs	1.8 cfs	15.0%	$0.150 \times \$100k \times 0.6 = \$9.0k$	40.0%	$0.40 \times (\$110k - \$60k) = \$20.0k$	\$29.0k	26.4%
D	4 cfs	1.2 cfs	5.2 cfs	43.3%	$0.433 \times \$100k \times 0.6 = \$26.0k$	60.0%	$0.60 \times (\$110k - \$60k) = \$30.0k$	\$56.0k	50.9%
Total	10 cfs	2 cfs	12 cfs	100.0 %	\$60.0k		\$50.0k	\$110.0k	100.0 %

6.5.3. Replacement for Capacity for One Party.

If a Shared Sewer is being replaced to increase capacity for only one Using Party, the Non-Initiators pay only for the value of the extended life of the replacement sewer. The Initiator is responsible for the balance of the replacement costs. The example below illustrates the Non-Initiator's allocated cost of the replacement sewer.

Example for Section 6.5.3

% of Existing Sewer	% of Replacement Sewer	Extended Life	Replacement Cost	Non-Initiator's Cost
25%	5%	60 years	\$500,000	$\$500,000 \times 5\% =$ $\$25,000 \times 60\% =$ \$15,000

6.5.4. Replacement for Capacity for More Than One Party.

If a Shared Sewer is being replaced to increase capacity for more than one Using Party, the Initiators are responsible for all replacement costs in excess of the value of the extended life obtained by the Non-Initiators in the

replacement sewer. The example below illustrates the allocated cost of the replacement sewer, where Party A is a Non-Initiator and Parties B and C are Initiators.

Example for Section 6.5.4

Part y	Cap. in Old	% of Old	Cap. in New	% of New	% of Cap. Increase	Cost of New	Extended Life of New	Cost Share	% of Cost
A	2.5 cfs	25%	2.5 cfs	16%	0	\$1M	60 yrs.	$.60 \times (.16 \times \$1M) = \$96,000$	9.6
B	3 cfs	30%	5.5 cfs	34%	$2.5/6 = 42\%$	“	N/A	$(.34 \times \$1M) + (.42 \times .064 \times \$1M) = \$366,880$	36.7
C	4.5 cfs	45%	8.0 cfs	50%	$3.5/6 = 58\%$	“	N/A	$(.50 \times \$1M) + (.58 \times .064 \times \$1m) = \$537,120$	53.7
	10 cfs	100	16	100	100	\$1M		\$1M	100

6.5.5. Repair of Shared Sewer and Replacement for Repair.

If a Shared Sewer needs repair, or is being replaced solely as a result of the need for repairs with no increase in any Party's capacity allocation, the repair or replacement costs must be shared by all Using Parties in accordance with their allocated capacities in the Shared Sewer.

6.5.6. Replacement for Multiple Purposes.

Shared Sewers may be replaced for multiple reasons, for example, to add clearwater capacity and to meet growth needs. In such cases, costs must first be allocated to the Non-Initiators for the value of the extended life obtained by the replacement, based upon the principles and formulas identified in sections 6.5.1 through 6.5.4, above. Remaining costs must be allocated to categories differentiated according to the purpose of the capacity increase, and costs within each category must then be allocated in accordance with sections 6.5.1 through 6.5.5, above. For example, if 30% of the replacement sewer capacity increase is for clearwater and 70% is for growth needs, 30% of the Initiators' cost is shared by the Parties in proportion to their excessive I/I. The remaining 70% of the Initiators' cost is allocated to the Initiators in accordance with the formulas set forth above. Each Party's allocated

clearwater share is combined with its allocated growth share to determine the Party's total cost share.

Shared Sewers may be replaced for reasons other than those identified in sections 6.5.1 through 6.5.5 of this Agreement. In that case, the Parties shall use the cost-sharing principles in this Agreement to the extent applicable and shall negotiate in good faith to achieve a fair allocation of those costs attributable to those reasons not identified in this Agreement.

6.5.7. Allocable Costs.

Allocable costs for replacement of Shared Sewers are the same as Eligible Shared Costs for new Shared Sewers as set forth in section 6.2.1 above.

6.5.8. Party's Capacity Share.

A Party's capacity share in a replacement Shared Sewer is determined in accordance with the formula applicable to new Shared Sewers as set forth in section 6.2, above.

6.5.9. Calculation of Party's Share of "Excessive" I/I.

A Party's "excessive" I/I in an improvement is the sum of its peak hourly exceedances tributary to the improvement over the previous 12 months:

For each day of an exceedance by any tributary Party, its exceedance (in cfs) is the maximum hourly flow metered at the Party's Connection Point minus the MDL in effect on that day.

Costs allocated in proportion to "excessive" I/I are based on each Party's "excessive" I/I (in cfs) divided by the sum of the "excessive" I/I (in cfs) of all tributary parties over the 12 months.

Example for Section 6.5.9. All figures in cfs.

(Table assumes three excessive I/I events within a 12-month period.)

Party	February 27			June 25			August 7			Excessive I/I	Cost Share
	Peak	MDL	Exceedance	Peak	MDL	Exceedance	Peak	MDL	Exceedance		
A	1.3	1.5	--	1.8	1.6	0.2	1.5	1.5	...	0.2	10%
B	2.3	2.0	0.3	2.7	2.0	0.7	2.6	2.0	0.6	1.6	80%
C	0.3	0.5	--	0.7	0.6	0.1	0.8	0.7	0.1	0.2	10%
Total			0.3			1.0			0.7	2.0	100%

VII. PROJECTS FOR WPCP CAPACITY OR REGIONAL INTERCEPTOR CAPACITY

7.1 COSTS ALLOCATED TO PARTIES IN PROPORTION TO THEIR CONTRIBUTION TOWARD THE NEED FOR PROJECTS

The costs for any project related to WPCP capacity or Regional Interceptor capacity must be allocated to the Parties in proportion to their contribution toward the need for the project. Listed below are the allocation methods for typical projects, categorized according to the nature of the project and the cause of need for the project. This listing is not all inclusive.

7.1.1 Project for Upgrades.

Costs for an upgrade of the WPCP to meet new permit requirements (such as facilities for ammonia removal), or to improve the ability to meet current permit requirements, must be shared by all Parties in accordance with their design flow and loading allocations as provided in section 5.1. Project costs must be allocated in proportion to the Parties' share of the parameters causing the need for the project (such as flow, BOD, TSS, P, or NH₃).

7.1.2 Maintenance Projects.

Costs of improvements to maintain capacity, such as replacement of a Regional Interceptor or WPCP treatment unit, where the cost is not covered by the replacement fund, must be shared by the affected. Parties in accordance with their flow and loading allocations as provided in section 5.1.

7.1.3 Projects to Increase Capacity.

Costs of improvements to increase capacity must be allocated to the Party or Parties creating the need for additional capacity.

7.1.3.1. Projects Solely for I/I.

If a project is required solely to handle peak I/I, the cost must be shared by the Using Parties in proportion to their "excessive" I/I, determined in accordance with section 6.5.9.

7.1.3.2. New Improvements Partly for I/I.

If a new improvement is required in part to handle peak I/I all Using Parties must pay, at a minimum, for their share of the cost of the improvement without oversizing to handle "excessive" I/I, in accordance with their design flow and loading allocations. The balance of the actual project cost must be shared by the Using Parties in proportion to their "excessive" I/I.

Example for Section 7.1.3.2

Cost of project without oversizing = \$100,000.

Cost of actual project = \$150,000.

