

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF MERTON AND WAUKESHA COUNTY**

Whereas, the Town of Merton ("Town") and Waukesha County ("County") both recognize the negative impacts that storm water runoff from urban lands can have on local water resources and are both subject to WPDES Municipal Separate Storm Sewer Discharge General Permit WI-S050075-1 under Chapter NR 216 Wisconsin Administrative Code ("Municipal Permit"); and

Whereas, as conditions of a the Municipal Permit, communities are required to conduct an information and education program on controlling nonpoint source water pollution and enforce a construction site erosion control and storm water management ordinance that complies with NR 216; and

Whereas, the WI Department of Natural Resources has determined Chapter 14, Article VIII of the Waukesha County Code of Ordinances, entitled *Storm Water Management and Erosion Control* ("County Ordinance") complies with the above noted Municipal Permit requirement related to ordinance enforcement within the jurisdictional boundaries of the Town; and

Whereas, the WI Department of Natural Resources has also determined that the Waukesha County Storm Water Education Program, as described in Exhibit X, complies with the above noted Municipal Permit requirements related to storm water education if implemented by the Town and the County as described herein; and

Whereas, a written agreement for the Town and the County to jointly coordinate ordinance enforcement activities and implement the storm water education program can be a cost-effective way to satisfy these Municipal Permit requirements for both units of government;

Now, therefore, in consideration of these premises, the Town and the County under the authority of subsection 66.0301 Wis. Stats. hereby agree to cooperate on the implementation of the County Ordinance and a storm water education program within the Town in accordance with the following:

- (a) **SERVICES, FEES, CONTACTS AND REPORTS.** For the remainder of this agreement, the term "County" shall mean the Waukesha County Department of Parks and Land Use – Land Resources Division.
1. **County Ordinance Enforcement.** By administering and enforcing the County Ordinance, the County shall be responsible for meeting the Municipal Permit conditions for the Town entitled "Construction Site Pollutant Control" (section 2.4) and "Post Construction Storm Water Management" (section 2.5). The procedures outlined in section (b) below shall apply to this process.
 2. **Information and Education.** Starting November 1, 2008 the County agrees to provide the Town educational program services in accordance with Exhibit X. When implemented, this program will satisfy the Municipal Permit conditions entitled "Public Education and Outreach" (Section 2.1) and "Public Involvement and Participation" (Section 2.2) for both the County and the

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Town. Exhibit X describes an annual work planning and oversight process, program goals by target audience, planned activities and the general roles of the County and the Town during implementation. The County and the Town agree to participate in at least two program planning and implementation meetings each year and to carry out assigned activities, as described in Exhibit X. It is understood that the County and the Town must implement the program described in Exhibit X to maintain compliance with the Municipal Permit and are both subject to annual evaluations by the Wisconsin Department of Natural Resources.

The County and the Town further understand they are each responsible for demonstrating their own compliance with Section 2.6.8 of the Municipal Permit relating to the education of County and Town officials.

3. Fees.

A. County Ordinance. The County will charge no fees to the Town for services performed to administer Storm Water Permits under the County Ordinance. The County will establish, retain and modify fees for permit applicants as necessary to support County costs for administering the County Ordinance. The Town is responsible for annual municipal permit fees to the state under NR 216.08.

B. Information and Education. Starting in 2008, the Town agrees to pay the County the applicable fee shown in Exhibit Y for the information and education program services described in Exhibit X. This fee is designed to partially offset County costs for staff salaries, benefits, overhead, materials and program support, except for bulk mailings. After 2008, this fee shall be subject to an annual increase not to exceed 5% or the actual County cost increases for salary and benefits involved in providing these services, whichever is less. All fees after 2008 shall be documented by invoice from the County to the Town. The Town shall approve and be responsible for any proposed bulk mailing costs proposed within their community above and beyond the program outlined in Exhibit X, unless otherwise agreed to by the County.

4. **Responsible Contacts.** Upon execution of this agreement, the County and the Town each shall designate in writing a primary contact person to be responsible for carrying out the activities described in Exhibit X.

5. **Reporting.** By March 1 of each year, the County shall provide the Town with a report of activities under sections 1. and 2. above that were carried out by the County during the previous calendar year, as needed to comply with the Municipal Permit. The Town shall be responsible for tracking their own activities and submitting all required reports to the Wisconsin Department of Natural Resources.

