

April 25, 2002

**RACINE AREA INTERGOVERNMENTAL SANITARY  
SEWER SERVICE, REVENUE-SHARING, COOPERATION  
AND SETTLEMENT AGREEMENT**

This Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement (this agreement, as amended or otherwise modified pursuant to its terms from time to time, is hereinafter referred to as this "Agreement") is entered into as of the 31st day of December, 2001, by and between the City of Racine, which includes the Racine Wastewater Utility (the "Racine Utility"), a quasi-independent division of the Racine city government (collectively, "Racine"), the Racine Wastewater Utility Commission, which is the governing body of the Racine Utility and an intergovernmental commission established by this Agreement pursuant to Wis. Stat. § 66.0301 (the "Wastewater Commission"), and some or all of the following local governmental entities: the Town of Mt. Pleasant ("Mt. Pleasant"), the Mt. Pleasant Sewer Utility District No. 1 ("Mt. Pleasant No. 1"), the Town of Caledonia ("Caledonia"), the Sewer Utility District No. 1 of the Town of Caledonia ("Caledonia No. 1"), the Crestview Sanitary District (the "Crestview District"), the North Park Sanitary District (the "North Park District"), the Village of Sturtevant ("Sturtevant"), the Village of Sturtevant Water and Sewer Utility (the "Sturtevant Utility"), the Village of Elmwood Park ("Elmwood Park"), the Village of Wind Point ("Wind Point"), the Village of North Bay ("North Bay"), the Town of Yorkville ("Yorkville"), the Yorkville Sewer Utility No. 1 ("Yorkville No. 1"), the Town of Raymond ("Raymond"), the Raymond Heights Sanitary District (the "Raymond Heights District") and the Town of Somers ("Somers").

**WITNESSETH:**

1. **WHEREAS**, Racine, through its Racine Utility, owns and operates a wastewater treatment facility (the "Wastewater Treatment Facility"), certain wastewater interceptors and certain wastewater pumping, storage, drying and related sewerage facilities (collectively, the "2001 Sewer Service Facilities") listed on the attached Exhibit A, which is incorporated by reference, for the purpose of providing its public sanitary sewer service ("Sewer Service") to Racine and to all or portions of a number of outlying communities; and

2. **WHEREAS**, the 2001 Sewer Service Facilities are operated, maintained, replaced, improved and accounted for separately from other wastewater collection and conveyance facilities tributary to the Wastewater Treatment Facility that are owned and/or operated by or for Racine, the other Parties or other non-Party local governmental entities

receiving Sewer Service, for their respective individual purposes (collectively, the “Collection Facilities”); and

3. **WHEREAS**, Racine entered into 20-year Sewer Service agreements with some of the outlying communities in or about 1977 (the “1977 Sewer Service Agreements”), pursuant to which Racine provided Sewer Service to at least certain areas of all of the initially Anticipated Outlying Parties except Yorkville No. 1, Yorkville, the Raymond Heights District and Raymond, either directly or through intermediary arrangements, until those agreements expired and terminated by their terms on December 31, 1996; and

4. **WHEREAS**, since the expiration and termination of the 1977 Sewer Service Agreements, Racine has continued to provide Sewer Service directly to the outlying communities that were previously receiving Sewer Service, pursuant to terms and conditions prescribed in Chapter 98 of the Racine Code of Ordinances, but Racine has declined to construct any new Sewer Service Facilities to serve the future growth needs of any of the outlying communities without a new and satisfactory intergovernmental Sewer Service agreement; and

5. **WHEREAS**, a number of significant unresolved disputes and issues prevented Racine and the outlying communities from negotiating a new Sewer Service agreement promptly after the expiration and termination of the 1977 Sewer Service Agreements; and

6. **WHEREAS**, Racine, through its Racine Utility, caused a facilities plan for the upgrading and expansion of the 2001 Sewer Service Facilities through the year 2020 to be prepared in or about February 1998 (the “1998 Facilities Plan”), making clear in Appendix K thereof that the 1998 Facilities Plan would be implemented only if and to the extent that a new and satisfactory Sewer Service agreement could be consummated with the outlying communities; and

7. **WHEREAS**, the 1998 Facilities Plan provided for three categories of recommended sewerage improvements (collectively, the “1998 Recommended Improvements”): (1) certain improvements to the 2001 Sewer Service Facilities to cure deficiencies in handling wet weather flows, which improvements are needed even if no additional sewer extensions are constructed (collectively, the “Deficiency Work”) (the improvements constituting the Deficiency Work are set out in Exhibit B, which is incorporated by reference); and (2) certain additional improvements to the 2001 Sewer Service Facilities to provide expanded wastewater treatment capacity to serve the anticipated future growth needs of the Anticipated Parties through the year 2020 (collectively, the “Future Growth Work”, which improvements are set out in Exhibit B) within the planning area of the 1998 Facilities Plan (the “1998 Facilities Planning Area”), shown on the attached Exhibit J, which is incorporated by reference; and (3) certain other improvements to the individual Collection Facilities of Racine and the outlying communities already receiving Sewer Service to reduce inflow and infiltration by 10%; and

8. **WHEREAS**, the Wisconsin Department of Natural Resources (the “DNR”) approved the 1998 Facilities Plan on June 10, 1999; and

9. **WHEREAS**, in December 1998, the average daily flows, peak daily flows and peak hourly flows of each of the Anticipated Parties were recalculated, and are summarized in the attached Exhibit C, which is incorporated herein by reference; and

10. **WHEREAS**, the recalculated flow figures in Exhibit C have been accepted as accurate estimates by the Anticipated Parties and will be used in this Agreement as the basis for allocating to the Parties both (1) wastewater treatment capacity and wastewater conveyance capacity, and (2) the capital costs of providing the 1998 Recommended Improvements to the 2001 Sewer Service Facilities, assuming that all of the 1998 Recommended Improvements are constructed; and

11. **WHEREAS**, the proposed allocation to the Anticipated Parties of the wastewater treatment capacity and the wastewater conveyance capacity to be created by the 1998 Recommended Improvements to the 2001 Sewer Service Facilities is set out on the attached Exhibits E and F, which is incorporated by reference only for the purpose of general information; and

12. **WHEREAS**, estimated costs of the 1998 Recommended Improvements to the 2001 Sewer Service Facilities, as of September 2000 are approximately \$79,347,500, as detailed in the attached Exhibit B, which is incorporated by reference only for the purpose of general information; and

13. **WHEREAS**, the 2001 Sewer Service Facilities must be upgraded to continue providing high quality, reliable and environmentally acceptable Sewer Service to Racine and to the areas of the outlying communities already receiving Sewer Service, and must be expanded to accommodate the future growth needs of Racine and the outlying communities over the next 20 years (the 2001 Sewer Service Facilities, as upgraded, expanded or otherwise improved from time to time are hereinafter referred to as the “Sewer Service Facilities”); and

14. **WHEREAS**, the Parties to this Agreement recognized that if they failed to achieve an agreement that fairly and reasonably served the legitimate needs and interests of all of the Parties, an opportunity would be missed to finance the Future Growth Work with low-cost Clean Water Fund Financing and the Parties would probably find themselves in prolonged, difficult and expensive litigation, which might have a substantially adverse impact on the economic and social well-being of the greater Racine area for many years to come; and

15. **WHEREAS**, the Parties to this Agreement are desirous of compromising, settling and amicably resolving their differences, and of equitably sharing both the costs and benefits of the provision of Sewer Service in the greater Racine area, and of cooperating with one another regarding boundaries, incorporation, certain cross-boundary issues and the financing of certain intergovernmental services, all in accordance with this Agreement, and of achieving the very considerable individual and synergistic benefits and advantages of a long-term cooperative relationship between the Parties; and

16. **WHEREAS**, each of the Parties receiving Sewer Service pursuant to this Agreement understands that it is likely to run short of allocated wastewater treatment capacity

and/or allocated Wastewater conveyance capacity prior to the year 2020 if it fails to eliminate 10% of the existing inflow and infiltration to its own sewerage system, as envisioned by the 1998 Facilities Plan, or otherwise fails to exercise reasonable control over and eliminate excess infiltration and inflow.

**NOW, THEREFORE**, in consideration of the mutual provisions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, and pursuant to Wis. Stat. §§ 66.0301, 66.0305, 62.11(5) and other applicable provisions of the Wisconsin Statutes, the Parties hereby agree as follows:

## **I. DEFINITIONS**

The following words, phrases or abbreviations, as used in this Agreement, are defined below. For convenience, such defined terms are written in this Agreement with initial capital letters. Defined terms can be combined to form new and additional defined terms, e.g. “SSR Party” and “Outlying Party” can be combined to form “Outlying SSR Party.”

- 1.1** Act. “Act” means The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq., as amended or supplemented or recreated from time to time.
- 1.2** Adjunct Party. “Adjunct Party” means a Related Party to which a principal Party has delegated the performance of certain specified functions pursuant to this Agreement, for which the principal Party remains responsible.
- 1.3** Agreement. “Agreement” means this Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement, as amended or otherwise modified pursuant to its terms from time to time.
- 1.4** All Applicable Laws. “All Applicable Laws” means all applicable statutes, ordinances, regulations, policies, regulatory permits or approvals (including, without limitation, any WPDES Permit, any approved Facilities Plan, any approved Sewer Service Area), judgments, orders or other laws to which the Racine Utility and the Wastewater Commission are subject, as enacted, amended, modified, recreated, supplemented, issued, promulgated, declared or entered from time to time.
- 1.5** Allocated Conveyance Capacity. See definition for “Conveyance Capacity Allocation”, below.
- 1.6** Allocated Treatment Capacity. See definition for “Treatment Capacity Allocation”, below.
- 1.7** Anticipated Parties. “Anticipated Parties” means the following local governmental entities in the greater Racine area which the Parties as of the Effective Date of this Agreement anticipate may join this Agreement in the foreseeable future: the Racine Wastewater Utility Commission, the City of

Racine, the Town of Mt. Pleasant, the Mt. Pleasant Sewer Utility District No. 1, the Town of Caledonia, the Sewer Utility District No. 1 of the Town of Caledonia, the Crestview Sanitary District, the North Park Sanitary District, the Village of Sturtevant, the Village of Elmwood Park, the Village of Wind Point, the Village of North Bay, the Town of Yorkville, the Yorkville Sewer Utility No. 1, the Town of Raymond, the Raymond Heights Sanitary District, the Town of Somers, the Town of Somers KR Sewer Utility District. “Anticipated Parties” shall be deemed to include any city, village, town, or sewerage-related special purpose district which is created by the Anticipated Parties listed in Section 2.1 of this Agreement, or any of them, or which is created so as to consist of or include any of the territory of such Anticipated Parties, or any of them, at any time.

- 1.8** Average Daily BOD Loading. “Average Daily BOD Loading” means the total amount of BOD (biochemical oxygen demand) contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any 365-day period, divided by 365, and usually expressed in terms of pounds per day.
- 1.9** Average Daily Flow. “Average Daily Flow” means the total volume of Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any 365-day period, divided by 365, and usually expressed in terms of millions of gallons per day.
- 1.10** Average Daily P Loading. “Average Daily P Loading” means the total amount of P (phosphorus) contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any 365-day period, divided by 365, and usually expressed in terms of pounds per day.
- 1.11** Average Daily TSS Loading. “Average Daily TSS Loading” means the total amount of TSS (total suspended solids) contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any 365-day period, divided by 365, and usually expressed in terms of pounds per day.

- 1.12** Banked Allocated (Treatment or Conveyance) Capacity. “Banked Allocated (Treatment or Conveyance) Capacity” means allocated capacity paid for in the first instance by the Wastewater Commission and made available to the SSR Parties in accordance with this Agreement.
- 1.13** BOD. “BOD” means biochemical oxygen demand, which is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at 20 degrees Centigrade.
- 1.14** Bypassing. “Bypassing” means the discharge of untreated Wastewater to the environment.
- 1.15** Capital Costs. “Capital Costs” means any and all expenditures (i.e. total project costs) for the planning, design, purchase, installation, construction and/or other provision of long-term improvements to the Sewer Service Facilities of the Racine Utility, including, without limitation, administrative costs of bonding or financing, any related costs for obtaining permits and approvals, and related attorneys' fees and consultants' fees.
- 1.16** Capital Reserve Account Funds. “Capital Reserve Account Funds” means funds of the Racine Utility that accumulate when annual recovery of depreciation and ROI exceeds annual debt service and cash financed capital projects, plus interest earned on fund balances. The Capital Reserve Account Funds are separate and distinct from any Replacement Reserve Fund that may be required as a condition for obtaining Clean Water Fund Financing.
- 1.17** Categorical Pretreatment Standards. “Categorical Pretreatment Standards” means any regulation containing Pollutant discharge limits promulgated by Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Users and which appear in 40 CFR, chapter I, subchapter N, parts 405 through 471, as amended or supplemented from time.
- 1.18** Clean Water Fund Financing. “Clean Water Fund Financing” means financial assistance received from the State of Wisconsin pursuant to Sections 281.58 and 281.59 of the Wisconsin Statutes.
- 1.19** Collection Facilities. “Collection Facilities” means Wastewater collection and conveyance facilities, other than the Sewer Service Facilities, that are tributary to the Wastewater Treatment Facility and owned and/or operated by or for any of the Parties, or any of the other local governmental entities receiving Sewer Service, for their respective individual purposes, as such facilities may be upgraded, expanded, or otherwise modified or improved from time to time. (As used in this Agreement, “Collection Facilities” are mutually exclusive of “Sewer Service Facilities”.)
- 1.20** Construction Cost Index. “Construction Cost Index” means the composite index of construction costs, including the costs of materials and labor for 20 U.S. cities,

that measures the increase in such costs over the base year of 1913 as published monthly by The Engineering News Record.