Party	Design Flow Allocation in New Project	% of Allocated Capacity in New Project	Cost of Project Without Oversizing	Excessive I/I	% of Excessive I/I	Excessive I/I Cost	Total Cost	% of Project Cost
A	2 cfs	20%	0.20 x \$100k = \$20.0k	0 cfs	0.0%	\$0.0k	\$20.0k	13.3%
B	3 cfs	30%	0.30 x \$100k = \$30.0k	0 cfs	0.0%	\$0.0k	\$30.0k	20.0%
C	1 cfs	10%	0.10 x \$100k = \$10.0k	0.8 cfs	40.0%	0.40 x (\$150k - \$100k) = \$20.0k	\$30.0k	20.0%
D	4 cfs	40%	0.40 x \$100k = \$40.0k	1.2 cfs	60.0%	0.60 x (\$150k - \$100k) = \$30.0k	\$70.0k	46.7%
Total	10 cfs	100.0%	\$100.0k	2 cfs		\$50.0k	\$150.0k	100.0%

7.1.3.3. Replacement Projects Partly for I/I.

If the project replaces an existing facility in part to handle peak I/I each Using Party must pay, at a minimum, for the value of the extended life obtained by the replacement. The cost share of a Using Party without "excessive" I/I may not include the cost of oversizing necessary to accommodate "excessive" I/I. The balance of the project costs must be shared by the Using Parties in proportion to their "excessive" I/I. See Election 6.5.2 for an example of cost sharing for replacement of an existing improvement.

7.1.3.4. Calculation of Oversizing Costs.

The cost of oversizing Regional Interceptors must be calculated in accordance with the formula identified in section 6.5.2. The Parties must use the cost-sharing principles in this Agreement and must negotiate in good faith to achieve a fair calculation of the cost of oversizing other Regional Facilities components for I/I.

7.1.3.5. Effect of Capacity for "Excessive" I/I.

The inclusion of "excessive" I/I in the design capacity of the improvement is for design and cost sharing purposes only under this section and section 6.5, and does not serve to increase any Party's capacity allocation or MDL.

7.1.3.6. Calculation of Party's share of "Excessive" I/I.

A Party's "excessive" I/I is calculated using the formula identified in section 6.5.9.

7.1.4 Enhancement Projects.

Costs of WPCP enhancements to improve operational efficiency and cost effectiveness must be allocated to all Parties in accordance with their flow and loading allocations as provided in section 5.1. Project costs must be allocated to each parameter, the treatment for which is affected by the Project.

5.2. PROJECTS FOR MULTIPLE PURPOSES

Costs for projects that have multiple purposes may fall into one or more categories. In such cases, costs must first be allocated to categories that are differentiated according to the purpose of the improvement (to meet future growth needs, to add clearwater capacity, etc.); costs within each category must then be allocated in accordance with sections 7.1 through section 7.1.4, above.

5.3. ELIGIBLE SHARED COSTS

5.3.1. Allocable Eligible Costs.

Eligible costs that may be allocated to the Parties include the following:

- 7.3.1.1 Equipment and associated installation costs, including any remodeling or new construction required for installation.
- 7.3.1.2 Construction cost of new WPCP buildings and non-enclosed treatment facilities or processes such as lagoons and trickling filters, including land acquisition and easement costs.
- 7.3.1.3 Construction cost of new or replacement Regional Interceptors, including the main sewer and manholes, sewer lining, lift stations and force mains, backfill, surface restoration, and easement acquisition costs, but excluding costs related to connection of building laterals or reconstruction of connecting sewers carrying only City-generated Wastewater.
- 7.3.1.4 Engineering and architectural fees, consisting of specific project design and services during construction, including construction inspection.
- 7.3.1.5 Financing, consisting only of the City's debt interest over the life of the debt issue attributable to eligible costs.
- 7.3.1.6 Bond issuance costs and bond counsel fees and other legal fees related to the preparation and review of documents pertaining to the improvement, financing and land or easement acquisition.
- 7.3.1.7 An administrative fee equal to 2% of eligible equipment or construction cost.

7.3.3. Reductions to Eligible Costs.

Eligible costs must be reduced by the amounts of any federal and state grants, any sums applied toward the project from the replacement fund, special assessments levied by the City, and interest earned on debt proceeds during construction. Reductions for grants, replacement fund monies and interest must be applied to reduce the total project cost and may not be applied to reduce any individual Party's share of the project cost.

7.3.4. Documentation of Costs

7.3.3.1 To the extent applicable, the City must follow the standard construction bid item format in the Technical Guidance Manual and must track all other project costs so that the eligible costs of the improvement project can be readily determined. If the project includes components that are not eligible for cost sharing (such as reconstruction of City sewers carrying only City-generated Wastewater), engineering, architectural, financing and legal costs must be apportioned according to the ratio of the eligible construction cost to the total project construction cost. If the project is a multiple-purpose project, construction costs for each purpose must be separately identified and engineering, architectural, financing and legal costs must be apportioned to each purpose according to the ratio of its construction cost to the total construction cost.

7.3.3.2 The City must submit project closeout records to the Technical Standards Committee within 30 days of project completion (final payout). Project closeout records must include:

7.3.3.2.1 tabulation of final payment quantities and amounts;

7.3.3.2.2 tabulation of associated project costs, separately identifying costs, including lifetime debt interest, eligible and ineligible for sharing as set forth above;

7.3.3.2.3 tabulation of grants, interest on debt proceeds earned during construction, and special assessments levied;

7.3.3.2.4 the cost sharing calculations for all Parties; and

7.3.3.2.5 the term of and lifetime interest rate charged on the debt issue for the project.

VIII. COST SHARING PAYMENT SCHEDULE FOR SHARED REGIONAL FACILITIES AND NEW OR REPLACEMENT SHARED SEWER PROJECTS

8.1 LUMP SUM PAYMENT

Any Party may, at its option, pay its allocated share of project costs in a lump sum. The City (in the case of Regional Facilities projects) or the Initiator (in the case of Shared Sewer projects) shall notify Parties of the date by which they must elect the lump sum payment option. The City (or Initiator) must give the Parties such reasonable notice as is practicable of a date by which they must elect the lump sum payment option, taking into consideration the timing requirements of the City's (or Initiator's) financing. If lump sum payment is elected, payment must be made within 180 days of receipt of the final tabulation of the Party's cost share and must include the Party's share of project debt interest accrued to the date of payment.

8.2 PAYMENT OVER TERM OF PROJECT DEBT ISSUE

Parties not paying their allocated share of project costs in a lump sum must pay over a term not to exceed the term of the debt issue for the project. Equal quarterly payments of the allocated cost share, including allocated interest, must be made. The total quarterly debt service charge must be added to and separately identified on the Party's quarterly User Charge bill from the City, or in the case of OSG-initiated Shared Sewer projects, must be separately invoiced to the Party.

8.3 EFFECT OF REFINANCING

If the project debt issue is refinanced, future payments of those Parties who have not paid in a lump sum must be adjusted to reflect the net savings resulting from the refinancing based upon the new debt service schedule.

8.4 EFFECT OF ADVANCE REFUNDING

If the project debt issue is advance refunded, future payment amounts of those Parties who have not paid in a lump sum must be adjusted to reflect the Party's pro rata share of the present value savings obtained from the refinancing. The net present value of savings will be calculated by the City's (or Initiator's) accountants and approved by the affected Parties.

8.5. PAYMENT SCHEDULE ADJUSTMENTS

In no case may a Party's payment schedule outlined in this section be adjusted upward from the original payment schedule as a result of a refinancing or advance refunding.