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(b) ORDINANCE ENFORCEMENT PROCEDURES

1. **Intent.** In order to effectively enforce the County Ordinance under this agreement, it is important to incorporate storm water management concepts into site planning early in the land development process. To do this requires coordination of certain procedures between the County and Town. This section describes how this will be done.

2. **Plan Review/Approval Procedures.** The Town and the County will notify each other of any scheduled on-site visits for proposed subdivision plats and other developments that may trigger the need for a storm water management plan under the County Ordinance. Copies of all correspondence generated by the Town or the County relating to a permit under the County Ordinance will be provided to each other. The Town Clerk will notify the County of all meetings scheduled to review the projects subject to a storm water management plan and provide copies of plats and other materials to the County in accordance with the following:
 - A. Preliminary Plats & Site Plans/CSM's. Two weeks prior to scheduled action by the Town Planning Commission or Town Board, the Town will provide copies of all certified survey maps (CSM's), site plans, preliminary plats and other proposed developments subject to a storm water management plan under the County Ordinance. This will allow time for the County to prepare a "Preliminary Storm Water Review Letter" and resolve spatial issues related to storm water management early in site planning, as described in the County Ordinance.

 - B. Grading/Construction Plans. The Town Engineer will provide the County with any comments from the Town relating to the enforcement of the County Ordinance, which the County will incorporate into the Storm Water Permit process, as authorized. The Town Engineer is responsible for ensuring compliance with all other applicable Town codes, permits and approvals.

 - C. Final Plats and CSM's. Final Plats and CSMs will not be approved by the Town or County until the County provides "Certification of Compliance" with the County Ordinance. This will help ensure that items such as drainage easements, BMP locations, maintenance agreements, access lanes, utility easements and other related items are properly addressed.

3. **Financial Assurance.** The Town agrees to include a provision in the developer's agreement that expressly allows the Town to withhold release of a financial assurance until documentation is received from the County of compliance with the County Ordinance. The County will hold a separate smaller financial assurance from the permit holder until compliance with County Storm Water Permit termination requirements, including as-built surveys and construction verification.

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4. **Preconstruction Meetings.** Preconstruction meetings will be coordinated between the Town Engineer and the County to review all regulatory requirements and ensure that the Town, the County, the developer and all affected contractors agree to and possess a final approved set of construction plans.
5. **Plan Revisions or Modifications.** The Town and the County must each receive in a timely manner a set of any construction plans that are revised or modified after a Preconstruction meeting.
6. **As-Built Documentation.** As stated in the County Ordinance, the County will rely on the engineer of the Storm Water Permit holder to verify compliance with approved plans and provide as-built documentation to the County. The County will ensure electronic archiving of the data as described in section (d) below.
7. **Permit Enforcement Procedures.**
 - A. Enforcement. The Town will forward any concern or complaint the Town receives relating to enforcement of the County Ordinance to the County. The County will respond to any complaint received from the Town within 24 hours on working days. If the Town determines that an issue requires immediate attention, the Town may request that the County respond immediately.
 - B. Legal Services. The County Corporation Counsel's Office will provide legal services to the County regarding enforcement of the County Ordinance.
 - C. Appeals. The County Board of Adjustment will hear all appeals related to the implementation of the County Ordinance. The County has additional enforcement authority under the County Ordinance, including citation authority.
8. **Town Funded Projects.** For any road maintenance project or other construction funded by the Town that may trigger the need for a permit under the County Ordinance, no fees or financial assurance will apply and the County will assist the Town in meeting the County Ordinance in accordance with the following:
 - A. New Construction/Reconstruction. The Town Engineer will involve the County early in the planning process to determine applicability of various technical requirements of the County Ordinance. The County will advise the Town Engineer or other designated consultant on the preparation of plans that comply with all applicable requirements.
 - B. Road and Ditch Maintenance. The County will provide the Town with sample erosion control plan templates for common road maintenance work that may trigger the need for an erosion control plan, including maintenance work to ditches and other stormwater conveyance

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systems. If the Town uses these templates, roadwork can proceed after a 24-hour notification to the County. For other road maintenance projects, the Town must provide the County at least 7 days notice, so that the County can review erosion control plans for the site.