- 1.21** Conveyance Capacity Allocation. “Conveyance Capacity Allocation” (or “Allocated Conveyance Capacity”) means the right of a Party, pursuant to and in accordance with this Agreement, to discharge Wastewater to a particular Interceptor or other conveyance facility of the Sewer Service Facilities, or to a particular portion thereof, or to a sewer or other sewerage facility that is tributary to a particular Interceptor or other conveyance facility of the Racine Utility or to a particular portion thereof, up to but not in excess of a maximum prescribed rate, which is quantified and expressed in terms of millions of gallons per day of Peak Hourly Flow.
- 1.22** Cost-Benefit Balance. “Cost-Benefit Balance” (of this Agreement) means the carefully structured balance of benefits and costs or burdens which the Parties extensively negotiated and have accepted in this Agreement, some of the major elements of which are set forth in Section 12.8 of this Agreement.
- 1.23** Cost of Service Cost-Based Allocation. “Cost of Service Cost-Based Allocation” means a combined Cost of Service Study and allocation of the costs to the Parties.
- 1.24** Cost of Service Study. “Cost of Service Study” means the allocation of costs to various parameters for which the costs were incurred.
- 1.25** Deficiency Work. “Deficiency Work” means the planning, design, installation, construction and provision of those elements of the 1998 Recommended Improvements to the 2001 Sewer Service Facilities to cure deficiencies in handling wet weather flows, which improvements are set out on Exhibit B to this Agreement, and which would be needed even if no additional sewer extensions were constructed. (As used in this Agreement, “Deficiency Work” is mutually exclusive of “Future Growth Work”.)
- 1.26** Designated Territory. “Designated Territory” means the geographical area with respect to which a Party functions and is required to function, respectively, in its capacity as a SSP Party, as a SSR Party, as an OAE Party or as a RSP Party.
- 1.27** DNR. “DNR” means Wisconsin Department of Natural Resources or any successor agency having regulatory authority over the Racine Utility, the Wastewater Commission and/or the other Parties to this Agreement with respect to Wastewater collection, conveyance, treatment and discharge.
- 1.28** Domestic Sewage. “Domestic Sewage” means Sewage discharged from the sanitary conveniences of dwellings (including, without limitation, apartments, motels and hotels), office buildings, factories, commercial establishments, institutions, and other similar sources, which is free from stormwater, surface water and cooling water and which is also free from industrial wastes which require additional treatment.

- 1.29** Domestic User. “Domestic User” means a user that generates Wastewater with a strength equal to or less than Normal Domestic Strength Wastewater, independent of the quantity of flow discharged.
- 1.30** Effective Date of this Agreement. “Effective Date of this Agreement” means the date on which Racine, Mt. Pleasant and the Wastewater Commission have duly approved and executed this Agreement.
- 1.31** EPA. “EPA” means U. S. Environmental Protection Agency or any successor agency having Wastewater regulatory authority over the Racine Utility, the Wastewater Commission and/or the other Parties to this Agreement.
- 1.32** Existing Capital Costs. “Existing Capital Costs” means all Capital Costs expended by the Racine Utility or assets transferred to the Racine Utility by Racine before the Effective Date of this Agreement with respect to the Sewer Service Facilities. Undepreciated Existing Capital Costs are recovered by the Wastewater Commission through Sewer Service rates.
- 1.33** Expanded Sewer Service Facilities. “Expanded Sewer Service Facilities” means any new or improved Sewer Service Facilities, the provision of which results in a Capital Cost, and which results in (or those portions of which result in) an increase in Allocated Treatment Capacity or Allocated Conveyance Capacity in the Sewer Service Facilities, and which are reasonably necessary or desirable to comply with this Agreement and All Applicable Laws or to provide high quality, reliable and environmentally acceptable Sewer Service to the Parties.
- 1.34** Facilities Plan. “Facilities Plan” means a plan for improvements to the Sewer Service Facilities, as such term is used in Section NR 110.08 of the Wisconsin Administrative Code, which must be approved by the DNR.
- 1.35** First Group of Improvements. “First Group of Improvements” means whatever portion of the 1998 Recommended Improvements that the Wastewater Commission decides to construct shortly after the Effective Date of this Agreement, including the Deficiency Work improvements and or all or some portion of the Future Growth Work improvements.
- 1.36** Future Capital Costs. “Future Capital Costs” means all Capital Costs expended by the Wastewater Commission after the Effective Date of this Agreement with respect to the Sewer Service Facilities. Except as is otherwise specifically provided in this Agreement, Future Capital Costs will be paid for up front by the SSR Parties, and the Racine Utility will not recover such costs through Sewer Service rates. (Note, however, that the Capital Costs of the Deficiency Work will be excluded from Future Capital Costs and will be treated like Existing Capital Costs, and that the Capital Costs of Minor Unplanned Upgraded Sewer Service Facilities may be excluded from Future Capital Costs and treated like Existing Capital Costs, without respect to when such costs are expended.)



- 1.37** Future Growth Work. “Future Growth Work” means the planning, design, installation, construction and provision of those elements of the 1998 Recommended Improvements to the 2001 Sewer Service Facilities, exclusive of the Deficiency Work, which are necessary or desirable to add treatment or conveyance capacity to serve the future growth needs of the then-existing Parties, and of any potential New Parties that may join the Agreement thereafter to the extent that any of the existing Parties desires to front and carry the costs. (As used in this Agreement, “Future Growth Work” is mutually exclusive of “Deficiency Work”.)
- 1.38** Grab Sample. “Grab Sample” means a sample taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of the time the sample is taken.
- 1.39** Hauled Wastewater. “Hauled Wastewater” means Septic Tank Waste (including holding tank waste, without limitation), Industrial Wastes or any other Wastewater that is hauled to and discharged into the Sewer Service Facilities or any sewerage facility that is tributary to the Wastewater Treatment Plant.
- 1.40** Industrial User. “Industrial User” means any User that generates Wastewater with a strength greater than that of Normal Domestic Strength Wastewater, independent of the quantity of flow discharged. (Any User identified in the Standard Industrial Classification Manual of the Office of Management and Budget, as amended or supplemented from time to time, under any of the following divisions shall presumptively be considered an Industrial User: (1) Division A: agricultural, forestry and fishing; (2) Division B: mining; (3) Division D: manufacturing; (4) Division E: transportation, communications, electric, gas, and sanitary services; and (5) Division I: services; provided, however, that the Racine Utility may determine, in its discretion, that such a User which discharges primarily Domestic Sewage will be treated as a Domestic User for Sewer Service rate purposes.)
- 1.41** Industrial Wastes. “Industrial Wastes” means any liquid substance discharged or escaping from any industrial, manufacturing, trade or business process, as distinguished from segregated Domestic Sewage.
- 1.42** Infiltration. “Infiltration” means water entering a sewer system, including sewer service connections, from the ground, through such means as the following, without limitation: defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, Inflow.
- 1.43** Infiltration and Inflow. “Infiltration and Inflow” (or “I and I”) means the total quantity of water entering a sewer system as either Infiltration or Inflow, without distinguishing the source.
- 1.44** Inflow. “Inflow” means the water entering a sewer system, including sewer service connections, from such sources as the following, without limitation: roof

leaders, cellar, yard, and area drains, foundation drains, sump pumps, cooling towers, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm water, surface run-off, street wash waters or drainage. Inflow does not include, and is distinguished from, Infiltration.

- 1.45** Initial Parties. “Initial Parties” means the Parties to this Agreement as of the Effective Date of this Agreement or within 120 days thereafter.
- 1.46** Instantaneous Maximum Allowable Discharge Limit. “Instantaneous Maximum Allowable Discharge Limit” means the maximum concentration of a Pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.
- 1.47** Interceptor. “Interceptor” means a main trunk sanitary sewer.
- 1.48** Interference. “Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the Wastewater Treatment Facility, its treatment processes or operations, or its sludge processes, use or disposal.
- 1.49** Maintenance. “Maintenance” means the preservation of the functional integrity and efficiency of a Wastewater conveyance, storage, pumping, treatment or drying facility, including its processes, equipment and structures. The term includes preventive maintenance, correctional maintenance and repair of equipment and other facilities.
- 1.50** Material Change of Circumstances. “Material Change of Circumstances” means any change of circumstances resulting from judicial, legislative or administrative actions by federal, state or local authorities, which occurs after December 31, 2001, which is not otherwise specifically provided for in this Agreement, and which has the effect of materially altering the Cost Benefit Balance of this Agreement or which disrupts, hampers or obstructs the smooth and efficient administration of this Agreement (e.g. if the information required for the calculation of Revenue Sharing Payments under Section 7.1 of this Agreement is organized differently or published by a different body than is contemplated by this Agreement). Without limitation, the following shall not be considered to be a Material Change of Circumstances: (1) Upgraded or Expanded Sewer Service Facilities are required; or (2) Clean Water Fund Financing is unavailable or is not available in sufficient amounts for the Future Growth Work improvements.
- 1.51** May/May Not. “May” means that the action referred to is discretionary, but “may not” or “no Person (or Party, etc.) may” means that the action referred to is prohibited.
- 1.52** Minor Unplanned Upgraded Sewer Service Facilities. “Minor Unplanned Upgraded Sewer Service Facilities” means Unplanned Upgraded Sewer Service

Facilities costing in the aggregate less than \$500,000 each budget year (adjusted annually in accordance with this Agreement), which costs the Racine Utility may treat like Existing Capital Costs and recover through Sewer Service rates.

- 1.53** Net Contributing Party. “Net Contributing Party” means a RSP Party that is required by this Agreement to make a Revenue Sharing Payment in a particular year.
- 1.54** Net Discharge Of Wastewater. “Net Discharge Of Wastewater” (or any variation thereof) means a Party’s Total Discharge of Wastewater to the Sewer Service Facilities or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility, less all intermingled Wastewater discharged by other Parties or Anticipated Parties. With respect to Allocated Conveyance Capacity, Net Discharge of Wastewater may be limited to Wastewater discharged to a particular interceptor upstream of a particular metering station. (See definitions of “Wastewater Discharged to the Sewer Service Facilities” and “Total Discharge of Wastewater”.)
- 1.55** Net Recipient Party. “Net Recipient Party” means a RSP Party that receives a revenue sharing payment in a particular year.
- 1.56** New Party. “New Party” means any Party, which is admitted to this Agreement after 120 days after the Effective Date of this Agreement. (As used in this Agreement, “New Party” is mutually exclusive of “Successor”.)
- 1.57** 1998 Facilities Plan. “1998 Facilities Plan” means the Facilities Plan, approved by the DNR on June 10, 1999, to provide Sewer Service to the 1998 Racine Planning Area to accommodate the anticipated Wastewater flows associated with projected development within such area through the year 2020 (or with respect to a few specific facilities, through the year 2030).
- 1.58** 1998 Facilities Planning Area. “1998 Facilities Planning Area” means the area for which Sewer Service is contemplated and planned for through the year 2020 by the 1998 Facilities Plan.
- 1.59** 1998 Recommended Improvements. “1998 Recommended Improvements” means the improvements to the Sewer Service Facilities of the Racine Utility and to the Collection Facilities of the Anticipated Parties that are described and provided for in the 1998 Facilities Plan.
- 1.60** Normal Domestic Strength Wastewater. “Normal Domestic Strength Wastewater” means Wastewater having an average daily TSS concentration of not more than 250 mg/l, an average daily BOD concentration of not more than 200 mg/l, and an average daily P concentration of not more than 6 mg/l.
- 1.61** OAE Party. “OAE Party” means “ordinance adoption and enforcement Party”, a Party that adopts and enforces sewer ordinance provisions pursuant to and in accordance with this Agreement, applicable to its own territory as SSR Party or to

the territory of one or more Related SSR Parties, which territory is receiving or eligible to receive Sewer Service pursuant to this Agreement.

- 1.62** OMR. “OMR” means “Operation, Maintenance and Replacement”, which are the combined functions of Operation, Maintenance and Replacement with respect to the Sewer Service Facilities of the Racine Utility. The costs of OMR are paid for by the SSR Parties through Sewer Service rates or other sewerage service charges in accordance with Section 6.4 of this Agreement.
- 1.63** Operation. “Operation” means exercising supervision and control over the unit processes, structures and equipment of the Sewer Service Facilities, including, without limitation, administration, planning, financial management, personnel management, records management, laboratory control, process control, safety and emergency operations.
- 1.64** P. “P” means phosphorous, as defined in the latest edition of Standard Methods for the Examination of Water and Wastewater.
- 1.65** Parties. “Parties” means local governmental entities, which have approved, executed and satisfied the conditions of this Agreement, and their Successors. (“Outlying Parties” means those Parties other than Racine and the Wastewater Commission.)
- 1.66** Peak Daily Flow. “Peak Daily Flow” means the greatest total volume of Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any consecutive 24-hour period (or the greatest such volume as of a specified date), and usually expressed in terms of millions of gallons per day.
- 1.67** Peak Hourly Flow. “Peak Hourly Flow” means the greatest total volume of Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any consecutive 60-minute period (or the greatest such volume as of a specified date and time), and usually expressed in terms of millions of gallons per day.
- 1.68** Peak Monthly BOD Loading. “Peak Monthly BOD Loading” means the greatest total amount of BOD contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of

the Racine Utility) during any consecutive 30-day period (or the greatest such amount as of a specified date), and usually expressed in terms of pounds per day.

- 1.69** Peak Monthly Flow. “Peak Monthly Flow” means the greatest total volume of Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any consecutive 30-day period (or the greatest such volume as of a specified date), and usually expressed in terms of millions of gallons per day.
- 1.70** Peak Monthly P Loading. “Peak Monthly P Loading” means the greatest total amount of P contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any consecutive 30-day period (or the greatest such amount as of a specified date), and usually expressed in terms of pounds per day.
- 1.71** Peak Monthly TSS Loading. “Peak Monthly TSS Loading” means the greatest total amount of TSS contained in the Wastewater generated by or within the Designated SSR Territory of a SSR Party and discharged to the Sewer Service Facilities of the Racine Utility or to any sewer or any other sewerage facility that is tributary to the Racine Wastewater Treatment Facility (but excluding Hauled Wastewater discharged at the Wastewater Treatment Facility with the consent of the Racine Utility) during any consecutive 30-day period (or the greatest such amount as of a specified date), and usually expressed in terms of pounds per day.
- 1.72** Person. “Person” means any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, municipality, governmental subdivision, agency, state, nation, or any other entity, including, but not limited to, association, commission or any interstate body, and including any officer or governing or managing body of any such entity.
- 1.73** Pollutant. “Pollutant” means any dredged spoil, solid waste, incinerator residue, Sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste, or certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity or odor).
- 1.74** Pretreatment. “Pretreatment” means the reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of the properties of Pollutants in Wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such Pollutants into the Wastewater Treatment Facility

of the Racine Utility, directly or indirectly. Such elimination, reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or by other means, except as prohibited by 40 CFR, part 403.6(d), as amended, supplemented or recreated from time to time.