8.6. PREPAYMENT RIGHTS

Any Party initially paying on a quarterly basis may unilaterally elect to pay the balance of its allocated cost, including allocated interest accrued to the date of payment, on any date on which the City (or the Initiator) has the right under the terms of its debt issue to prepay all or a portion of the debt issue. A Party may pay the balance of its allocated cost, including allocated interest accrued to the date of payment, at any other time only with the express consent of the City or the Initiator. Any Party that initially pays its allocated cost on a quarterly basis and later elects to pay the balance in full in accordance with this section is obligated to pay only that allocable portion of the project debt interest that has accrued to the date of full payment. Any interest attributable to periods beyond the full payment date that has been prepaid as part of the Party's quarterly payments must be credited against the balance due from the Party.

8.7. EFFECT OF PSC RULES

If a Shared Sewer payment is due to a developer under applicable Rules of the Wisconsin Public Service Commission, the formula for determining the payment amount and the payment terms must be determined under said Rules, and any contrary provisions of this Agreement are superseded only if required by the Rules.

IX. METERING AND SAMPLING

9.1. METERS REQUIRED WHEREVER POSSIBLE

All Parties must meter their discharge at each Connection Point unless, as provided in section 9.2 below, the service area is too small to be practicably metered. All meters must be connected to and reported to the WPCP by standardized telemetry. Each Party owns and is responsible for installation of the required meters and telemetry equipment. Acceptable meter types and performance criteria for the meters and telemetry are identified in a standardized set of specifications established and maintained by the Technical Standards Committee as part of the Technical Guidance Manual. The type of meter selected for use by a Party for each Connection Point

must be selected from the list of City specifications based upon the flow conditions and hydraulic characteristics at the Connection Point.

9.2. METERING EXEMPTION FOR SMALL AREAS

9.2.1. Temporary Exemptions

If a Party requests an exemption from the metering requirement for an area whose initial flows are too small to meter practicably and the Technical Standards Committee agrees, then Wastewater billings will be based on metered water use adjusted by an infiltration/inflow (I/I) factor. The I/I factor must be based on temporary sewer flow monitoring using portable flow meters and must be reviewed every two years. The duration of temporary monitoring must be determined by the Technical Standards Committee and be sufficient to record data through an appropriate wet weather period. Permanent flow metering equipment must be installed by the Party when flows at the Connection Point increase sufficiently to allow reliable full-time metering as determined by the Technical Standards Committee.

9.2.2. Permanent Exemption.

For isolated service areas that probably will never produce flows sufficient to enable reliable metering, the I/I factor must be determined based on permanent meter data from elsewhere within the Party's system, or, if such data is not available, on temporary monitoring of another portion of the Party's system.

9.3. SAMPLING

The City must obtain flow-proportioned 24-hour composite samples of the Parties' discharges over seven consecutive days not less than once each quarter and in accordance with the City's sewer use ordinance. The City's calculation of a Party's Wastewater characteristics for the true-up billing pursuant to section 10.3 must be based on the previous three years' sampling results. Except where flow levels are too low to warrant sampling, samples must be obtained at connection Points where the Parties' discharges enter the City's collection system and wherever the City's discharges enter another Party's collection system. The Wastewater characteristics of Parties upstream of a sampling point are assumed to be equal to those at the sampling point. Any "unsampled" Party may request that samples be taken on the same basis as above, with the costs of such sampling and testing to be included in the City's WPCP operating costs, which are apportioned among all Purchasers.

9.4. ACCESS

The City is hereby granted by each Party an unrestricted right of access at all times to all Parties' metering and sampling equipment for purposes of inspecting or servicing such equipment.

9.5. OPERATION AND MAINTENANCE OF METER / SAMPLING EQUIPMENT

The Parties agree that the City must operate and maintain all metering and sampling equipment. The regular inspection and maintenance costs are included as part of the City's WPCP operating costs and apportioned among all Purchasers. Whenever repair and/or replacement of equipment is deemed necessary by the City, the City must undertake the repair and/or replacement and bill the Party who owns the equipment for the costs. The owner must reimburse the City within 30 days of receipt of the invoice. If not timely paid, the City may add such costs to the Party's Wastewater user billings. The Parties, without waiving any immunity protection, hereby agree to defend, indemnify and hold the City harmless from any and all claims and damages of any nature whatsoever which arise from or are in any way related to the City's operation, maintenance, repair and/or replacement of a Party's (other than the City's) metering or sampling equipment.

X. CHARGES, BILLING AND PAYMENT

For the acceptance, treatment and disposal of Wastewater transmitted to the City from a Party and for the operation and maintenance of the regional sewerage system including the operation of the City's wastewater treatment plant and all other related activities, the Party must pay to the City a fair and equitable allocation of the utility's costs to provide reliable sewerage treatment and disposal service. The Parties must pay the City for the treatment of the Wastewater, on a quarterly basis, or more frequently if agreed by the Parties, User Charges calculated in accordance with the wholesale rates then in effect as prescribed by and adopted under the City's user charge system and the City's sewer use ordinance, and reviewed by the Technical Standards Committee from time to time, except that the Parties are not required to pay any portion of the capital cost for the current WPCP and the 1977 Regional Interceptors unless agreed to by the Parties, in that the Parties have already paid capital contributions for such allocated capacity as set forth in section 5 above. The User Charges are intended to reflect the Parties' fair and proportionate share of the operations, maintenance, and replacement costs.

10.1. DETERMINATION OF ANNUAL REVENUE NEEDED TO BE GENERATED BY SEWER RATES

10.1.1. Cash Basis Determination.

The City must continue to use a "cash basis," not a "utility basis," when determining the annual revenue requirement or cash needed to be generated by sewer user charge rates.

10.1.2. City-Only Expenses.

If the City should appropriate any sewer utility cash for general City purposes, such cash must be treated as an expense item to be borne by City Users only.

10.2. RATES DESIGNED USING BUDGETED EXPENSE AND ESTIMATED FLOW AND POLLUTANT LOADINGS

The rates for each year are determined using the adopted budget level of expenses for that given year. The budget-based rates are determined using sewage volumes for the most recent 12-month period, and the pollutant strength used to calculate pounds of BOD, TSS, P., NH₃-N, or other pollutant is the average strength for the most recent 3-year [36 month] period. The 3-year average is used to calculate pollutant strengths for the WPCP influent and for all customers, both City and non-City. The budget-based rates are applied to actual metered flows and calculated pounds of pollutants using the average strength for each pollutant component as determined at the time the budget-based rates were established.

10.3. ANNUAL TRUE-UP

The total annual charge for sewer service must be adjusted with an annual true-up. After each calendar year, bills to all Parties must be recalculated using rates based on actual customer flows and actual expenses. The true-up rates must be determined using actual sewage volumes during the calendar year corresponding to the actual expenses during that same calendar year. For purposes of developing true-up rates, the pounds of pollutants are calculated using the actual sewage flow applied to the trailing 3-year average sewage strength ending December 31 of the year. The difference between budget-based bills and actual-based bills must appear as a line item adjustment to a Party's first quarter bill for the subsequent year. If actual figures are unavailable in time to make the true-up adjustment on the first quarter bill, then it must be made on the second quarter bill.

10.4. CONSISTENT APPLICATION OF COST ALLOCATIONS

The cost allocation methodology as set forth in detail in the Technical Guidance Manual must be applied in a consistent and uniform manner in the determination of both budget rates and true-up rates. In order to preserve the equitable recovery of costs over time, changes in the cost allocation factors may be required from time to time due to changes in treatment process, additional or changed regulatory requirements, or other unknown conditions. Any proposed changes in the cost allocation factors or methodology must be presented to the Technical Standards Committee for review and approval.