(c) TOWN POLICIES

It is the policy of the Town to require new roads and buried utilities to be installed in a timely manner that minimizes soil erosion, environmental damage and future maintenance problems. The County will ensure that the following Town policies are adhered to during the preparation and implementation of erosion control plans through the County Ordinance:

1. **Utilities.** Whenever practicable, no buried utilities shall be installed within the design flows of open channels in Town road right-of-ways, except for right angle crossings. Preferred placement on new roads is 3 feet inside of property boundaries with a 10 foot recorded easements for future maintenance. This policy may vary depending on soil conditions, trees and other obstructions.
2. **Road Construction Deadlines.** September 15 is recognized as the deadline for successful seeding of permanent grasses in Waukesha County. In accordance with the County Ordinance, new road construction with roadside swales will generally not be allowed to proceed unless it is demonstrated that this deadline will be met. Exceptions to this rule may be made under unique circumstances only if no off-site impacts are likely to occur and the Town Engineer and the County approve the construction plans.

(d) LONG TERM MAINTENANCE OF STORMWATER FACILITIES

The following procedures aim to ensure the proper long-term maintenance of storm water management facilities within the Town and compliance with certain provisions of the Municipal Permit. Proper maintenance of these facilities will help minimize structure failure and possible damage and ensure that the facilities continue to serve their designed functions. It is understood by the Town that all County activities listed in this subsection will be completed as staff time allows, at no cost to the Town.

1. **GIS Database.** The County has created a web-based database to store information on all storm water management facilities within the Town, including: location (including GIS links), facility type, design data, year of installation, ownership and maintenance responsibilities (if able to determine), photographs, a record of any inspections completed, and other related information. The Town will be offered access to this database through the Internet upon request.
2. **Inspections.** The County will conduct periodic on-site inspections of storm water management facilities in the Town and produce a written report concerning the current condition of each facility inspected. During the inspection, the County may complete simple maintenance measures such as clearing debris from outlets or removal of trash or woody vegetation. If the

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County recommends additional inspection or maintenance action, the County will discuss the needs with the Town Engineer and include final recommendations in a written inspection report to the Town.

3. **Enforcement.** The Town will be responsible for notifying the owner(s) of the storm water facility and enforcing any inspection and maintenance requirements.
4. **Disclaimer.** It is understood that the County does not certify the design, construction or performance of any storm water management facility in the Town, regardless of the conditions noted in an inspection report. The Town is responsible for compliance with Municipal Permit requirements relating to inspection of Town-owned storm water management facilities.

(e) MISCELLANEOUS PROVISIONS


1. **Effective Date.** Pursuant to Wis. Stat. §§ 59.693(9) and 60.627(8), this Agreement may be established only by ordinance of both municipal entities and shall become effective thereon. This Agreement shall remain in effect through the term of the Municipal Permit (December 31, 2010) or until otherwise terminated by either party under sub. 3. below. Upon renewal, extension or re-issuance of the Municipal Permit, this agreement will automatically be extended and renewed for the period of the permit, unless otherwise agreed by the parties or terminated under sub. 3. below.
2. **Review and Amendments.** The terms of this Agreement shall be reviewed annually and may be modified if approved in writing by both parties and duly executed by the authorized representative. The County shall notify the DNR of any proposed amendments to determine if they would have any effect on compliance with the Municipal Permit.
3. **Termination.** The County or the Town may terminate this Agreement at any time upon a 60-day written notice of intent. The Town is responsible for notifying the DNR of any termination of this agreement and for subsequent compliance with DNR permit requirements.
4. **Effect of Agreement.** The only terms and conditions of the Municipal Permit affected by this agreement shall be those specifically stated in this agreement. The Town and the County acknowledge that each is responsible for complying with all other terms and conditions of the Municipal Permit that apply to their jurisdiction. This Agreement contains the entire agreement of the parties. The County and the Town recognize that this Agreement is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and should not be seen as precedent for any future agreement between the County and other entities.
5. **Severability.** If any clause, provision or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such

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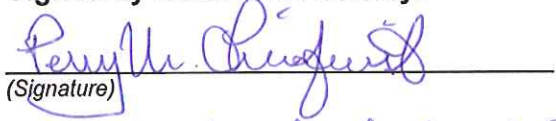
clause, provision or section shall not affect any of the remaining provisions of this Agreement.

6. **Binding Agreement.** This Agreement is binding upon the parties hereto and their respective successors and assigns.

Signed by the Town:


Richard J. Morris - CHAIRMAN
(Signature) 3/27/2008
(Date)

Signed by Waukesha County:


Perry M. Lindquist, Land Resources Mgr.
(Signature) 5/6/08
(Date)