- 1.75** Pretreatment Requirement. “Pretreatment Requirement” means any federal, state or local requirement related to Pretreatment, other than a Categorical Pretreatment Standard, which is imposed on an Industrial User.
- 1.76** Pretreatment Standard. “Pretreatment Standard” means prohibited discharge standards, Categorical Pretreatment Standards, and local limits.
- 1.77** Process Wastewater. “Process Wastewater” means any Wastewater, other than Domestic Sewage and Infiltration and Inflow, discharged to any sewerage system.
- 1.78** Prohibited Discharge. “Prohibited Discharge” means any discharge as delineated in Subsection 98-151(a) of the Racine Sewer Ordinances, as amended, supplemented or recreated from time to time.
- 1.79** PSC. “PSC” means Wisconsin Public Service Commission or any successor agency having regulatory review authority over the Racine Utility, the Wastewater Commission and/or the other Parties with respect to Sewer Service rates, rules and practices.
- 1.80** Racine Sewer Ordinances. “Racine Sewer Ordinances” means Articles I, II and IV of Chapter 98 of the Racine Code of Ordinances, as they may be amended, supplemented or recreated from time to time.
- 1.81** Racine Utility. “Racine Utility” means the Racine Wastewater Utility, a quasi-independent arm and agent of the Racine city government to which Racine has delegated the operation, maintenance and improvement of the Sewer Service Facilities, the provision of Sewer Service and related matters pursuant to and in accordance with the Racine Sewer Ordinances and this Agreement, and the governing body of which is the Wastewater Commission.
- 1.82** Related Parties. “Related Parties” means Parties that are related to one another and serve essential Party functions relating to the provision or receipt of Sewer Service under this Agreement (those of SSP Party, SSR Party, OAE Party and RSP Party) with respect to a particular geographic area. In a few instances this Agreement expressly recognizes a potential or actual cross-municipal-boundary Related SSR Party relationship, where a Party or Anticipated Party is expected to have little or no future development that will be provided with Sewer Service pursuant to this Agreement and where such Party or Anticipated Party already receives Sewer Service by means by an integrated arrangements with a SSR Party or Anticipated Party, i.e. North Bay – Racine, Elmwood Park – Racine, Wind Point – North Park District and Somers – Mt. Pleasant.

- 1.83** Replacement. “Replacement” means obtaining and installing equipment, accessories or appurtenances or making other improvements to the Sewer Service Facilities which are necessary during the useful life of such facilities to maintain the capacity and/or performance for which such facilities were designed and constructed. “Replacement” may involve Capital Costs for facilities, which are recovered through Sewer Service rates and thus are treated neither as Capital Costs for Upgraded Sewer Service Facilities nor as Capital Costs for Expanded Sewer Service Facilities under this Agreement.
- 1.84** Required Unplanned Expanded Sewer Service Facilities. “Required Unplanned Expanded Sewer Service Facilities” means Unplanned Expanded Sewer Service Facilities that are required by state or federal statute, regulation, permit, judgment or order, or that are reasonably necessary to protect the Sewer Service Facilities from significant harm or damage, or to prevent backing up of Wastewater in basements.
- 1.85** Residential User. “Residential User” means a premises used only for human residency which discharges Wastewater to the Sewer Service Facilities of the Racine Utility.
- 1.86** Revenue Sharing Payments. “Revenue Sharing Payments” are payments made by a RSP Party in accordance with this Agreement, pursuant to Wis. Stat. § 66.0305, to share the benefits of development within the boundaries of the RSP Party.
- 1.87** ROI. “ROI” means return on investment.
- 1.88** RSP Party. “RSP Party” means a Party that has or may have Revenue Sharing Payment obligations pursuant to this Agreement.
- 1.89** SCADA System. “SCADA System” means supervisory control and data acquisition system.
- 1.90** Septic Tank Waste. “Septic Tank Waste” means any Sewage from holding tanks such as vessels, chemical toilets, campers, trailers and from septic tanks or other on-site systems to treat or dispose of Sewage.
- 1.91** Sewage. “Sewage” means human excrement and gray water (household showers, dishwashing operations, etc.).
- 1.92** Sewer Extension. “Sewer Extension” means the installation of a public sanitary sewer, or of a privately owned sanitary sewer serving two or more buildings, or the extension of either, for the purpose of providing additional capacity for new development within the existing or proposed tributary area of such sewer or extension. Alterations or modifications of previously existing sewerage structures designed to replace inadequate existing structures, or installed because of inadequate hydraulic sewer capacity, which do not extend Sewer Service to previously unserved areas, are not Sewer Extensions.

- 1.93** Sewer Service. “Sewer Service” means public sanitary sewer service provided by Racine through its Racine Utility and the Wastewater Commission to Racine, the Outlying Parties and other local governmental entities through use of the Sewer Service Facilities pursuant to this Agreement.
- 1.94** Sewer Service Area. “Sewer Service Area” means the geographical area within which Racine, the Racine Utility and/or the Wastewater Commission is authorized to provide Sewer Service by the DNR, as such area may be amended from time to time.
- 1.95** Sewer Service Facilities. “Sewer Service Facilities” means the 2001 Sewer Service Facilities of the Racine Utility, as they may be upgraded, expanded, or otherwise modified or improved from time to time pursuant to this Agreement. (As used in this Agreement, “Sewer Service Facilities” are mutually exclusive of “Collection Facilities”.)
- 1.96** Shall. “Shall” means that the action referred to is mandatory. When coupled with “no” or “not” (e.g. “no Party shall” or “a Party shall not”), “shall” means that the action referred to is prohibited.
- 1.97** Side Contracts. “Side Contracts” means agreements entered into or amended after the Effective Date of this Agreement by and between the Wastewater Commission and other Parties or Anticipated Parties (or agreements entered into prior to the Effective Date of this Agreement by and between the Racine Utility or Racine and other Parties, Anticipated Parties or other Persons) pursuant to which the Racine Utility provides OMR services or other services with respect to the Collection Facilities of such Parties or Anticipated Parties, or with respect to the provision of sewerage services by such Parties or Anticipated Parties to their own retail sewerage services customers (or, in the case of agreements entered into prior to the Effective Date of this Agreement, pursuant to which the Racine Utility provides Hauled Wastewater acceptance services to Persons other than Parties or Anticipated Parties), or pursuant to which the Racine Utility or Racine or the Wastewater Commission receives Wastewater conveyance or other sewerage services from other Parties or Anticipated Parties.
- 1.98** Significant User. “Significant User” means a User subject to Categorical Pretreatment Standards; or a User that (1) discharges an average of 25,000 gallons per day or more of Process Wastewater to the Racine Utility's Wastewater Treatment Facility (excluding segregated Domestic Sewage, noncontact cooling water and boiler blowdown wastewater); or (2) contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the Wastewater Treatment Facility; or (3) has a reasonable potential for adversely affecting the Wastewater Treatment Facility or for violating any Pretreatment Standard or requirement.
- 1.99** Slug. “Slug” means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 98-151 of the



Racine Sewer Ordinances, as amended, supplemented or recreated from time to time.

- 1.100** SSP Party. “SSP Party” means a “Sewer Service provider Party”, a Party that provides Sewer Service pursuant to and in accordance with this Agreement.
- 1.101** SSR Party. “SSR Party” means a “Sewer Service recipient Party”, a Party that receives (or whose constituents receive) Sewer Service from the Racine Utility pursuant to and in accordance with this Agreement and which is obligated to pay for such services in accordance with this Agreement.
- 1.102** Standard Transfer Unit. “Standard Transfer Unit” of Treatment Capacity Allocation means a unit of Treatment Capacity Allocation, which can be transferred to another Party and which consists of 1,000 gallons per day of Average Daily Flow with the following associated flow and loading characteristics: 1,360 gallons per day of Peak Monthly Flow, 4,776 gallons per day of Peak Daily Flow, 6,694 gallons per day of Peak Hourly Flow, 0.877 pounds per day of Average Daily BOD Loading, 1.053 pounds per day of Peak Monthly BOD Loading, 1.083 pounds per day of Average Daily TSS Loading, 1.419 pounds per day of Peak Monthly TSS Loading, 0.026 pounds per day of Average Daily P Loading, and 0.033 pounds per day of Peak Monthly P Loading.
- 1.103** Stormwater. “Stormwater” means any flow occurring during or following any form of natural precipitation and resulting therefrom.
- 1.104** Successor. “Successor” (to a Party) means any city, village, town, sanitary district, sewer utility district, or any other similar local governmental entity that can appropriately function as a SSP Party, a SSR Party, an OAE Party or a RSP Party under this Agreement, which is created by any of the Parties, or which results from the incorporation, annexation or other structural reorganization or geographic reconfiguration activity involving any of the Parties, at any time. (As used in this Agreement, “Successor” is mutually exclusive of “New Party”.)
- 1.105** TID. “TID” means “tax increment district” as defined in Wis. Stat. § 66.1105.
- 1.106** Total Discharge of Wastewater. “Total Discharge of Wastewater” (or any variation thereof) means all Wastewater discharged by a Party to the Sewer Service Facilities of the Racine Utility or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility, including all Wastewater Bypassed by such Party other than in accordance with applicable regulations of EPA and DNR, and including all intermingled Wastewater discharged by other Parties or Anticipated Parties. With respect to Allocated Conveyance Capacity, Total Discharge of Wastewater may be limited to Wastewater discharged to a particular Interceptor upstream of a particular metering station. (See definitions of “Wastewater Discharged to the Sewer Service Facilities” and “Net Discharge of Wastewater”.)

- 1.107** Toxic Pollutant. “Toxic Pollutant” means any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the EPA under the provisions of Section 307(a) of the Act or other acts, as amended, supplemented or recreated from time to time.
- 1.108** Transition Period. “Transition Period” means the period between the Effective Date of this Agreement to the completion of the First Group of Improvements.
- 1.109** Treatment Capacity Allocation. “Treatment Capacity Allocation” (or “Allocated Treatment Capacity”) means the right of a Party, pursuant to and in accordance with this Agreement, to discharge Wastewater to the Wastewater Treatment Facility or to a sewer or other sewerage facility which is tributary to such Treatment Facility, up to but not in excess of a maximum prescribed rate which is quantified and expressed in terms of millions of gallons per day of Average Daily Flow, and which right is subject to certain specified limitations on Peak Hourly Flow, Peak Daily Flow, Peak Monthly flow and certain maximum Pollutant loading levels, all as set forth in this Agreement.
- 1.110** Treatment Facility. See definition for “Wastewater Treatment Facility”, below.
- 1.111** TSS. “TSS” means “total suspended solids”, which is the total suspended matter that either floats on the surface of, or is in suspension in water, Wastewater, or other liquids and is removable by laboratory filtration as prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
- 1.112** 2001 Sewer Service Facilities. “2001 Sewer Service Facilities” means the Wastewater Treatment Facility, the Wastewater interceptors and the Wastewater pumping, storage, drying and related sewerage facilities listed on Exhibit A to this Agreement, which are owned and operated by Racine through its Racine Utility and the Wastewater Commission as of the Effective Date of this Agreement for the purpose of providing Sewer Service to the Parties and other local governmental entities pursuant to this Agreement, and which are operated, maintained, replaced, improved and accounted for separately from the Collection Facilities of Racine, or any of the other Parties or of any other local governmental entities receiving Sewer Service from Racine.
- 1.113** 2001 Sewer Service Area. “2001 Sewer Service area” means the Sewer Service Area as it exists on the Effective Date of this Agreement.
- 1.114** Unplanned Sewer Service Facilities. “Unplanned Sewer Service Facilities” means any improvements to the Sewer Service Facilities that are not included in the First Group of Improvements.
- 1.115** Upgraded Sewer Service Facilities. “Upgraded Sewer Service Facilities” means any new or improved Sewer Service Facilities, the provision of which results in a Capital Cost, and which do not result in (or those portions of which do not result in) an increase in expanded Allocated Treatment Capacity or expanded Allocated

Conveyance Capacity in the Sewage Treatment Facilities, and which are reasonably necessary or desirable to comply with this Agreement and All Applicable Laws or to provide high quality, reliable and environmentally acceptable Sewer Service to the Parties.

- 1.116** Upset. “Upset” means an exceptional incident in which a discharger is unintentionally and temporarily in a state of noncompliance with the allocated capacity limitations set out in Sections 5.1 and 5.2 of this Agreement due to factors beyond the reasonable control of the discharger, but excluding noncompliance to the extent caused by operational error, improperly designed facilities, inadequate facilities, lack of preventive maintenance, or careless or improper operation of facilities.
- 1.117** User. “User” means any Person who discharges, or causes or permits the discharge of Wastewater to the Sewer Service Facilities or to any sewer or other sewerage facility that is tributary to the Racine Wastewater Treatment Facility.
- 1.118** Wastewater. “Wastewater” means the combination of the liquid and water-carried wastes from residences, buildings, industrial establishments, institutions, manufacturing plants, processing plants, commercial establishments, or other places in which such wastes are produced, together with such ground, surface, storm or other water as may be present.
- 1.119** Wastewater Commission. “Wastewater Commission” or “Commission” means the Racine Wastewater Utility Commission, an intergovernmental commission established by this Agreement pursuant to Wis. Stat. § 66.0301 to serve as the governing body of the Racine Utility and to administer this Agreement.
- 1.120** Wastewater Discharged To The Sewer Service Facilities. “Wastewater Discharged to the Sewer Service Facilities” (or any variation thereof) means Wastewater discharged directly to the Sewer Service Facilities or to any sewer or other sewerage facility that is tributary to the Wastewater Treatment Facility, including without limitation, Wastewater Bypassed by a Party but counted against such Party pursuant to this Agreement for purposes of capacity limitations and/or sewerage service charges (i.e., a Bypass not authorized by DNR and/or EPA regulation). (See definitions of “Total Discharge of Wastewater” and “Net Discharge of Wastewater”.)
- 1.121** Wastewater Treatment Facility. “Wastewater Treatment Facility” (or “Treatment Facility”) means the structures, equipment and processes used by the Racine Utility to treat Wastewater and dispose of the effluent and accumulated residual solids.
- 1.122** WPDES Permit. “WPDES Permit” means Wisconsin Pollutant Discharge Elimination System Permit.