10.5. CHARGES APPLICABLE FOR USE OF SHARED SEWERS

Individual customers within an area served through another Party's system must pay the Using Party's standard sewer use charges in accordance with an adopted User Charge System and Sewer Ordinance. The Using Party must pay the serving Party for Shared Sewer use based on the serving Party's wholesale rate excluding prior debt service. Future debt resulting from replacement or rehabilitation costs of the Shared Sewer in excess of eligible replacement fund levels results in debt service that may be recovered in the rate charged to the Using Party pursuant to an adopted User Charge System.

For example: The Luco Road developments are within the City (user municipality), but are served through the Fond du Lac SD #2 (serving municipality) pump station. The property owners must pay the City's standard sewer rates, but the City must pay (or credit) SD #2 based on SD #2's rates, but excluding any remaining debt service related to the initial construction of the SD #2 system. At such time as SD #2's rates increase due to additional debt for system improvements (such as upgrading or replacing the pump station), the rate paid to SD #2 by the City will be adjusted to include such new debt service.

10.6. ORDINANCE PROCEDURES TO APPLY PERTAINING TO PAYMENT AND COLLECTION

Except as provided in sections 10.1 and 10.2 above, all provisions of a Party's adopted Sewer Ordinance pertaining to the payment and collection of sewer charges are applicable to a user of another Party's sewer facilities unless otherwise contrary to this Agreement.

10.7. CLEARWATER REDUCTION FUND CHARGES

10.7.1. Determination of Exceedances and Charges.

10.7.1.1 Each Party's clearwater reduction goal is "no exceedances by 2017." Clearwater reduction charges are incurred by a Party for each day that the Maximum Hourly Flow metered at a Connection Point exceeds the Connection Point's MDL for that Party. The clearwater reduction charge is equal to 600% of the volume charge for the metered volume discharged by the Party at that Connection Point on the day of the exceedance, plus the estimated volume of Wastewater bypassed by the Party. Clearwater reduction charges are incurred only in conjunction with a clearwater event (rainfall or snowmelt).

10.7.1.2 A clearwater reduction charge is incurred by the City of Fond du Lac for each day that either the Maximum Hourly Flow metered into the Wastewater Pollution Control Plant exceeds 90% of the design peak hydraulic capacity or Collection System bypassing occurs within the City collection system. The clearwater reduction charge is equal to 600% of the volume charge for the entire metered volume entering the WPCP plus the estimated volume bypassed by the City.

10.7.2. Payment of Clearwater Reduction Charges.

Each Party's quarterly Wastewater bill from the City must include a statement of clearwater reduction charges accumulated by the Party during that quarter. The statement must identify the Party, Connection Point, and MDL for that quarter, and must list the date, Maximum Hourly Flow, daily volume, and clearwater reduction charge for each exceedance during the quarter. Payment of current clearwater reduction charges is not made from this statement, which is provided for information only. Each year's second quarter bill (for the March through June period) must include a summary of total clearwater reduction charges accumulated since the previous July 1. At the July meeting of the Technical Standards Committee, each Party must present a statement of its actual clearwater reduction expenditures during the preceding 12 months (July through June). If the Party's accumulated clearwater reduction charges exceed the total actually expended on clearwater reduction efforts, the balance must be added to the Party's quarterly Wastewater bills, in 4 equal installments beginning with the first quarter of the following year. If a Party's payment of the City's quarterly Wastewater bill is less than the

total amount of the bill, payments must be applied first to clearwater reduction charges, then to interest or penalties, then to volume charges. Unpaid volume charges are subject to normal collection procedures.

10.7.3. Clearwater Reduction Escrow Accounts.

Payments of clearwater reduction charges must be deposited by the City in an escrow account to be established for each Party, with the account balance available only for the funding of bona fide clearwater reduction projects within the contributing Party's Collection System. These charges must be set aside in a segregated bank account for future use as provided in this Agreement and must be shown as restricted assets on the City's financial statements. Escrow accounts are held by the City Wastewater Utility, with interest accruing to the Parties. Escrow balances are not available to fund expansion or routine maintenance of the Party's Collection System, but may be used only for flow reduction measures, such as, but not limited to, televising, clearwater studies, repairs, rehabilitation, or replacement. Clearwater reduction account balances are available to the contributing Party on a reimbursement basis. Disbursements are made by the City of Fond du Lac Utilities Director upon application and presentation of invoices or other evidence of qualifying expenditures by the Party. Application for reimbursement may be made at any time.

10.8. MINIMUM SYSTEM MAINTENANCE

The Parties may not rely on clearwater reduction payments as the sole source of funding for system maintenance programs. All Parties must fund system maintenance budgets (including clearwater reduction efforts) that may be needed in the future. A minimum funding level equivalent to \$3 per quarter per customer billed or 3% of the amount of billed revenues, whichever is higher, is required.

XI. MANAGEMENT

11.1. CITY MANAGES REGIONAL FACILITIES

The Parties agree that the City is the managing agency for the Regional Facilities. The City is responsible for the day-to-day operation and maintenance of the Regional Facilities and may exercise that responsibility in its sole discretion. The Parties agree that as holder of the WPDES Permit for the WPCP, the City has the authority to take all necessary and appropriate actions to ensure compliance with the WPDES Permit

and related federal and state laws and regulations. Similarly, the Parties agree that the City is the Party with primary responsibility for administration of this Agreement.

11.2 REGIONAL WASTEWATER TECHNICAL STANDARDS COMMITTEE

11.2.1 Technical Standards Committee Membership.

As a vehicle for addressing certain technical issues under this Agreement, a Regional Wastewater Technical Standards Committee (TSC) is established. The TSC consists of the following five (5) representatives from the City and the Outlying Sewer Group:

11.2.1.1 City of Fond du Lac Utilities Director (Chair)

11.2.1.2 City of Fond du Lac Director of Public Works

11.2.1.3 City of Fond du Lac City Engineer

11.2.1.4 Village of North Fond du Lac Director of Public Works

11.2.1.5 An At-Large representative of the Outlying Sewer Group, who is not required to be an elected or appointed official

11.2.2 TSC Alternates

Each TSC member may designate an alternate representative.

11.2.3 TSC Quarterly Meetings

The TSC must meet quarterly in January, April, July and October. Each meeting will consist of a Communication Session and a Technical Session.

11.2.4 Communication Sessions

11.2.4.1. Each Communication Session has the following standing agenda:

11.2.4.1.1 Report on correspondence relating to the Regional Wastewater System.

11.2.4.1.2 Report on records exchange and update the contact list.

- 11.2.4.1.3 Report on sewer or system improvements that are anticipated, in progress, or completed (extensions or rehabilitations).
 - 11.2.4.1.4 Report on facilities plan or Regional Service Area Plan amendments that are anticipated, in progress, or completed.
 - 11.2.4.1.5 Receive sewer project closeout: records and shared sewer cost calculations.
 - 11.2.4.1.6 Report on Clearwater Reduction Fund status and Party activity.
 - 11.2.4.1.7 Report on metering and sampling.
 - 11.2.4.1.8 Distribute updates to regional sewer design and construction standards and Technical Guidance Manual revisions.
 - 11.2.4.1.9 Other concerns of the Parties.
- 11.2.4.2. All OSG representatives are invited to participate in the standing agenda of each Communication Session.
- 11.2.4.3. The Communication Session held in January has the following emphasis:
- 11.2.4.3.1 Summary of prior year's activity.
 - 11.2.4.3.2 Receive and review the Parties' annual reports for incorporation into the City's annual Compliance Maintenance Report to DNR.
 - 11.2.4.3.3 Plan April meeting.
- 11.2.4.4. The Communication Session held in April must follow the spring elections and has the following emphasis:
- 11.2.4.4.1 Introduce new government officials.
 - 11.2.4.4.2 Technical review of specifications and new products.

11.2.4.4.3 Facility tours and demonstrations.

11.2.4.5 The Communication Session held in July has the following emphasis:

11.2.4.5.1 Discuss Parties' needs and desires in preparing budgets.

11.2.4.5.2 Review previous 12 months clearwater reduction charges and expenditures.

11.2.4.6 The Communication Session held in October has the following emphasis:

11.2.4.6.1 Review preliminary budgets.

11.2.4.6.2 Review wastewater systems performance.

11.2.4.7 The TSC's authority regarding the Communication Sessions is to prepare and conduct the sessions, communicate with the OSG, and maintain records related to the Agreement.

11.2.5 Technical Sessions

The TSC meets in Technical Session to address administrative functions and dispute review functions.

11.2.5.1 The TSC's administrative functions include the following:

11.2.5.1.1 Establish and maintain regional standard sewer construction specifications.

11.2.5.1.2 Review and evaluate new products and technology for incorporation into the standard specifications

11.2.5.1.3 Monitor the assessment, accumulation and use of Clearwater Reduction Funds.

11.2.5.1.4 Establish and maintain procedures and protocol for compliance with the Agreement.

11.2.5.1.5 Review and recommend proposed changes, revisions, clarifications, and amendments to the Parties regarding the Agreement and the Technical Guidance Manual.

11.2.5.1.6 Consider and decide requests for specification waivers.

11.2.5.1.7 Prepare appropriate specification amendments.

11.2.5.1.8 Review shared sewer cost calculations for compliance with Technical Guidance Manual procedures.

11.2.5.1.9 Conduct the initial review of proposed revisions to the 2000 RSAP to identify potential Regional impacts.

11.2.5.2 The TSC's dispute review functions include the following:

11.2.5.2.1 Confirm compliance with the design and construction standards contained in the Technical Guidance Manual.

11.2.5.2.2 Receive input from Parties and others regarding specification waivers or proposed specification amendments.

11.2.5.2.3 Identify actions that are not in compliance with the Agreement or the 2000 RSAP.

11.2.5.2.4 Review Parties' disputes regarding the Agreement and Technical Guidance Manual procedures and upon review either identify non-compliance or recommend an appropriate resolution to the dispute.

11.2.5.3 The TSC's dispute review role is to review and research disputes and to recommend resolution of the dispute to the Parties. The TSC's recommendations are not binding on the Parties. Such recommendations must be made in good faith to encourage cooperation among the Parties.

11.2.5.4 The Utilities Director must call special Technical Sessions when circumstances warrant such sessions.

11.2.6 Monthly Meetings

The TSC will meet monthly on the third Tuesday of each month or such other date as the TSC may agree upon, in Technical Session to review technical matters assigned to it by this Agreement. The Utilities Director must prepare the agenda for the monthly meetings based upon items submitted by the Parties or TSC members. The monthly Technical Session meeting schedule is in addition to regularly scheduled quarterly meetings and any special Technical Sessions that the Utilities Director may call, except that if there are no pending technical matters the Technical Session meeting for that month will be cancelled and the Utilities Director must so notify the TSC Members. The Utilities Director must give notice to and provide a copy of the agenda for all TSC meetings to all parties at the addresses listed on the contact list in the Technical Guidance Manual.

11.3 BOOKS AND RECORDS

Each Party must keep accurate books, records, and accounts of all sewer-related matters as they pertain to this Agreement. Upon reasonable notice, any Party is entitled to examine and copy any such books and records, at their expense. Any Party may request, at their expense, an annual certified audit report for the books and records of the other Party.

XII. DISPUTE RESOLUTION/REMEDIES

12.1 INFORMAL GOOD FAITH NEGOTIATIONS REQUIRED

If any claim, controversy or dispute arising out of or relating to this Agreement occurs, the Parties agree that they must first attempt in good faith to resolve the matter informally and promptly through negotiation. If a dispute should arise, any Party may initiate good faith negotiation, pursuant to this provision, by delivering a written request to the other Party to meet within fourteen (14) days, at a mutually agreed upon time and place. Each Party may designate up to three (3) representatives to participate in the good faith negotiations. If the Parties are not able to resolve the dispute within thirty (30) days after the request to meet, either Party may proceed to pursue its rights and remedies as set forth below. Any of the time periods provided in this section may be modified if mutually agreed upon by the Parties.

12.2 TECHNICAL STANDARDS COMMITTEE REVIEW

If the informal negotiation process of section 12.1 does not resolve the dispute, any Party may submit the matter for review and comment by the Technical Standards Committee.

12.3 MEDIATION

If the negotiation process of section 12.1 and the review process of section 12.2 do not resolve the dispute, the Parties must conduct the following mediation before proceeding to formal arbitration:

12.3.1 Parties' Representatives.

Each Party must designate a representative with appropriate authority to be its representative in the mediation of the dispute.

12.3.2 Appointment of Mediator.

If the Parties cannot agree on the qualified mediator within five (5) days, a qualified mediator will be appointed by the Chairperson of the Alternative Dispute Resolution Committee of the State Bar of Wisconsin, or if the Chairperson fails to appoint a mediator, by the American Arbitration Association.

12.3.3 Mediation Session.

The mediation session must take place within thirty (30) days of the appointment of the mediator.

12.3.4 Mediation Memorandum.

Each Party must provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least ten (10) days prior to the scheduled mediation session. The Parties must also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any Party to supplement such information.

12.3.5 Mediator's Authority.

The mediator does not have authority to impose a settlement upon the Parties, but will attempt to help the Parties resolve their dispute. The mediation sessions shall be private. The Parties and their representatives may attend the mediation sessions.

12.3.6 Expenses.

The expenses of a mediator must be borne equally by the Parties.

12.3.7 Confidentiality.

The Parties must maintain the confidentiality of the mediation and may not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding (i) views expressed or suggestions made by another Party with respect to a possible settlement of the dispute; (ii) admissions made by another Party in the course of the mediation proceedings; (iii) proposals made or views expressed by the mediator; or (iv) the fact that another Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

12.4 BINDING ARBITRATION

If the mediation process of section 12.3 does not resolve the dispute, any Party may submit the matter to binding arbitration under the following procedures:

12.4.1 AAA Rules Apply.

The arbitration must be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the arbitration ("Rules"), except as such Rules may be modified by this Agreement.

12.4.2 Demand for Arbitration.

A Party desiring to submit a dispute to arbitration hereunder must file a Demand for Arbitration ("Demand") with the AAA at its office in Chicago, Illinois. A copy of such Demand must be sent to the other Parties at the same time. The arbitration proceeding must be conducted by a panel of three (3) arbitrators selected from a list of qualified arbitrators supplied by the AAA. The arbitrators must be selected as follows: Within ten (10) days after filing,

the Party who filed the Demand must appoint one (1) arbitrator and all other Parties collectively must appoint one arbitrator. If the other Parties are unable to agree on the appointment of an arbitrator within the ten-day deadline, then an arbitrator must be appointed for them by the AAA. Within ten (10) days after they are chosen, the two (2) arbitrators; must choose a third arbitrator who acts as chairperson of the arbitration proceedings. If the two (2) arbitrators are unable to agree upon a third arbitrator within the deadline, then the third arbitrator must be appointed by the AAA. The arbitrators in the arbitration proceeding must be individuals with the necessary expertise and competency to pass on the matters presented for arbitration, but said arbitrators may have no interest in or prior connection with any Party.

12.4.3 Document Production.

Following the appointment of the arbitrators, each Party has the right to mail to any other Party (with a copy to the arbitrators) a written request for the production of certain identified documents or of all documents in possession of the other Party relevant to any claims or counterclaims in the arbitration. Within ten (10) days of receipt of any such request, the receiving Party must respond to such request but may object to all or part of said request (with a copy to the arbitrators), on the ground that it is unduly burdensome, that the documents requested are irrelevant or privileged, or that such documents are equally available to the requesting Party. The arbitrators will rule on the validity of any such objection and the Parties must produce documents in accordance with the ruling.