## **II. PARTIES**

### **2.1 Classification of Parties By Essential Function.**

Each Party to this Agreement shall be classified in terms of each of the following essential function(s) that it performs under this Agreement: (1) SSP Party; (2) SSR Party; (3) OAE Party; and (4) RSP Party.

Except as otherwise specifically provided in this Agreement, each Party that is a city, village or town shall be and shall fulfill the functions of SSR Party, OAE Party and RSP Party, within and for the appropriate Designated Territory relating to each such function. Each Party that is a sanitary district shall be and shall fulfill the functions of SSR Party and OAE Party, respectively, within and for its appropriately Designated Territory relating to each such function (except that such a Party may adopt and enforce rules rather than ordinances in fulfilling its function as an OAE Party). (In a situation where a sanitary district and a town occupy the same territory, both shall be an OAE Party for such territory.) Racine may delegate its SSP functions (but not its obligation to fulfill such functions) to its agent, the Racine Utility, and to its agent, the Wastewater Commission (the governing body of the Racine Utility), which shall serve as an Adjunct SSP Party. Each Party that is a city, village or town may delegate its SSR Party operational and administrative functions (but not its obligation to fulfill such functions) to one or more duly established sewer utility districts, which shall serve as Adjunct SSR Parties. With respect to any such delegation not specifically and expressly recognized in Sections 2.4 or 2.7 of this Agreement, or with respect to any change in such a delegation, the Party making or changing such delegation shall notify the Wastewater Commission of such proposed delegation or change of delegation in writing at the earliest practicable date, and of the accomplished delegation or change of delegation as soon as possible after it occurs. The Wastewater Commission shall then take such actions as are appropriate to modify the Agreement pursuant to and in accordance with Sections 2.6 - 2.7 or Subsections 2.8o - 2.8p of this Agreement.

The anticipated classification(s) of the following Anticipated Parties, which are subject to confirmation and correction, if necessary, in Section 2.4 of this Agreement (for an Initial Party) or in Section 2.7 (for a New Party or Successor), are as follows:

a. Wastewater Commission: Adjunct SSP Party (agent of Racine), administrator of this Agreement and governing body of the Racine Utility;

b. Racine: SSP Party (through the Racine Utility, and its governing body, the Wastewater Commission, Racine's agents), SSR Party (with respect to territory in Racine, and with respect to territory in North Bay and Elmwood Park, respectively, if North Bay and/or Elmwood Park are Parties), OAE Party, RSP Party;

c. Mt. Pleasant: SSR Party (with respect to territory in Mt. Pleasant, and with respect to territory in Somers if Somers is a Party), OAE Party, RSP Party;

d. Mt. Pleasant No. 1: Adjunct SSR Party (agent of Mt. Pleasant);

- e. Caledonia: SSR Party (with respect to Caledonia territory outside of the North Park District, the Crestview District, and the Caddy Vista District served by Milwaukee Metropolitan Sewerage District), OAE Party, RSP Party;
- f. Caledonia No. 1: Adjunct SSR Party (agent of Caledonia);
- g. Crestview District: SSR Party and OAE Party (with respect to the Crestview District territory in Caledonia if Caledonia is a Party);
- h. North Park District: SSR Party and OAE Party (with respect to the North Park District territory in Caledonia and Wind Point, respectively, if Caledonia and/or Wind Point are Parties);
- i. Sturtevant: SSR Party, OAE Party, RSP Party;
- j. Sturtevant Utility: Adjunct SSR Party (agent of Sturtevant);
- k. Elmwood Park: OAE Party, RSP Party;
- l. Wind Point: OAE Party, RSP Party;
- m. North Bay: OAE Party, RSP Party;
- n. Yorkville: SSR Party, OAE Party, RSP Party;
- o. Yorkville No. 1: Adjunct SSR Party (agent of Yorkville);
- p. Raymond: SSR Party, OAE Party, RSP Party;
- q. Raymond Heights District: SSR Party and OAE Party (with respect to territory in Raymond if Raymond is a Party);
- r. Somers: OAE Party, RSP Party;

**2.2 Functional Requirements for Parties; Limitations on the Rights of Parties that Fail to Satisfy Functional Requirements.**

Each Party (except the Wastewater Commission), by itself or in conjunction with one or more Related Parties, shall serve as and be legally and practically capable of performing the functions of SSR Party, OAE Party and RSP Party within and for all of its or their Designated Territory in accordance with this Agreement. Notwithstanding any other provision of this Agreement, no Anticipated Party joining this Agreement, except the Wastewater Commission shall be deemed to be a Party or have any right to any of the benefits of this

Agreement until such time as it, either by itself or in conjunction with one or more Related Parties, is legally authorized and capable of performing its or their functions as SSR Party, OAE Party and RSP Party for all of its or their Designated Territory (e.g., a sanitary district joining the Agreement shall not be deemed to be a Party until such time as the town occupying the same territory has joined the Agreement.) Notwithstanding any other provision of this Agreement, no Party (except the Wastewater Commission), or group of Related Parties, that becomes incapable of performing the functions of SSR Party, OAE Party and RSP Party for all of its or their Designated Territory shall thereafter receive any initial Sewer Service (if it has not already received Sewer Service), or receive any (or any additional) Treatment Capacity Allocation or Conveyance Capacity Allocation, or construct any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or receive any approval for plans for or the construction of any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or make any new connections to any existing sewerage facilities that are tributary to the Wastewater Treatment Facility, unless and until such lack of capability is cured.

### **2.3 Designated Territory Within Which Parties Perform Each Essential Function.**

Except as is otherwise specifically provided in this Section 2.3, each Party to this Agreement shall perform each of its assigned essential functions within and for its Designated Territory with respect to each such function:

a. SSP Party. The Designated Territory for a SSP Party shall be all of the territory within which Racine is obligated to provide Sewer Service to the SSR Parties by this Agreement, provided that such territory is within the Sewer Service Area.

b. SSR Party. The Designated Territory for a SSR Party shall be all of the territory over which such SSR Party has jurisdiction to provide sewerage services, to the extent that Racine is obligated to provide Sewer Service to such territory by this Agreement, and provided that such territory is within the Sewer Service Area; provided, however, that a town SSR Party's Designated Territory shall not include the Designated Territory of a Related SSR Party that is a town sanitary district or the territory of a sanitary district that is not a Party.

c. OAE Party. The Designated Territory for an OAE Party shall be all of the territory over which such OAE Party has jurisdiction to enact and enforce Wastewater and sewer-related ordinances (or Wastewater and sewer-related rules, in the case of SSR Parties that are town sanitary districts), to the extent that Racine is obligated to provide Sewer Service to such territory by this Agreement, and provided that such territory is within the Sewer Service Area; provided, however, that a town OAE Party's Designated Territory shall not include the Designated Territory of a Related OAE Party that is a town sanitary district.

d. RSP Party. Except as is otherwise specifically provided in this Subsection 2.3d, the Designated Territory for a RSP Party shall be all of the territory within which a city, village or town RSP Party has taxing jurisdiction, any part of which is receiving Sewer Service pursuant to this Agreement or to any part of which Racine is obligated to provide Sewer Service

by this Agreement; provided, however that the Designated RSP Territory associated with Somers, Yorkville or Raymond, or the Designated RSP Territory associated with any Party not among the Anticipated Parties identified or described in Section 2.1, above, and whose territory lies outside of the 1998 Facilities Planning Area, shall be that portion of the city, village or town to which Racine is obligated to provide Sewer Service pursuant to this Agreement and which is within the Sewer Service Area.

#### **2.4 Initial Parties.**

The Anticipated Parties which duly approve and sign this Agreement before or within 120 days after the Effective Date of this Agreement, and which satisfy the requirements of Section 2.2 of this Agreement, shall automatically become Initial Parties. The functional classifications of the Initial Parties shall be as set out in Section 2.1 of this Agreement, and the allocated capacity of the Initial Parties shall be as set out in Exhibit E. The Initial Parties to this Agreement and the functional classifications of each such Party, the Designated Territory of each such Party with respect to each of its functional classifications, the amount of Allocated Treatment Capacity which each such Party is entitled to use and/or transfer and for which such Party is obligated to pay, the amount of Allocated Conveyance Capacity which each such Party is entitled to use and/or transfer and for which such Party is obligated to pay, the notice addressee(s) of each such Party, and any other requirement or information relating to each such Party which the Wastewater Commission determines, from time to time, will facilitate the smooth and efficient administration of this Agreement for the mutual benefit of the Parties, are as set forth on the attached Exhibits E, E1, E2, etc. (one per Initial Party) and Exhibit F, which are incorporated by reference.

#### **2.5 New Parties Joining This Agreement.**

a. Adding New Parties. The Wastewater Commission shall have administrative authority to recognize, process, approve and add as a New Party to this Agreement any of the Anticipated Parties, in accordance with the requirements of this Section 2.5, upon satisfaction of each of the following conditions precedent that is applicable:

(1) The proposed New Party (and any Related Party required to satisfy Section 2.2, above) has duly approved and executed this Agreement, which shall include inserts to Sections 2.7 and 5.1 (and to Section 5.2 or other sections, as appropriate) of this Agreement approved by the Wastewater Commission with respect to such New Party's functional classification(s), its Designated Territory with respect to each of its functional classifications, the amount of Allocated Treatment Capacity which such New Party is entitled to use and/or transfer and for which such New Party is obligated to pay (and whether such capacity is to be transferred from an existing Party or newly created through an expansion of the Sewer Service Facilities), the amount of Allocated Conveyance Capacity which such New Party is entitled to use and/or transfer and for which such New Party is obligated to pay (and whether such capacity is to be transferred from an existing Party or newly created through Expanded Sewer Service Facilities), its notice addressee(s), any requirements imposed on such New Party pursuant to Subsection 2.5a(4) of this Agreement, and any other requirements or information relating to such New Party which the

Wastewater Commission determines, from time to time, will facilitate the smooth and efficient administration of the Agreement for the mutual benefit of all of the Parties.

(2) Any proposed New SSR Party has made all necessary arrangements with any Party or any other local governmental entity receiving Sewer Service from the Racine Utility for the conveyance of its Wastewater to the Sewer Service Facilities.

(3) Any proposed New Party joining the Agreement more than 120 days after the Effective Date of this Agreement has agreed to reimburse the Racine Utility, within 60 days of receiving an invoice, for any costs incurred by the Racine Utility or the Wastewater Commission in connection with such potential New Party becoming a Party, including without limitation, the costs of any facilities planning or engineering, legal or other expert consulting services, or any substantial administrative services of the Racine Utility or the Wastewater Commission (or such potential New Party's fair share of such costs) required to provide Sewer Service to it, which payments shall be credited to OMR, and such proposed New Party is not in default of such reimbursement obligation.

(4) The proposed New Party has agreed to take or refrain from taking any actions that may be reasonably required to protect the Sewer Service Facilities, or to prevent such New Party from exceeding its Treatment Capacity Allocation or Conveyance Capacity Allocation or any related limitations.

(5) Any proposed New OAE Party has adopted the sewer ordinance provisions required by this Agreement; provided, however, that such ordinance provisions can be made contingent upon this Agreement becoming effective as to such Party.

(6) The Wastewater Commission has approved, by the favorable vote of all its members (and the Racine Common Council has approved with respect to any revenue sharing issues), by written resolution, any terms or conditions of providing Sewer Service to any such New Party that are more favorable than the terms and conditions under which similarly situated existing Parties receive Sewer Service under this Agreement.

(7) The Wastewater Commission has duly adopted a resolution formally admitting such New Party to the Agreement.

The Wastewater Commission shall record on dated inserts to the appropriate sections or subsections of this Agreement, approved by it, any modifications to the Agreement resulting from action taken pursuant to this Section 2.5, which shall automatically become part of this Agreement.

b. **Provisional Party Status.** To facilitate the entry of a New Party into this Agreement, the Wastewater Commission may offer provisional status to a potential New Party, whereby the potential New Party will be reasonably assured of achieving Party status upon satisfaction of all of the foregoing conditions precedent within a three-year period, provided that the Wastewater Commission is satisfied that the potential New Party is reasonably likely to be able to satisfy such conditions in a timely fashion.



c. Notice of Action To Be Considered or Taken. Before taking any action pursuant to this Section 2.5, the Wastewater Commission shall give each of the Parties not less than 40 days prior written notice of the action to be considered, and the basis therefor, and shall review and consider any written comments received from the Parties during such notice period. In the event the Wastewater Commission is considering to voluntarily (without being required by law to do so) provide Sewer Service to a New Party on terms and conditions that are more favorable than the terms and conditions under which similarly situated existing Parties receive Sewer Service under this Agreement, the notice shall specify the proposed more favorable (and other different) terms and conditions in detail, and the notice shall also state whether the Wastewater Commission has received the required approval of the Racine Common Council in accordance with Subsection 2.5a(6) of this Agreement. If the Wastewater Commission fails to take action pursuant to said notice within 90 days of the date of such notice, such notice shall be null and void. The Wastewater Commission shall give prompt written notice of any action taken pursuant to this Section 2.5 to each of the Parties and shall include with such notice a dated copy of any resulting inserts modifying this Agreement.

d. Adding Anticipated Parties as Parties. It is the intent of this Agreement that all of the Anticipated Parties should become Parties and that no Party has any rights under this Agreement that are harmed by the Anticipated Parties becoming Parties, in the absence of some particular unanticipated problem. Thus, for example, no existing Party's rights under this Agreement shall be deemed to be harmed because a New Party joining this Agreement may be able to compete better against such existing Party for future development, or may be in a better position to annex territory from such existing Party, or may be in a better position to prevent its own territory from being annexed by such existing Party.

e. Adding New Parties That Are Not Anticipated Parties. The addition of a New Party to this Agreement that is not an Anticipated Party shall require a written amendment of this Agreement.