12.4.4 Conduct of Arbitration.

The site of the arbitration must be Fond du Lac, Wisconsin, unless otherwise agreed to by the Parties. The Parties must diligently and expeditiously proceed with arbitration. Upon the conclusion of any hearing, the Parties have thirty (30) days to submit written briefs in support of their respective positions. The arbitrators must make an award within forty-five (45) days after the filing of such briefs, subject to any reasonable delay due to unforeseen circumstances.

12.4.5 Award.

Except to the extent the Parties' remedies may be limited by the terms of this Agreement, the arbitrators are empowered to award any remedy available under the laws of the State of Wisconsin including, but not limited to, monetary damages and specific performance. The arbitrators have no

authority to award punitive or other damages not measured by the prevailing Party's actual damages and may not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of this Agreement. The award of the arbitrators must be in writing with a statement of reasons for such award and signed by the arbitrators. A written decision of a majority of the arbitrators is binding upon the Parties. An award rendered by the arbitrators in an individual or consolidated arbitration may be entered in any court having jurisdiction thereof.

12.4.6. Arbitrators' Authority.

The arbitrators' authority is limited solely to resolving disputes under the 2000 Wastewater Agreement. Because the 2000 Wastewater Agreement supersedes prior agreements, no prior agreements and no arbitration decisions or court decisions construing or applying prior agreements may be admitted into evidence or considered by the arbitrators.

12.4.7. Effect of Pending Proceedings on Parties' Obligations.

The pendency of any arbitration hereunder does not relieve any Party of any of its obligations under this Agreement.

12.4.8. Consolidation of Proceedings.

Disputes between all Parties arising out of the same event or relating to the same subject matter must be consolidated into a single arbitration proceeding.

12.4.9. Expenses and Fees.

The Parties must share equally the fees and expenses of the arbitrators as well as all fees imposed by the AAA including, but not limited to, transcripts, hearing room rentals and administrative costs. Where two or more Parties have a common interest in the subject of the arbitration, those Parties collectively must be treated as one party for cost-sharing purposes. Each Party to the arbitration proceeding is responsible for its own costs and legal fees, if any, except that the arbitrators are empowered to award such costs and fees against a Party who prosecutes or defends an arbitration hereunder in bad faith. If the City is a Party to the arbitration, it may not incorporate into sewer user charges its own costs and expenses of dispute resolution. The arbitrators have authority, however, to allocate the costs of a participating Party among any non-participating Parties who benefit from a Party's participation.

XIII. SEWER SYSTEM CONNECTION PROCEDURES

13.1 SPECIFICATIONS FOR MAKING CONNECTIONS

The Technical Standards Committee will adopt as part of the Technical Guidance Manual, and update as necessary, standard sewer construction specifications to be utilized by all Parties. The specifications must be based on the most current Standard Specifications for Sewer and Water Construction in Wisconsin.

13.2 EXTENSION PROCEDURES

13.2.1 Pre-Design. Conference.

When a Party proposes a new sewer extension or the replacement of a Shared Sewer, an application must be made to the Utilities Director, who must determine whether a pre-design conference will be held between the initiating Party (the Applicant) and all other directly affected Parties. The purpose and agenda of the pre-design conference is as described in the Technical Guidance Manual. A pre-design conference is required if the Applicant proposes a sewer extension that will become a Shared Sewer or replacement of a Shared Sewer for which a Party (or combination of Parties) other than the Applicant is responsible for the majority of eligible costs as determined in accordance with the provisions of this Agreement.

13.2.2 Submission to City.

Upon completion of sewer design, the Applicant must submit design data as listed in the Technical Guidance Manual to the Utilities Director in sufficient copies for distribution to all directly affected Parties for review.

13.2.3 Alternative Design or Construction Methods.

The Applicant and all affected Parties must consult regarding the most cost-effective design or construction alternative sufficient to accomplish the project based upon sound engineering principles if (a) affected Parties other than the Applicant are responsible for the majority of cost of the Shared Sewer and (b) the cost difference between available alternatives exceeds 15%. If the Applicant and affected Parties are unable to reach agreement, the matter shall be submitted to the Technical Standards Committee for review. The Technical Standards Committee may require the Applicant and the affected parties to submit such data and tests as it deems necessary to complete its review. The Applicant shall design and construct the Shared

Sewer in accordance with the Technical Standards Committee decision. The Parties retain their right to pursue the dispute resolution mechanisms set forth in section 12 of this Agreement, but the Applicant may proceed with the project notwithstanding the pendency of such dispute resolution procedures.

13.2.4 Submission to Other Reviewing or Approving Authorities.

The Applicant must submit the Project to the other reviewing or approving authorities for the required facilities plan compliance review concurrent with the Parties' review.

13.2.5 RSAP Amendment.

Design data for projects requiring an amendment to the RSAP may not be reviewed by the Parties until the RSAP Amendment has been approved in accordance with procedures outlined in this Agreement and in the Technical Guidance Manual.

13.2.6 Reviewing Party's Obligations.

Each affected Party must issue an Acknowledgment of Receipt of the Applicant's submittal that indicates the time required for review, within which time the affected Party will either issue an Owner Approval letter to the Applicant or will return the submittal with comments. All affected Parties must deliver copies of their review and Owner Approval letters to the Utilities Director. Review times following receipt of a complete submittal package may range from 20 days for a routine sewer extension or replacement of a Shared Sewer to 30 days for complex projects, or up to a maximum of 45 days for review of a facilities plan for a new collection system. Each affected Party must review the entire submittal package and compile all its comments into a single review letter, thereby minimizing the number of resubmittals. The affected Party's time for review is suspended during any period that insufficient or erroneous information has been provided and the Applicant has been notified of the insufficiency in writing. The affected Party may deny an application if sufficient information has not been provided within a reasonable time. Affected Parties must process their review on other aspects of the proposed extension notwithstanding any dispute regarding design or construction alternatives discussed in section 13.2.3, above.

13.2.7 Submission to WDNR.

After all review comments have been satisfactorily addressed and approval letters have been received from all affected Parties and other reviewing or approval authorities, the City must submit the project to WDNR for review on behalf of the Applicant.

13.2.8 Owner Approval does not relieve the Applicant of the responsibility to apply for and obtain any other required permits or licenses.

XIV. PAYMENTS FOR CAPACITY UPON TRANSFER OF AREA FROM ONE JURISDICTION TO ANOTHER

14.1 TRANSFER OF AREA

For the purposes of this Agreement, an area lies within only one jurisdiction. For example, when the City or the Village of North Fond du Lac annexes an area from a sanitary district, the area detaches from the sanitary district. When an area transfers from one Party's designated service area to another's, the allocated capacity in Regional Facilities and Shared Sewers associated with that area also transfers, and a payment for such capacity allocations is due from the Party receiving capacity, to the Party transferring capacity as set forth below.

14.2 REGIONAL FACILITIES

14.2.1 Calculation of Transferred Capacity.

Allocated design capacity in Regional Facilities to be transferred must be calculated in the same manner as the original capacity allocations in the 2000 RSAP.

14.2.2 Cost of WPCP Capacity.

Payment for WPCP capacity must be made at a rate in \$/mgd that is based on the original 1977 local share costs. The Parties agree that the 1977 cost of capacity, considering the cost percentages allocated to the various treatment parameters (flow, BOD, TSS, phosphorus) in the Metcalf & Eddy 1977 User Charge Report and based on a typical domestic strength of 200 mg/1 BOD, 240 mg/1 TSS, and 7 mg/1 phosphorus, was \$343,400 per mgd. Until such time as the WPCP needs to be upgraded or expanded, adjustments of WPCP capacity allocations arising out of amendments to the 2000 RSAP will be

made at the above rate per mgd, escalated to the time of the adjustment by 61% of the change in the US Bureau of Labor Statistics US City Average All Items Consumer Price Index (CPIU, 1967=100) from the 1977 value of 181.5. Capacity adjustments at the time this Agreement is signed are made at a price of \$563,560 per mgd, based on the 1998 average CPI of 488.3.

$$\$343,400 \times [61\% \times (488.3/181.5)] = \$563,560$$

When the WPCP is upgraded or expanded, the parties must negotiate in good faith to establish a new base value of WPCP capacity per mgd. All transfers of rights to capacity in the WPCP from one Party to another must go through the City as an intermediary. For all transfers permitted by this Agreement, the City has a ministerial duty to reconvey immediately to the ultimate purchaser. The Parties must advise the City of the terms of transfer, including the amount of capacity, the price, and the terms of payment. The Parties must supply to the City such information as is reasonably required to determine that the transfer conforms to the terms of this Agreement. Except as provided in section 14.2.5, the price for WPCP capacity transfers are as set forth in this section 14.2.2 but the City may not require any payment to itself for transactions in which it serves as intermediary.

14.2.3 Cost of Regional Interceptor Capacity.

Payment for capacity in Regional Interceptors must be based on the original 1977 local share costs and all interest payments made by the City from the time of the original bond issue through debt retirement in April 1997. The Parties agree that the base values of the various interceptor segments are as follows, determined by allocating interest costs to each segment in proportion to its share of the original local share capital cost.

Interceptor Segment	Total Cost
West Scott Street Interceptor	
North Fond du Lac Connection	\$46,921
West Scott Extension	23,131
Main West Scott Interceptor	<u>611,288</u>
Subtotal - West Scott Street	\$ 681,340
Harbor View (Oregon) Interceptor	
SD 2 Connection	\$81,994
Taft Street Connection	34,193
Main Oregon Interceptor	<u>333,460</u>
Subtotal - Harbor View	\$449,647
Doty Street Interceptor	<u><u>\$94,391</u></u>
Total	\$1,225,379

Until such time as a Regional Interceptor needs to be upgraded or expanded, adjustments of capacity allocations arising out of amendments to the 2000 RSAP will be based on the above values, escalated to the time of the adjustment by the change in the US Bureau of Labor Statistics US City Average All Items Consumer Price Index (CPIU 1967= 100) from the April 1997 value of 479.7, and depreciated from April 1997 to the time of the adjustment based on a 100-year service life.

14.2.4 Cost of Upgrades.

Costs of Regional Facilities upgrades or expansions are shared in accordance with section VII of the Agreement.

14.2.5 Special Provision for North Fond du Lac Extraterritorial Area.

The Village has purchased capacity to serve the Extraterritorial Area. If all or a portion of the Extraterritorial Area develops within the Town, the capacity in the Regional Facilities attributable to that area must be transferred to the Town and a payment is due from the Town to the Village for such capacity. The Village and the Town may, by mutual agreement, determine the amount due to the Village, provided that the minimum payment due is the 1998 value as set forth in sections 14.2.2 and 14.2.3, and the maximum

payment due is the then-current price adjusted to the year of payment in accordance with the adjustment procedures set forth in said sections.

14.3 SHARED SEWERS

14.3.1 Transfer of Area.

When an area lies within one Party's jurisdiction but receives sewer service at the time of annexation through another Party's collection and conveyance system, a payment is due from the Using Party to the "serving Party" for Shared Sewer capacity. The amount of the payment is determined in accordance with the procedures in section 6.4 for existing Shared Sewers.

14.3.2 Transfers of Capacity Due to Annexation.

If a Using Party has previously purchased capacity or paid an allocated construction cost share for capacity in a Shared Sewer and, as a result of annexation that capacity is transferred to the annexing Party, a refund is due from the Shared Sewer Owner to the Using Party. The refund is the original purchase price or cost share paid by the Using Party, plus any debt interest related to the purchase price actually paid by the Using Party, less any special assessments related to the transferred area collected by the Using Party that contributed to the original purchase price or cost share. The refund is calculated based upon the percentage of transferred capacity to originally purchased capacity. For example, if the Using Party's net cost for the originally purchased capacity calculated in accordance with this section is \$20,000 and the transferred area's flows represent 40% of the originally purchased capacity, a refund of \$8,000 is due to the Using Party.

14.3.3 Party Not Required to Refund for Unneeded Capacity.

If a Shared Sewer Owner:

- (i) originally constructed the Shared Sewer with a specific design flow allocated to a Using Party, and
- (ii) the 2000 RSAP (or an amendment thereto) identifies the Using Party's required capacity in the Shared Sewer to be less than that originally constructed for it,

the Owner is not be required to purchase the Using Party's excess capacity, nor is any refund be due to the Using Party, unless the 2,000 RSAP (or an

amendment thereto) identifies the Owner's required capacity in the Shared Sewer to be greater than the amount of capacity the Owner retained after purchases by other Using Parties. If the Owner is required to purchase the Using Party's excess capacity under the conditions set forth in this section 14.3.3, the Using Party is required to transfer its excess capacity to the Owner and the transfer price is calculated in accordance with the formula identified in section 14.3.2, above.

XV. INCORPORATION OF CITY ORDINANCE

15.1 Waste Characteristics.

Characteristics of waste delivered to a publicly owned sewer must conform to the requirements established by the City under its sewer use ordinance as amended from time to time.

15.2 Applicability of City Ordinance.

Parties must provide by ordinance that the City's sewer use ordinance as amended from time to time applies within their jurisdictions, including that all customers within their jurisdictions who require pretreatment of sewage are subject to the provisions of the City's sewer use ordinance relating to pretreatment. The City may take any reasonable steps, including inspection and sampling, within the jurisdiction of any Party to assure compliance with pretreatment requirements.

15.3 Ordinance Violations.

When any Party becomes aware of a violation of any provision of the City's sewer use ordinance that has been made applicable outside the City, the Party must give notice to both the City and the jurisdiction where the violation occurred (the "outside jurisdiction"). The outside jurisdiction must either prosecute the possible violation or allow the City to prosecute. The City must allow the outside jurisdiction the first opportunity to prosecute the violation. If the outside jurisdiction does not, within a reasonable time, prosecute with reasonable diligence and vigor, the City may take over the prosecution. The Parties agree that when the City prosecutes violations that occur in an outside jurisdiction, the City may proceed in the same forum in which it prosecutes violations that occur within the City.

XVI. AGREEMENT SUPERSEDES PRIOR AGREEMENTS, JUDGMENTS AND AWARDS

The Parties acknowledge that there have been various disputes between the City and some of the members of the Outlying Sewer Group relating to the interpretation and the enforcement of the 1977 Agreement. These disputes led to litigation in Fond du Lac County Circuit Court. Various judgments were rendered in the litigation ("Judgments"). The Parties further acknowledge that the various disputes between the City and some of the members of the Outlying Sewer Group also led to arbitration proceedings in which final and binding awards were rendered by an arbitrator ("Awards"). During the negotiations resulting in this Agreement the Parties had the unlimited right and opportunity to make demands and proposals with respect to any subject matter relating to either the Judgments or the Awards. The Parties hereby agree that this document contains their entire understanding, undertaking and agreement and, further, that it supersedes all Judgments and Awards referred to above. The Parties further agree that this Agreement supersedes the 1977 Agreement in its entirety and supersedes all other past and current agreements to the extent they are inconsistent with this Agreement. Nothing in this Agreement relieves a Party of its obligations under the 1996 Intergovernmental Agreement.