## **2.6 Reorganization or Reconfiguration of Parties.**

a. Intent of Section 2.6. The Parties hereby acknowledge that they may need or desire to reorganize or reconfigure themselves from time to time, and that from time to time they may be reorganized or reconfigured as a result of forces beyond their control. Thus, for example, an unincorporated Party may incorporate; or a portion of an unincorporated Party may incorporate; or two Parties may consolidate; or a Party may create a new sanitary district; or a sewer utility district may be dissolved; or a Party may annex a portion of another Party. These and other such actions may result in the creation of Successors, the disappearance of existing Parties, changes in the Designated Territory of Parties, changes in the functions of Parties, changes in the Treatment or Conveyance Capacity Allocations of Parties, changes in the payment obligations of Parties, etc., and may require modifications to this Agreement. The intent of this Section 2.6 is to allow all such reorganization and reconfiguration activities to go forward, while attempting to ensure that modifications to the Agreement rendered necessary by such activities can be made administratively by the Wastewater Commission without the need for an amendment to this Agreement.

b. Notice of Proposed Reorganization or Reconfiguration Activity. Each Party shall notify the Wastewater Commission in writing, as early as possible, of any formally proposed reorganization or reconfiguration activity, of which it has notice or knowledge, that will or may result in a change in the number of the Parties, or the identity of any of the Parties, or a change in any of the information recorded with respect to any Party in Section 2.4 or Section 2.7 of this Agreement, or that will or may require the imposition of special requirements pursuant to Subsection 2.6d of this Agreement.

c. Notice of Accomplished Reorganization or Reconfiguration Activity/Activities to Apportion, Reverse, Overturn or Modify. Each Party involved in or affected by any such proposed reorganization or reconfiguration activity shall notify the Wastewater Commission in writing as soon as possible after the accomplishment and/or effectuation of any such reorganization or reconfiguration activity affecting any Party, and of any subsequent legislative, judicial or administrative activity which seeks to or does reverse, overturn, modify or uphold any such reorganization or reconfiguration or the convening of any apportionment board or subsequent court proceedings.

d. Administrative Authority of the Wastewater Commission.

(1) Following or in connection with any reorganization or reconfiguration of any of the Parties, and in accordance with Subsections 2.8o or 2.8p of this Agreement, the Wastewater Commission shall have administrative authority, without amendment of this Agreement, to recognize as a Party any reorganized or reconfigured Party, or any Successor (including any previously unrecognized Related Party required under Section 2.2, above); and to classify or reclassify appropriately any such reorganized, reconfigured, Successor or Related Party; and to determine or redetermine the Designated Territory with respect to each functional classification of each such Party.

(2) In the event of an apportionment of assets and liabilities under Wis. Stat. § 66.0235, the Wastewater Commission shall not have authority to re-allocate Sewer Service capacity allocated under this Agreement except: (i) upon the agreement of the affected Parties; or (ii) upon the award of an apportionment board or a circuit court making an apportionment. The Wastewater Commission shall have authority to advise any apportionment board or circuit court involved in the statutory apportionment of allocated Sewer Service capacity as a result of any transfer of territory, regarding the facilities planning assumptions and projections underlying the original allocation of capacity in this Agreement, and the process of transferring allocated capacity under this Agreement and the requirements of this Agreement which restrict the use and transfer of allocated capacity. The Wastewater Commission may, but is not required to, participate in the apportionment to protect its interests as they may appear.

(3) The Wastewater Commission may impose on any reorganized, reconfigured, Successor or Related Party, by the favorable vote of three-quarters of the members of the Wastewater Commission, any special requirement reasonably necessary to protect the Sewer Service Facilities, or prevent any such reorganized, reconfigured, Successor or Related Party from exceeding any Treatment Capacity Allocation or Conveyance Capacity Allocation or any related limitations, or to avoid significant harm to the rights of any Party under this

Agreement (interpreted in accordance with the principles set forth in Subsection 2.5d, above, if and to the extent such harm or risk of harm results from the reorganization or reconfiguration in question and to perform any other similar administrative functions for or with respect to any such reorganized, reconfigured, Successor or Related Party necessary to maintain and preserve the Cost Benefit Balance of this Agreement for the mutual benefit of the Parties. The Wastewater Commission shall not have authority under this Section 2.6 to make Sewer Service available to reorganized or reconfigured Parties or Successors on terms and conditions that are more favorable than the terms and conditions under which other similarly situated existing Parties receive Sewer Service under this Agreement.

e. **Successor Shall Approve and Sign Agreement/Limitation of Rights.** Any Successor to a Party resulting from any reorganization or reconfiguration of one or more existing Parties, and any previously unrecognized Related Party required under Section 2.2 of this Agreement, shall promptly and duly approve and execute this Agreement, including any inserts approved by the Wastewater Commission pursuant to this Section 2.6. Such approval and execution shall not be a condition precedent for this Agreement (including any inserts approved by the Wastewater Utility pursuant to this Section 2.6) to be binding upon any such Successor or Related Party. Any such Successor Related Party which fails or refuses promptly and duly to approve and execute this Agreement, including any inserts approved by the Wastewater Commission or re-allocation by an apportionment board or circuit court pursuant to this Section 2.6, shall be subject to the same limitations of rights as are set out in Section 2.2 of this Agreement until such failure is cured; provided, however, that a Successor may challenge the apportionment of allocated capacity in accordance with its statutory remedies. In the event of a dispute as to the allocated capacity awarded by an apportionment board or circuit court, a Successor or reconfigured Party may execute this Agreement as to so much of the allocated Sewer Service capacity which is not in dispute and contest the remainder through its statutory remedies. To the extent that there is a dispute as to any portion of the Sewer Service capacity allocation of a Successor, the Wastewater Commission is not obligated to act as regards that portion, or as regards other actions flowing from that portion in dispute, until the dispute is finally resolved by the Parties or through statutory remedies.

## **2.7 Information About New Parties and Successors.**

With respect to each New Party, or Successor (including any previously unrecognized Related Party), the Wastewater Commission shall record the following information on a dated insert to this Agreement: the functional classification(s) of such Party, the Designated Territory of such Party with respect to each of its functional classifications, the amount of Allocated Treatment Capacity which such Party is entitled to use and/or transfer and for which such Party is obligated to pay, the amount of Allocated Conveyance Capacity which such Party is entitled to use and/or transfer and for which such Party is obligated to pay, the notice addressee(s) of such Party, any special requirements imposed on such Party or any other items of information required by the Wastewater Commission pursuant to Subsections 2.5a(4) or 2.6d of this Agreement, in the following format:

a. \_\_\_\_\_

(1) Functional classifications: \_\_\_\_\_;

(2) Designated SSR, OAE and RSP Party territory: shown on the attached Map E or E , etc., which is incorporated herein by reference;

(3) Allocated Treatment Capacity which the Party is entitled to use and/or transfer and for which the Party is obligated to pay:

\_\_\_\_\_;

(4) Allocated Conveyance Capacity which the Party is entitled to use and/or transfer and for which the Party is obligated to pay:

\_\_\_\_\_;

(5) Notice addressee(s): \_\_\_\_\_;

(6) Special requirements imposed: \_\_\_\_\_;

(7) Other required information: \_\_\_\_\_;

**[New insert for each New Party. Exhibits for each New Party, sequentially, will be Exhibit E, Exhibit E , etc., and corresponding maps will be Map E , Map E , etc.]**

The Wastewater Commission shall promptly notify each Party in writing of the admission to this Agreement of any New Party, or the execution of this Agreement by any Successor (including any previously unrecognized Related Party), and shall attach to such notice a copy of the dated insert required by this Section 2.7, which shall be attached to this Agreement as an exhibit and incorporated herein by reference.

## **2.8 Wastewater Commission.**

a. Creation. The preexisting seven-member Racine Wastewater Commission is hereby converted in accordance with this Section 2.8 to an eleven-member intergovernmental commission pursuant to Wis. Stat. § 66.0301, which shall be known as the Racine Wastewater Commission (the “Wastewater Commission”). Upon this Agreement taking limited effect pursuant to Section 12.22, below, the preexisting Racine Wastewater Commission shall automatically become the intergovernmental Wastewater Commission created by this Agreement. (Cf. Subsection e. below.)

b. Composition. The Wastewater Commission shall consist of seven representatives of Racine, including the Racine Mayor ex officio (with all rights and responsibilities of a regular member) and six representatives appointed by the Racine Mayor and confirmed by the Racine Common Council (two of whom may be Racine elected officials and four of whom shall not be Racine elected officials), and four representatives of Outlying Parties,

one of whom shall be selected by the governing body of Mt. Pleasant, one of whom shall be selected by the governing body of Mt. Pleasant until December 31, 2032 and by the governing body of the SSR Party, other than Racine, that has the largest amount of Allocated Treatment Capacity beginning January 1, 2033, one of whom shall be selected by the governing body of Caledonia, and one of whom shall be selected by the governing body of the SSR Party that has the largest amount of Allocated Treatment Capacity other than Racine, Mt. Pleasant or Caledonia; provided, however, that in the event Caledonia is not an Initial Party, the number of members of the Wastewater Commission shall be reduced by one until such time as Caledonia becomes a Party; and further provided that in the event that no city, village or town other than Racine, Mt. Pleasant or Caledonia is an Initial Party, the number of members of the Wastewater Commission shall be reduced by one until such time as such a city, village or town becomes a Party. In the event of the partial incorporation of Mt. Pleasant or Caledonia, the resulting Successor having the greatest population shall be entitled to the seat(s) on the Wastewater Commission previously held by its predecessor Party.

c. Regular Selection of Members. Not later than the third Tuesday of September 2002, and of each year thereafter, members of the Wastewater Commission shall be selected or appointed as follows for a term beginning on the immediately following October 1: (1) the Racine Mayor shall appoint two members of the Wastewater Commission, who shall be confirmed by the Racine Common Council (and who may be Racine elected officials), each for a one-year term; (2) the Racine Mayor shall appoint one Racine representative, who shall be confirmed by the Racine Common Council (who shall not be a Racine elected official) for a four-year term; (3) the governing body of Mt. Pleasant shall select up to two Mt. Pleasant representatives (who may be Mt. Pleasant elected officials) for a four-year term if and to the extent that the term of either or both of the Mt. Pleasant representatives will have been completed on the following October 1; (provided, however, that in its initial selection of members, Mt. Pleasant may select one representative with a four-year term and one representative with a two-year term); (4) the governing body of Caledonia (if Caledonia is a Party) shall select a Caledonia representative (who may be a Caledonia elected official) for a three-year term if the term of the Caledonia representative will have been completed on the following October 1; and (5) the governing body of the other represented Party shall select a representative (who may be an elected official of that municipality) for a three-year term.

d. Alternate Members. At the same time regular members of the Wastewater Commission are selected or appointed, alternate members shall be selected or appointed as follows: the Racine Mayor shall appoint one first-alternate Racine representative, who may be a Racine elected official, and one second-alternate Racine representative, who shall not be a Racine elected official, each for a one-year term; and the governing body of each of the Outlying Parties which will have a representative on the Wastewater Commission as of the following October 1 shall also select an alternate representative for a one-year term. Alternate members are encouraged to attend all meetings of the Wastewater Commission but shall not vote unless a regular member is from that Party absent.

e. Transition. Upon this Agreement taking limited effect pursuant to Section 12.22 of this Agreement, the then-existing seven members of the new Wastewater Commission shall continue to serve for the balance of their respective terms: the Racine Mayor

for his term in office; two Racine Aldermen, each with a one-year term expiring on October 1, 2002; four Racine residents with four-year terms expiring, respectively, on October 1, 2002, 2003, 2004, and 2005. As soon as practicable after this Agreement becomes fully effective pursuant to Section 12.22, the governing bodies of Mt. Pleasant, Caledonia and Sturtevant shall each select a member of the Wastewater Commission to serve a partial one-year term expiring on October 1, 2002 if they have not already done so; provided, however, that if Caledonia is not an Initial Party, the governing body of Caledonia shall select a member of the Wastewater Commission to serve a partial one-year term expiring on October 1, 2002 as soon as practicable after Caledonia becomes a Party, and further provided that if Sturtevant has not become a Party within 120 days after the Effective Date of this Agreement, the governing body of the first city, village or town to become a Party other than Racine, Mt. Pleasant or Caledonia shall select a member of the Wastewater Commission to serve a partial one-year term expiring on October 1, 2002 as soon as practicable after such city, village or town becomes a Party. Except with respect to approving and signing this Agreement and except in case of emergency, the Wastewater Commission shall not act for 35 days after its creation, or until the members selected by the Parties as of the Effective Date of this Agreement have been qualified, whichever occurs first.

f. Notice of Selection/Qualification of Members. As soon as practicable after the selection or appointment of any regular or alternate member of the Wastewater Commission, the Party whose governing body or mayor is responsible for the selection or appointment shall notify the Wastewater Commission and each of the other Parties in writing of the name, address, telephone number(s), fax and e-mail address, if any, of the member and the length and expiration date of his or her term. Such member shall be deemed duly qualified, following such notice, upon being duly sworn in by the Racine City Clerk and signing an appropriate ethics certificate. Each member of the Wastewater Commission shall serve until his or her successor is duly selected or appointed and qualified.

g. Vacancies/Removal for Cause. In the event that a member's position on the Wastewater Commission becomes vacant, for any reason, the body or official that selected or appointed such member shall promptly select or appoint a new member to fill the unexpired term. If an alternate member becomes a regular member, a new alternate member shall be promptly selected or appointed to fill the unexpired term. The body or official that selects or appoints a regular or alternate member of the Wastewater Commission can remove such member for cause, including but not limited to excessive unexcused absences. Each Party having a representative on the Wastewater Commission shall have discretion to determine appropriate cause for removal.

h. Duties and Powers of the Wastewater Commission. The Wastewater Commission shall have the following duties and powers: (1) to perform the duties and tasks delegated to it by this Agreement, and to administer this Agreement in accordance with its terms, for the mutual benefit of the Parties; (2) to serve as the governing body of the Racine Utility; (3) to perform the Sewer Service obligations of Racine under this Agreement; (4) to provide wholesale Sewer Service to the Outlying SSR Parties, (5) to provide retail sanitary sewerage service to retail customers in Racine and in other municipalities by Side Agreement, in accordance with this Agreement, to the extent applicable, and the Racine Sewer Ordinances; (6) to provide general supervision over the Sewer Service Facilities and the operations of the Racine

Utility, in order to ensure compliance with this Agreement, the Racine Sewer Ordinances and All Applicable Laws; (7) to coordinate its activities with the Racine Water Commission to ensure that the Wastewater Commission and the Water Commission function as integrated parts of the Racine city operations; (8) to prescribe rules of order for the regulation of its meetings, proceedings and deliberations which are not inconsistent with this Agreement or the Racine Sewer Ordinances and to amend, recreate or repeal such rules of order from time to time as it deems proper; (9) to prescribe rules and regulations for the operations of the Sewer Service Facilities and the Racine Utility which are not inconsistent with this Agreement or the Racine Sewer Ordinances; (10) to bill and collect rates and other sewerage service charges; (11) in providing for accounting functions, the Wastewater Commission shall conform to all policies and procedures as set forth by the Racine finance director, from time to time, except to the extent such policies or procedures are inconsistent with this Agreement, and except that the Wastewater Commission is authorized to retain independent audit and accounting services when required; (12) in providing for all legal functions relating to improvements to the Sewer Service Facilities, the Wastewater Commission shall conform to all policies and procedures as set forth by the Racine commissioner of public works with respect to requirements for public works contracts, except to the extent such policies and procedures are inconsistent with this Agreement, and further provided that the Wastewater Commission is authorized to retain independent legal counsel when required; (13) to prescribe rules and regulations for the Racine employees supervised by the Wastewater Commission; (14) in providing personnel functions, the Wastewater Commission shall conform to all policies and procedures as set forth by the Racine director of human resources, to the extent not inconsistent with this Agreement; (15) in providing for discipline or termination of Racine employees working for the Racine Utility, the Wastewater Commission shall conform to all policies and procedures of Racine and the Racine director of human resources, to the extent not inconsistent with this Agreement; (16) to contract for and purchase fuel, supplies and repairs necessary for or incident to the proper operation or maintenance of the Sewer Service Facilities; (17) to enact rules and regulations under which the Parties shall be served, consistent with this Agreement, and subject to the control of the PSC, as provided by law; (18) to contract for, and to purchase, construct, install and provide all improvements to the Sewer Service Facilities in accordance with this Agreement; (19) in concert with the Racine Water Commission, and in conformance with the Racine human resources department policies for filling vacancies, except to the extent such policies are inconsistent with this Agreement, to appoint if a vacancy exists a Wastewater/water manager who shall be the general executive officer of the Racine Wastewater Utility and the Racine Water Utility; (20) so far as practical, and subject to the determination of the Wastewater Commission, there shall be a single administration of the Racine Wastewater and Water Utilities operating under the supervision of the manager of the two Utilities; (21) to oversee the Wastewater/water manager, who shall be the administrative head of the Racine Wastewater and Water Utilities, and who in such capacity shall have charge of and coordinate the work of the Racine Wastewater and Water Utilities, supervise the work of the Racine employees working for the Racine Wastewater and Water Utilities, and report to the Wastewater Commission with respect to Wastewater matters; (22) to approve expenditures beyond the approved budget, subject to Racine Common Council approval; (23) to modify the budget of the Racine Utility within the limits of the budgeted amount of each fund as approved by the Racine Common Council; (24) to establish Sewer Service rates and other sewerage service charges in accordance with this Agreement, subject to approval by the Racine Common Council; (25) to commence civil actions or administrative

proceedings against Parties or other Persons to enforce this Agreement or other agreements provided for in this Agreement, to obtain declaratory judgments regarding this Agreement or other agreements provided for in this Agreement, to collect unpaid charges, to recover damages for the breach of this Agreement or other agreements provided for in this Agreement, to enforce sewer ordinances or otherwise protect the Sewer Service Facilities, or to obtain any other appropriate remedy or relief provided by law; (26) to conduct hearings as may be necessary to determine facts, hear legal arguments or protect the rights of Parties in connection with various decisions or actions it is required to make or take pursuant to this Agreement; (27) to make appropriate use of such consultants, legal counsel or other assistance as may be available from Racine or any of the other Parties; (28) to retain such independent expert consultants or legal counsel as it may require; (29) to enter into and amend such Side Contracts in accordance with this Agreement, subject to Racine Common Council approval; (30) to finance improvements to the Sewer Service Facilities pursuant to Wis. Stat. § 66.0621, or other applicable statutes, subject to Racine Common Council approval; and (31) to exercise all powers necessarily incident to the duties and powers stated above, consistent with this Agreement and All Applicable Laws.

i. Sewer Extensions to Non-Parties. Under no circumstances shall the Wastewater Commission voluntarily (without being required by law to do so) approve any Sewer Extension to serve the territory of any local governmental entity that is a non-Party, or voluntarily (without being required by law to do so) enter into any agreement with any local governmental entity that is a non-Party by which it agrees to approve any Sewer Extension to serve the territory of such non-Party, on terms and conditions that are more favorable than the terms and conditions under which such non-Party would receive Sewer Service under this Agreement if such non-Party were to become a Party, except in strict compliance with the procedures of Section 3.1 of this Agreement.

j. New or Existing Parties/More Favorable Terms and Conditions. Under no circumstances shall the Wastewater Commission voluntarily (without being required by law to do so) agree to provide Sewer Service to a New Party or an Existing Party on terms and conditions that are more favorable than the terms and conditions under which similarly situated existing Parties receive Sewer Service under this Agreement, except in strict compliance with the procedures of Section 2.5 of this Agreement.

k. No Authority/Void Approvals, Agreements. The Wastewater Commission has no authority voluntarily (without being required by law) to approve any Sewer Extension, or voluntarily (without being required by law) to enter into an agreement whereby it agrees to approve any Sewer Extension, to serve the territory of a local governmental entity that is a non-Party, other than in strict compliance with Section 3.1 and Subsection 2.8i of this Agreement. Further, the Wastewater Commission has no authority voluntarily (without being required by law) to enter into any agreement to provide Sewer Service to any New Party other than in strict compliance with Subsection 2.5a(6) and Subsection 2.8j of this Agreement. Any such voluntary approval or agreement by the Wastewater Commission that is made or entered into, other than in strict compliance with Subsections 2.8i or 2.8j, is null and void. Notwithstanding any other provision of this Agreement, any Party shall have the right immediately to commence a civil action seeking to obtain a declaratory judgment that any such unauthorized approval or



agreement is void and invalid and/or seeking to enjoin the construction or use of any resulting Sewer Extension or to enjoin the enforcement of any such agreement.

l. Notice of Lack of Authority/Void Approvals, Agreements. Within 15 days after the Effective Date of this Agreement, the Wastewater Commission shall cause the Racine Utility to give written notice by certified mail, return receipt requested, to the clerk or other appropriate officer of each of the Anticipated Parties that is not a Party to this Agreement summarizing Subsections 2.8k, and 2.8i and 2.8j, and any other subsections of this Agreement referred to therein, so as to avoid any potential future problems with such non-Parties relating to the apparent authority of the Wastewater Commission.

m. Racine Shall Not Dissolve. During the term of this Agreement, Racine shall not dissolve the Wastewater Commission or the Racine Utility or take any actions not contemplated by this Agreement which adversely and materially affect the ability of the Wastewater Commission to perform its duties and exercise its authority under this Agreement effectively and efficiently.

n. Relationship of Wastewater Commission and Racine. The Wastewater Commission is an intergovernmental commission established by this Agreement pursuant to Wis. Stat. § 66.0301 to administer this Agreement and to manage and supervise the operation and maintenance of the Sewer Service Facilities, which are owned by Racine but which the Outlying Parties have the right to use by virtue of the Treatment and Conveyance Capacity Allocations created by this Agreement, and the operations of the Racine Wastewater Utility, which is a quasi-independent division of the Racine city government. The Parties acknowledge that Racine has discretion to exercise its police power to protect the public health, safety and welfare, and further that Racine has final authority: (1) to adopt and enforce ordinances required by law or to protect the Sewer Service Facilities; (2) to approve the annual budget of the Racine Utility, provided that the budget is prepared and processed in accordance with this Agreement; (3) to approve the Sewer Service rates and other sewerage service charges of the Racine Utility, provided that they are established in accordance with this Agreement; (4) to approve amendments to the approved budget of the Racine Utility; (5) to approve new or amended Side Contracts, provided that they are entered into and processed in accordance with this Agreement; (6) to approve the financing by Racine or the Wastewater Commission of improvements to the Sewer Service Facilities intended to serve Parties other than Racine; (7) to acquire and hold title to land or interests in real property associated with the Sewer Service Facilities; (8) to approve Sewer Extensions (or agreements providing for Sewer Extensions) to serve the territory of local governmental entities that are non-Parties in accordance with Subsection 2.8i of this Agreement; and (9) to approve agreements to provide Sewer Service to New Parties on more favorable terms and conditions in accordance with Subsection 2.8j, above; (10) to recommend the exercise of powers of eminent domain by the Racine Common Council; and (11) to recommend to the Racine Common Council amendments of the Racine Sewer Ordinances consistent with this Agreement. It is the intent and requirement of this Agreement that the Wastewater Commission shall act fairly, reasonably and even-handedly with respect to each of the Parties in carrying out its duties and exercising its authority under this Agreement, and that Racine shall not, subject to the proper exercise of its police power, exercise its powers over or with respect to the Wastewater Commission, the Racine Utility or the Sewer Service Facilities, to change or subvert

the carefully drawn Cost-Benefit Balance of this Agreement. In the event that the Racine Common Council does alter the Cost Benefit Balance of this Agreement, such action shall be treated as a Material Change of Circumstances under Subsection 2.8p or Section 12.7 of this Agreement.

o. Ministerial Modifications of This Agreement.

(1) The Wastewater Commission shall have administrative authority, ministerially, without amendment of this Agreement, and in close consultation with the affected Parties, to update and correct the information regarding any Party which is set out in Sections 2.4 or 2.7 of this Agreement and/or in exhibits or maps referenced in those sections, and to approve dated inserts to this Agreement containing such updated or corrected information, provided that the updated or corrected information is not in dispute and that the change of such information does not adversely affect the rights of any of the other Parties under this Agreement (interpreted in accordance with the principles set forth in Subsection 2.5d, above).

(2) The Wastewater Commission shall promptly notify each Party in writing of any such changes or corrections and shall include with such notice a dated copy of the insert to the Agreement prepared pursuant to this Subsection 2.8o. In the event that any Party objects to any such change or correction by written notice to the Wastewater Commission and any affected Parties and states the basis for its objection, within 15 days after the Wastewater Commission's notice, the Wastewater Commission shall consider the objection of the objecting Party, and any rebuttal comments made by written notice of any affected Party within 15 days after the objection notice, and shall proceed as though it were acting pursuant to Subsection 2.8p, below.

p. Modify Agreement To Cure Changes of Circumstances Without Altering The Cost Benefit Balance of This Agreement. The Wastewater Commission shall have administrative authority, in close consultation with the affected Parties, to modify this Agreement, without amendment, in order to cure the adverse effects of any change of circumstances; provided, however, in the event of a Material Change of Circumstances the Wastewater Commission shall only act upon the affirmative vote of three-fourths of the members of the Wastewater Commission; and further provided that the Wastewater Commission shall have no authority under this Subsection 2.8p to materially alter the original Cost Benefit Balance agreed to by the Parties in this Agreement. The Wastewater Commission and all of the other Parties shall deal with any Material Change of Circumstances on an expedited basis and shall use their best efforts to resolve any problems as rapidly as possible. The Parties shall hold special meetings as necessary to determine a proposed curative action within 60 days of written notice of a Material Change of Circumstances. If the Wastewater Commission determines within such 60-day period that it is not authorized to take curative action or that it lacks the votes to take curative action, or if the Wastewater Commission fails to determine a proposed curative action within such 60-day period, or if the Wastewater Commission fails to take action within 120 days of such written notice, it shall invoke the procedures of Section 12.7 of the Agreement. When the Wastewater Commission decides to act under this Subsection 2.8p, it shall prepare and approve a written description of the proposed curative action and the basis therefor. Before taking any curative action pursuant to this Subsection 2.8p, the Wastewater Commission shall give not less than 30 days prior written notice to each of the Parties of the proposed curative

action and the basis therefor, and shall consider any written comments received from the Parties during such notice period. The Wastewater Commission shall carefully consider any comments received from the Parties, including any comments on whether the Wastewater Commission is authorized to act under the circumstances. If the Wastewater Commission decides that it is not authorized to take curative action, it shall invoke the procedures of Section 12.7 of this Agreement. The Wastewater Commission shall give prompt written notice to each of the Parties of any action taken or of any decision made pursuant to this Subsection 2.8p and shall include with such notice a dated copy of any resulting inserts modifying this Agreement. Any decision of the Wastewater Commission under this Subsection 2.8p shall be subject to review by a court of competent jurisdiction under the provisions of Section 12.16a.

q. Racine Utility Staff. The Manager of the Racine Utility and the other Racine employees working for the Racine Utility shall provide staff assistance to the Wastewater Commission as needed or upon request.

r. Hearings. The Wastewater Commission may substitute a hearing, on not less than 40 days prior written notice, for any notice and comment procedure provided for in this Agreement.