XVII. EXEMPTION FOR TOWN SANITARY DISTRICT NO. 1 OF THE TOWN OF FOND DU LAC

The Town of Fond du Lac and Brunswick Corporation, which comprises Town Sanitary District No. 1 of the Town of Fond du Lac, are subject to an agreed-upon court order, dated May 14, 1992, in Case No. 91 CV 230, in the Circuit Court for Fond du Lac County, which mandates annexation of the territory within the District to the City on January 1, 2003. The Town, City, and District agree that the City will continue to provide sanitary sewer service to the District on the same terms and conditions as it has in the past until the area is annexed. Nothing in this Agreement alters that arrangement among the Town, City, and District.

XVIII. CLOSING STATEMENT

Simultaneous with the execution of this Agreement, the Parties shall execute a Closing Statement. The Closing Statement identifies the outstanding sewer service-related obligations among the Parties (other than obligations for current use at present rates). These obligations include those under the 1977 Agreement and any arbitration awards or judgments under the 1977 Agreement. They also include obligations necessary to commence the Parties' new arrangement under the 2000 Wastewater Agreement. The Parties agree that executing the Closing Statement and paying the amounts identified therein has the effect of satisfying all such sewer-service related obligations existing as of the date of execution.

XIX. MISCELLANEOUS

19.1. ENFORCEABILITY

The Parties have entered into this Agreement under the authority of section 66.30, Stats, and Chapters 66, 62, 61 and 60, Stats. The enforceability of this Agreement will not be affected by statutory amendments, changes in the forms of City, Village or Town government, or changes in elected officials. The Parties agree that this Agreement must be construed so as to be binding upon their respective successors, agents and employees. No Party may assign its rights or delegate its obligations hereunder without; the written consent of all affected Parties.

19.2. PERFORMANCE STANDARD

This Agreement requires the Parties to act or to refrain from acting on a number of matters. The Parties hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a Party, the consent or approval may not be unreasonably withheld.

19.3. NO WAIVER

The failure of any Party to require strict performance with any provision of this Agreement does not constitute a waiver of the provision or of any of the Parties' rights under this Agreement. Rights and obligations under this Agreement may be waived or modified only in writing. A writing waiving a right must be signed by the Party waiving the right. If an obligation of a Party is being waived or released, the writing must be signed by all affected Parties. Waiver of one right, or release of one obligation, does not constitute a waiver or release of any other right or obligation of any Party. Waivers and releases affect only the specific right or obligation waived or released and do not affect the rights or obligations of any other Party that did not sign the waiver or release. Except as specifically authorized in this Agreement, no Party may waive or release a right or obligation if the effect of the waiver or release is to give the waiving Party or the released Party a financial, economic or competitive advantage over, or to the detriment of, another Party.

19.4. NOTICES

All notices required or permitted to be given under this Agreement are deemed given when delivered in person or when deposited in the United States mail, postage prepaid, registered or certified mail, or when delivered to a private delivery service (except that notices required to be given by the Technical Guidance Manual need not

be sent by registered or certified mail unless specifically so provided therein), addressed as follows:

19.4.1. If to the City:

To the contact person and at the address identified in the Technical Guidance Manual.

19.4.2. If to an OSG member or other Party:

To the contact person and at the address identified in the Technical Guidance Manual.

19.5. AMENDMENT

This Agreement may be modified or amended only by an instrument in writing, duly executed by the Parties. Amendments to the 2000 RSAP, and amendments to add a Party may be made only in accordance with the specific amendment procedures set forth in this Agreement and may be made only with the written consent of all affected Parties (the consent or approval of non-affected Parties are not required for such amendments). Construction and design specification updates and amendments to the Technical Guidance Manual that are specifically authorized under this Agreement to be made by the Technical Standards Committee do not require the written approval of the Parties. Design or construction specification waivers approved by the Technical Standards Committee are not deemed to be an amendment to this Agreement.

19.6. HEADINGS

All articles and section headings inserted herein are for the convenience of the Parties only and do not modify or affect the construction or interpretation of any provision of this Agreement.

19.7. CONSTRUCTION AND INTERPRETATION

This Agreement must be liberally construed to accomplish its intended purposes. The Parties acknowledge that the language contained in this Agreement is the product of numerous individuals representing various interests. Therefore, ambiguities may not be construed against the drafter of this document. This Agreement must be construed to give a reasonable meaning to each of its provisions, and a construction that would render any of its provisions meaningless, inexplicable, or mere surplusage is to be avoided.

This Agreement contains various examples and charts that supplement and illustrate the substantive text of the Agreement. In the event of a conflict between the substantive text and an example or chart, the example or chart controls if the example or chart illustrates a condition or situation identical to the particular fact situation under review. An example or chart is deemed to illustrate an identical situation if the basic facts or conditions are the same, even if the number of affected Parties differs. If the example or chart illustrates a condition or situation similar but not identical to the particular fact situation under review, the substantive text controls and must be interpreted in light of and in harmony with the example or chart to the extent practicable.

The contract between the Parties consists of this Agreement, all documents incorporated by reference therein and all figures, exhibits and schedules attached thereto, and the WPDES permit issued to the City for the WCTS. The Technical Guidance Manual is not deemed to be a contract document. The Technical Guidance Manual is intended as a guide to implementation of this Agreement and may not modify the terms of this Agreement. The various documents constituting the contract must, insofar as is possible, be interpreted as to be consistent with one another. The contract documents are complementary and what is called for by any one is binding as if called for by all. In the event of conflicts in the contract documents, the parts thereof take precedence and control for the following matters in the following order:

19.7.1. WCTS Maintenance and Improvements.

- 19.7.1.1 The WPDES permit
- 19.7.1.2 The Agreement
- 19.7.1.3 Exhibits to the Agreement

19.7.2. All other matters.

- 19.7.2.1 The Agreement
- 19.7.2.2 Exhibits to the Agreement
- 19.7.2.3 The City's sewer use ordinance

19.8. MEANING OF WORDS

Unless the context in which it is used clearly indicates to the contrary, words used in the singular include the plural and words used in the plural include the singular.

19.9. EXHIBITS

If a document or matter is disclosed in any exhibit, figure, or other attachment to this Agreement, it is deemed to be disclosed for all purposes of this Agreement without the necessity of specific repetition or cross reference.

19.10. PRIOR NEGOTIATIONS

All prior negotiations and discussions by and among the Parties that are not set forth in this Agreement or in the exhibits, figures, schedules or attachments to this Agreement are merged into this Agreement and may not form the basis of any independent rights or claims.

19.11. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or enforceable, such provision may not affect or impair the validity, legality or enforceability of this Agreement or any of the other provisions hereof, and a valid and enforceable provision as similar as possible to the provision at issue must be substituted for the provision at issue.

19.12. NO THIRD PARTY BENEFICIARY

This Agreement is intended to be solely between the signatories set forth on the following pages. Nothing in this Agreement grants any third party beneficiary rights to any non-Party that may be enforced by any non-Party to this Agreement.

19.13. GOVERNING LAW

This Agreement must be governed by and construed in accordance with the internal laws of the State of Wisconsin.

19.14. COUNTERPARTS

Any number of counterparts of this Agreement may be executed and each such executed counterpart is deemed to be an original.

The undersigned officers of the City of Fond du Lac have executed this Agreement pursuant to a duly adopted Resolution of the City Council dated July 14, 1999.

CITY OF FOND DU LAC

Date

By _____

Stephen T. Nenonen, City Manager

Date

By _____

Theresa Hochrein, City Clerk