### **III. PROVISION OF SEWER SERVICE**

#### **3.1 Provision of Sewer Service to Non-Parties and Provision of Other Contract Services to Parties and Non-Parties.**

a. Continued Sewer Service to Non-Parties/Restrictions. Racine, through the Racine Utility and the Wastewater Commission, may continue to provide Sewer Service to any of the non-Party Anticipated Parties receiving Sewer Service from the Racine Utility as of the Effective Date of this Agreement, and to any city, village, town, sewerage-related special purpose district or any other similar local governmental entity that is created by such Anticipated Parties, or any of them, or that is created or expanded so as to consist of or include any territory or any such Anticipated Parties that is receiving Sewer Service, from time to time, pursuant to the Racine Sewer Ordinances and All Applicable Laws and/or pursuant to any agreement that may be required by law, on terms and conditions that the Wastewater Commission determines are appropriate and reasonable, subject to the following restrictions: (1) no Party shall be required to subsidize the cost of any portion of the Deficiency Work which should reasonably and fairly be charged to non-Party local governmental entities receiving Sewer Service; (2) such non-Party recipients of Sewer Service shall be charged not less than their pro-rata share of all OMR costs and Deficiency Work costs; (3) the Wastewater Commission shall not voluntarily (without being required by law to do so) approve any Sewer Extension to serve territory of a local governmental entity that is a non-Party, or voluntarily (without being required by law to do so) enter into any agreement with such a non-Party by which it agrees to approve any Sewer Extensions to serve the territory of such a non-Party, on terms and conditions that are more favorable than the terms and conditions under which such non-Party would receive Sewer Service under this Agreement if such non-Party were to become a Party, unless the Wastewater Commission shall have first approved such extension or agreement by the favorable vote of all of

its members, and unless the Racine Common Council shall have first approved any terms of such extension or agreement relating to revenue sharing, by written resolution.

b. Notice of Proposed and Final Action/Sewer Extension to Non-Party or Related Agreement. The Wastewater Commission shall notify each Party in writing not less than 40 days prior to approving any proposed Sewer Extension to serve the territory of a local governmental entity that is a non-Party, or prior to entering into any proposed agreement with such a non-Party by which it agrees to approve any such Sewer Extensions, specifying in detail in such notice the terms and conditions on which such Sewer Service is proposed to be provided, and whether such action is voluntary (not required by law), and if voluntary, whether the Wastewater Commission has received the approval of the Racine Common Council in accordance with Subsection 2.8h and Subsection 3.1a(3) of this Agreement. The Wastewater Commission shall review and consider any written comments received from any of the Parties during the notice period. If the Wastewater Commission fails to take final action on the proposed Sewer Extension or agreement within 90 days after the date of the Wastewater Commission's notice of proposed action under this Subsection 3.1b, such notice shall be null and void. Within 15 days after taking final action, the Wastewater Commission shall notify each of the Parties in writing of its action.

c. Side Contracts Existing on the Effective Date of this Agreement. Racine, through the Racine Utility and the Wastewater Commission, may continue, and may perform, enforce and terminate as appropriate, Side Contracts existing on the Effective Date of this Agreement; provided, however, that the costs of providing or receiving services pursuant to any such Side Contract shall be separately accounted for and shall not be charged to any Party other than the recipient of services provided pursuant to such Side Contract. The Side Contracts existing on the Effective Date of this Agreement are listed and briefly described on the attached Exhibit K, which is incorporated herein by reference.

d. Agreements to Accept Hauled Waste Existing on the Effective Date of this Agreement. Racine, through the Racine Utility and the Wastewater Commission, may continue, and may perform, enforce and terminate as appropriate, agreements with Non-Parties existing on the Effective Date of this Agreement to accept Hauled Wastewater at the Wastewater Treatment Plant.

e. Pretreatment Permits or Agreements With Industrial Users Existing on the Effective Date of this Agreement. Racine, through the Racine Utility and the Wastewater Commission, may continue, and may perform, enforce and terminate as appropriate, pretreatment permits or agreements with individual Industrial Users existing on the Effective Date of this Agreement.

f. New or Amended Side Contracts. The Wastewater Commission may approve and enter into new or amended Side Contracts, provided that it first determines that each such proposed Side Contract significantly benefits one or more of the Parties, does not harm the rights of any of the Parties under this Agreement, and can be appropriately, capably and cost-effectively performed by the Racine Utility; provided, however, that the costs of providing or

receiving services pursuant to any such Side Contract shall be separately accounted for and shall not be charged to any Party other than the recipient of services under such Side Contract.

g. New or Amended Pretreatment Agreements or Permits. Nothing in this Agreement shall be deemed to prohibit or limit the right of the Wastewater Commission to enter into new or amended pretreatment agreements, or to issue new or amended pretreatment permits, and to enforce or terminate such agreements or permits, in accordance with the Racine Sewer Ordinances and All Applicable Law.

h. Acceptance of Hauled Wastewater. Nothing in this Agreement shall be deemed to prohibit or limit the Wastewater Commission's right to accept Hauled Wastewater at the Wastewater Treatment Facility, provided that there is unused treatment capacity available to treat such Hauled Wastewater, and further provided that the fees received for the acceptance and treatment of Hauled Wastewater shall be credited to OMR.

i. Notice to Non-Parties regarding Allocated Capacity. Within 15 days after the Effective Date of this Agreement, the Wastewater Commission shall cause the Racine Utility to give written notice to each Anticipated SSR Party that is not yet a Party that Allocated Treatment Capacity and/or Allocated Conveyance Capacity designed to serve its needs may be purchased by Parties and unavailable to it if it fails to join the Agreement within 120 days after the Effective Date of the Agreement.

### **3.2 Provision of Sewer Service to SSR Parties During the Transition Period.**

a. Sewer Service/Temporary Potential Limitations. During the Transition Period, Racine, through the Racine Utility and the Wastewater Commission, shall provide Sewer Service in accordance with this Agreement to each SSR Party within its respective Designated SSR Territory, to the extent such territory is within the Sewer Service Area, and shall approve applications for Sewer Extensions within such territory in accordance with the Racine Sewer Ordinances and to the extent of available and unused Wastewater treatment and conveyance capacity, taking into account the limitations of the 2001 Sewer Service Facilities, any of the 1998 Recommended Improvements that have been completed, the restrictions of Racine's WPDES Permit, All Applicable Laws and proposed EPA or DNR regulations that are pending as of the Effective Date of this Agreement (until adopted or rejected) relating to restrictions on Bypassing. Pending completion of the First Group of Improvements, and subject to the limitations of this Section 3.2, the SSR Parties shall be permitted to "borrow" and make use of the engineering safety margin of treatment capacity remaining in the Wastewater Treatment Facility or incrementally created by the new improvements.

b. Potential Moratorium Authority. The Parties acknowledge, as of the Effective Date of this Agreement, that the Wastewater Treatment Facility has substantial deficiencies in its ability to handle wet weather flows, that the Treatment Facility is currently operating near or above its hydraulic design capacity, and that future development which can connect to already constructed or approved Sewer Extensions could use up any remaining engineering safety margin of Average Daily Flow treatment capacity. During the Transition Period, without

limitation and notwithstanding any other provision of this Agreement, the Wastewater Commission shall, upon a favorable vote of three-quarters of its members, have express authority to impose a temporary moratorium on the approval or processing of additional applications for Sewer Extensions if it finds that such a moratorium is necessary to comply with All Applicable Laws or that Clean Water Fund Financing for the 1998 Recommended Improvements is seriously at risk in the absence of such a moratorium. Further, the Wastewater Commission shall also have authority to impose such a moratorium, upon a favorable vote of three-quarters of its members, if it finds that such a moratorium is prudent to avoid any potential problems with All Applicable Laws or any risk of endangering the availability of Clean Water Fund Financing for the 1998 Recommended Improvements.

c. Preservation of Clean Water Fund Financing. During the Transition Period, the Wastewater Commission and each of the other Parties shall, individually and collectively, take and support such actions as may be necessary to preserve the availability of the Clean Water Fund Financing for use in constructing the First Group of Improvements.

d. Determining the First Group of Improvements.

(1) As rapidly as practicable after the Effective Date of this Agreement, the Wastewater Commission shall determine what portion of the Future Growth Work improvements to construct as part of the First Group of Improvements. Such improvements shall include: (1) those needed to provide the Treatment Capacity Allocations to the Parties, as set out in Sections 5.1 and 5.2 of this Agreement or in related exhibits; and (2) those improvements needed to provide any amount of capacity allocation that the Wastewater Commission duly decides to purchase and bank in accordance with Section 3.2 of this Agreement, up to the amount of the available capacity allocation proposed for non-Party Anticipated Parties on the attached original Exhibits E and F, which are incorporated by reference, that is under final design.

(2) Prior to making a final determination of what portion of the Future Growth Work improvements to construct as part of the First Group of Improvements, the Wastewater Commission shall give each of the Parties not less than 40 days prior written notice of the date of its proposed determination, specifying the amount of potential allocated capacity that is under final design and available for purchase by the SSR Parties. As part of its final determination of what portion of the Future Growth Work Improvements to construct as part of the First Group of Improvements, the Wastewater Commission shall have authority to allocate to itself, as Banked Allocated Capacity, any unallocated potential capacity that is under design, up to a maximum amount of 3.0 million gallons per day of Average Daily Flow.

(3) Promptly after its final determination pursuant to this Subsection 3.2, the Wastewater Commission shall update the information about the Parties' capacity allocations, set out in Sections 2.4 or 2.7 and 5.1 and 5.2 of this Agreement, in accordance with Subsection 2.8o of this Agreement.

e. Completion of Deficiency Work Design/Commencement of Construction. As rapidly as practicable after the Effective Date of this Agreement, the Wastewater Commission shall complete the design of the Deficiency Work improvements, and shall begin construction of

such improvements. In the event that Clean Water Fund Financing is not available for the Deficiency Work improvements, the Wastewater Commission can either proceed with construction of the entirety of the Deficiency Work or can reevaluate whether and on what schedule to proceed with construction of some or all of the Deficiency Work improvements.

f. Completion of Future Growth Work Design/Value Engineering. As rapidly as is practicable after the Effective Date of this Agreement, the Wastewater Commission shall complete the design of the Future Growth Work improvements to be constructed as part of the First Group of Improvements. At an appropriate time, and when the design of such improvements is between 25% and 50% completed, the Wastewater Commission shall cause a value engineering study of such improvements to be performed by a qualified independent value engineering firm in accordance with generally accepted industry standards.

g. Construction of Future Growth Work Improvements. Upon completion of the value engineering study and of the design work on the Future Growth Work improvements to be constructed as part of the First Group of Improvements, and subject to the opt-out rights of the SSR Parties pursuant to Section 6.1 of this Agreement in the event that Clean Water Fund Financing is not available for the Future Growth Facilities or is available in amounts substantially less than required, the Wastewater Commission shall proceed promptly with construction of such improvements.

h. Notice of Clean Water Fund Financing. The Racine Utility shall promptly notify each of the Parties in writing upon determining with certainty whether and to what extent Clean Water Fund Financing will be available for the First Group of Improvements. (In the event that such financing will not be available, or will be available in amounts substantially less than required, see Section 6.1 of this Agreement.)

i. Payment for Deficiency Work/Capital Costs Treatment. The Wastewater Utility shall pay for the Deficiency Work and shall treat the Capital Costs of such Deficiency Work as Existing Capital on which the Wastewater Commission shall be entitled to recover depreciation and ROI as a part of the Sewer Service rates.

j. Payment for Banked Capacity. The Wastewater Commission shall pay in the first instance the Capital Costs of any Banked Allocated Capacity it purchases in the First Group of Improvements. Unless the Wastewater Commission transfers such banked capacity in accordance with Section 5.3 of this Agreement, the Wastewater Commission shall pay the principal and interest costs associated with the Banked Capacity out of the Capital Reserve Account Funds until at least five years after the Effective Date of this Agreement, without putting such costs in the Sewer Service rates of the SSR Parties; thereafter, however, the Wastewater Commission may include such costs in the Sewer Service rates of the SSR Parties.

k. SSR Party Acceptance of Allocated Capacity. Each SSR Party shall be required to accept and pay for the amount of capacity allocation specified for such Party in Sections 5.1 and 5.2 of this Agreement, subject only to the opt-out provisions of Section 6.1 of

this Agreement if Clean Water Funds Financing is not available or is available in amounts substantially less than required.

### **3.3 Provision of Sewer Service to SSR Parties Generally.**

a. Provision of Sewer Service/Approval of Sewer Extensions. After the Transition Period, and throughout the balance of the term of this Agreement, Racine, through the Racine Utility and the Wastewater Commission, shall provide Sewer Service to each SSR Party within its respective Designated SSR Territory, to the extent such territory is within the Sewer Service Area, and shall approve applications for Sewer Extensions within such territory to the extent of available Wastewater treatment and conveyance capacity, in accordance with this Agreement, the limitations of its WPDES Permit, the Racine Sewer Ordinances and All Applicable Laws.

b. Unused, Unallocated Conveyance Capacity.

(1) In addition to the Treatment Capacity Allocations and Conveyance Capacity Allocations made to the Parties in Sections 5.1 and 5.2 of this Agreement, the Wastewater Commission shall make available to the SSR Parties unused Wastewater conveyance capacity in the Sewer Service Facilities where conveyance capacity has not been allocated, for actual use on a first-come-first-served basis, up to the maximum Peak Hourly Flow limitation established in Subsection 3.3b(2), below. Any amount of capacity in such a facility that has been actually used by a SSR Party when not in violation of its Allocated Treatment Capacity flow limitations shall be considered used and unavailable for use by other SSR Parties. Racine warrants that each of the SSR Parties shall have sufficient conveyance capacity available to it in the Sewer Service Facilities, after completion of the Deficiency Work and through the year 2020, to transport to the Wastewater Treatment Facility its original Allocated Treatment Capacity as shown on Exhibit E, in the absence of any changes in the law relating to conveyance capacity or Bypassing, or the creation of any additional Allocated Treatment Capacity affecting the conveyance of facilities in question, or any substantial reconfiguration of SSR Parties or any substantial transfer or apportionment of Allocated Treatment Capacity adversely affecting the conveyance facilities in question. The Wastewater Commission shall take such actions as may be required to protect the interests of the SSR Parties in unallocated conveyance capacity in the event the Agreement is amended to admit an unanticipated SSR Party.

(2) Whenever the total Peak Hourly Flow utilized by the Racine Utility's consultant in the modeling underlying the 1998 Facilities Plan for testing the sufficiency of capacity in any particular conveyance facility, or for any particular segment thereof, actually occurs in such conveyance facility, or in such segment thereof, the Wastewater Commission shall promptly notify all affected Parties in writing that there is no remaining capacity in such facility that is available for use. Thereafter, no further Sewer Extensions or sewer connections tributary to such facility, or to such segment thereof, shall be approved or permitted by any of the Parties until such time as the Wastewater Commission determines and notifies the affected Parties in writing that additional capacity in such facility or in such segment thereof is unused and available for use.



(3) After completion of the Deficiency Work Improvements, the Wastewater Utility shall use reasonable diligence, in accordance with generally accepted industry standards, to give written notice to each affected SSR Party sufficiently in advance of full utilization of the conveyance capacity in any conveyance facility in the Sewer Service Facilities where capacity is not allocated by this Agreement to allow for appropriate planning, design and construction of expanded capacity.

c. Acknowledgment of SSR Parties. The Parties acknowledge and agree, notwithstanding any other provision of this Agreement, that no SSR Party has the right to discharge Wastewater to the Sewer Service Facilities, or to any sewerage facility that is tributary to the Wastewater Treatment Facility, in excess of that Party's Allocated Treatment Capacity, or in excess of its Allocated Conveyance Capacity in specified conveyance facilities where capacity is allocated by this Agreement, or in excess of unused and available conveyance capacity in conveyance Sewer Service Facilities where capacity is not allocated in Section 5.2 of this Agreement, and that no SSR Party has the right to make or permit any Sewer Extensions or sewer connections whose anticipated use will cause a SSR Party to exceed its capacity allocation or exceed the unused and available capacity in any conveyance facility where capacity is not allocated by the Agreement.

d. Provision of Unplanned Sewer Service Facilities. The Wastewater Commission shall provide such Unplanned Sewer Service Facilities as are reasonably needed by the SSR Parties, or to provide high quality, reliable and environmentally acceptable Sewer Service to the SSR Parties, or to comply with All Applicable Laws, in accordance with Sections 3.4-3.7 of this Agreement.

e. Value Engineering Study. In the process of designing any Unplanned Sewer Service Facilities that will cost in excess of \$20 million (such amount to be adjusted annually, promptly after January 1 and on a compounding basis, in accordance with the percentage increase or decrease over the past year, if any, of the Construction Cost Index), the Wastewater Commission shall cause to be prepared, at an appropriate juncture in the design process, a value engineering study of such improvements by a qualified independent value engineering consultant. With respect to any Unplanned Sewer Service Facilities that will cost between \$10 million and \$20 million (such amounts to be adjusted annually in accordance with the foregoing methodology), the Wastewater Commission shall cause the Racine Utility to submit to it a report on the advantages and disadvantages of a value engineering study. The Wastewater Commission shall then determine whether or not to conduct such a study.

f. Additional SSP Party Obligations. The Wastewater Commission shall perform all necessary OMR functions with respect to the Sewer Service Facilities, and shall perform all necessary enforcement functions with respect to this Agreement and the Racine Sewer Ordinances, for the mutual benefit of the Parties, and shall use reasonable diligence, in accordance with generally accepted industry standards, to provide high quality, reliable and environmentally acceptable Sewer Service to the SSR Parties in accordance with this Agreement and All Applicable Laws.

g. SSR Party Acceptance of its Sewer Service Requirements. Each of the SSR Parties shall accept Sewer Service from the Racine Utility to the extent of its requirements within the Sewer Service Area, with the exception that Caledonia shall have the option of obtaining sewer service from a non-Anticipated Party or non-Anticipated Parties for all or parts of the following described area: Those portions of Caledonia (as it existed on December 31, 2001) lying east of the west line of Caledonia (as it existed on December 31, 2001) and north (or west) of a line corresponding to the southern right-of-way line of Six Mile Road (or such line extended) from Lake Michigan on the east to the east right-of-way line of CTH "H" on the west, and the east right-of-way line of CTH "H" from the southern right-of-way line of Six Mile Road on the north to the southern right-of-way line of Five Mile Road on the south, and the southern right-of-way line of Five Mile Road (or such line extended) from the east right-of-way line of CTH "H" on the east to the west line of the Caledonia on the west (all of such right-of-way lines and the Caledonia line as they existed on December 31, 2001), and also including the first tier of lots or parcels immediately adjacent to and south (or east) of such latter line but in no event including any area more than 250 feet south (or east) of such line.

### **3.4 Provision of Unplanned Upgraded Sewer Service Facilities.**

a. Provision of Unplanned Upgraded Sewer Service Facilities. From time to time in the future, the Wastewater Commission may propose, consider, plan for, design, construct and otherwise provide, in accordance with this Agreement and All Applicable Laws, such Unplanned Upgraded Sewer Service Facilities as may be reasonably necessary or desirable to comply with this Agreement and All Applicable Laws or to provide high quality, reliable and environmentally acceptable Sewer Service to the SSR Parties. The Unplanned Upgraded Sewer Service Facilities shall be approved by the Wastewater Commission prior to construction.

b. Notice. The Wastewater Commission shall give each Party not less than 40 days prior written notice before deciding to proceed with either the design or construction of any Unplanned Upgraded Sewer Service Facilities. Each such notice shall describe what the Wastewater Commission proposes to do and why. To the extent practicable, each such notice shall describe the proposed timing of the project, state the estimated total cost of the project, and state what portion of such total cost it estimates will be the responsibility of each SSR Party. The Wastewater Commission shall review and consider any written comments received from any of the Parties within the notice period before making its decision regarding design or construction of the project. The Wastewater Commission shall give each Party not less than 40 days prior written notice before approving any proposed Cost of Service Study or Cost of Service Cost-Based Allocation with respect to any such project. The Wastewater Commission shall give prompt written notice to each Party of any decision it makes regarding the design or construction of any such project, or its approval of any related Cost of Service Study or Cost of Service Cost-Based Allocation.

### **3.5 Minor Unplanned Upgraded Sewer Service Facilities.**

Notwithstanding Section 6.2 of this Agreement, the Wastewater Commission may recover the Capital Costs of Minor Unplanned Upgraded Sewer Service Facilities (totaling less than \$500,000 per budget year, which maximum amount shall be adjusted annually, promptly after January 1 and on a compounding basis, in accordance with the percentage increase or

decrease over the past year, if any, of the Construction Cost Index) through Sewer Service rates. In such situation, the Capital Costs of such upgraded facilities shall be treated like Existing Capital Costs, and the Wastewater Commission shall be entitled to recover depreciation and ROI on such costs as a part of the Sewer Service rates. The Wastewater Commission shall promptly give each of the SSR Parties written notice of any decision to treat Capital Costs as Existing Capital Costs pursuant to this Section 3.5.

### **3.6 Provision of Unplanned Expanded Sewer Service Facilities.**

a. Provision of Unplanned Expanded Sewer Service Facilities. The Wastewater Commission may propose, consider, plan for, design, construct and otherwise provide, in accordance with this Agreement and All Applicable Laws, such Unplanned Expanded Sewer Service Facilities as may be reasonably necessary or desirable to comply with this Agreement and All Applicable Laws or to provide high quality, reliable and environmentally acceptable Sewer Service to the SSR Parties. The Unplanned Expanded Sewer Service Facilities shall be approved by the Wastewater Commission prior to construction.

b. Condition Precedent to Allocation or Required Payment/Exception. With respect to any such Unplanned Expanded Sewer Service Facilities that are proposed or considered by the Wastewater Commission, a condition precedent to the Wastewater Commission's obligation to provide capacity allocation in any such facilities to a SSR Party, and to the obligation of any such SSR Party to pay its fair proportionate share of the Capital Costs of such facilities (except as is otherwise specifically provided in Section 3.7 of this Agreement with respect to Required Unplanned Sewer Service Facilities), shall be the agreement of such SSR Party to accept a specified amount of capacity in such facilities and to pay its fair proportionate share of the Capital Costs of such facilities in accordance with this Section 3.6.

c. Banked Allocated Capacity. The Wastewater Commission may purchase Banked Allocated Capacity in any Unplanned Expanded Sewer Service Facilities. The Capital Costs of any such Banked Allocated Capacity may be included in Sewer Service rates to the SSR Parties; provided, however, that if such costs are put in rates, the Wastewater Commission shall credit the proceeds of any future transfer of such Banked Allocated Capacity to Sewer Service rates in accordance with Section 5.3 of this Agreement.

d. Cost of Service Cost-Based Allocation. The Wastewater Commission shall prepare or cause to be prepared an appropriate Cost of Service Cost-Based Allocation relating to the allocation of the costs of any Unplanned Expanded Sewer Service Facilities. Except as is otherwise specifically provided in this Agreement, the cost of such Cost of Service Cost-Based Allocation shall be deemed to be an OMR cost. The Capital Costs of any Unplanned Expanded Sewer Service Facilities shall be allocated to each SSR Party which is financially participating in the provision of such expanded facilities (including the Wastewater Commission, if it is purchasing Banked Allocated Capacity), in proportion to its share of the new expanded capacity, by class of such capacity (e.g. treatment capacity, conveyance capacity, or conveyance capacity at a particular location in a particular Interceptor), which shall be consistent with the specified

amount of capacity of each class which such Party has agreed to accept and pay for pursuant to this Section 3.6.

e. **SSR Party Proposals/Limitations.** Any of the SSR Parties may propose to the Wastewater Commission that it provide Unplanned Expanded Sewer Service Facilities to one or more of the SSR Parties. The Wastewater Commission shall notify each of the Parties in writing not less than 90 days prior to deciding any such request. Each SSR Party may comment on such request by written notice to the Wastewater Commission during the notice period. Notwithstanding any other provision of this Agreement, the Wastewater Commission shall not be obligated at any time to provide Unplanned Expanded Sewer Service Facilities, or to plan for or take any other actions in contemplation of providing such facilities, unless: (1) the need for such expanded facilities is not brought about primarily by the failure of the SSR Party or Parties requesting them reasonably to eliminate or control excessive Infiltration and Inflow; and (2) either 75% of the existing total Allocated Treatment Capacity or 75% of the total Allocated Conveyance Capacity is being utilized, or as a complete alternative to satisfying either of such usage conditions, three-quarters of the members of the Wastewater Commission vote in favor of providing specified Unplanned Expanded Sewer Service Facilities which SSR Parties are desirous of purchasing. If less than three SSR Parties are interested in purchasing substantial new allocated capacity, the Wastewater Commission may charge the facilities planning costs to such Parties.

f. **Notice.** The Wastewater Commission shall give each Party not less than 90 days prior written notice before deciding to proceed with either the design or construction of any Unplanned Expanded Sewer Service Facilities. Each such notice shall describe what the Wastewater Commission proposes to do and why. To the extent practicable, each such notice shall describe the proposed timing of the project, state the estimated total cost of the project, and state what portion of such total cost it estimates will be the responsibility of each SSR Party. The Wastewater Commission shall review and consider any written comments received from any of the Parties within the notice period before making its decision regarding design or construction of the project. The Wastewater Commission shall give each Party not less than 40 days prior written notice before approving any proposed Cost of Service Study or Cost of Service Cost-Based Allocation with respect to any such project. The Wastewater Commission shall give prompt written notice to each Party of any decision it makes regarding the design or construction of any such project, or its approval of any related Cost of Service Study or Cost of Service Cost-Based Allocation. In connection with the provision of any Unplanned Expanded Sewer Service Facilities, the Wastewater Commission shall calculate the adjusted total Allocated Treatment Capacity or Allocated Conveyance Capacity of each class of allocated capacity which is held by each SSR Party (and by the Racine Utility, if applicable), shall prepare and approve a dated insert to this Agreement pursuant to Subsection 2.8n of this Agreement, modifying Sections 2.4, 2.7, 5.1 and 5.2 of this Agreement, as appropriate, and shall notify each Party in writing of the approval of such insert and include a copy of such insert in such notice.

### **3.7 Capital Costs of Required Unplanned Expanded Sewer Service Facilities To Be Treated Like Those of Unplanned Upgraded Sewer Service Facilities.**

The Capital Costs of any Required Unplanned Expanded Sewer Service Facilities may be recovered from the SSR Parties by the Wastewater Commission, at its option, as though

such facilities were Unplanned Upgraded Sewer Service Facilities, in accordance with Section 6.2 of this Agreement. The capacity of any such expanded facilities shall be allocated by the Wastewater Commission pursuant to a Cost of Service Cost-Based Allocation, in accordance with Subsection 3.6d of this Agreement.

### **3.8 1998 PSC Decision.**

Except as otherwise specifically provided in this Agreement, the Wastewater Commission may, but is not required to, continue the practices approved by the PSC in the November 19, 1998 decision in Docket No. 9307-SR-101 and, to the extent that the Wastewater Commission provides maintenance or other services to Racine or any of the other SSR Parties or non-Party Anticipated Parties with respect to their individual Collection Facilities, or provides other services by Side Contract, it shall conform to the requirement of the 1998 PSC Decision that it accurately account for the actual costs involved in providing such services.

### **3.9 Compliance With Applicable Laws.**

Notwithstanding any other provision of this Agreement, all Parties shall comply with, and may take any actions reasonably calculated to comply with, All Applicable Laws, including, without limitation, its WPDES permit and the Wisconsin Administrative Code.

## **IV. SEWER SERVICE AREA**

### **4.1 Sewer Service Area Expansion.**

From and after the date on which the Wastewater Commission notifies the other Parties that the conditions for proceeding with construction of the Future Growth Work improvements included in the First Group of Improvements have been satisfied, in accordance with Section 3.2 of this Agreement, each of the Parties shall use reasonable diligence to obtain, and shall fully support and cooperate with the other Parties in obtaining, all necessary or desirable approvals to accomplish the expansion of the 2001 Sewer Service Area so as to be coextensive with the 1998 Facilities Planning Area, shown on Exhibit J, to the extent of the Designated SSR Territory of the SSR Parties but not including in such expansion the territory of any non-Parties. The Wastewater Commission shall, upon request(s) of a SSR Party, actively support the expansion of the Sewer Service Area coextensive with the Designated SSR Territory of such SSR Party which will be served by the Sewer Service Facilities in accordance with a DNR-approved Facilities Plan, to the extent such Party has purchased capacity pursuant to this Agreement. Upon the written request of any SSR Party, the Racine Utility shall support the approval of a compensatory adjustment in the configuration of the Sewer Service Area with respect to such Party's Designated SSR Territory, provided that the sewerage usage can be accommodated satisfactorily in the conveyance facilities of the Sewer Service Facilities.

### **4.2 No Sewer Service Outside of the Sewer Service Area.**

Except as provided in Section 4.3, below, no Party may provide sanitary sewerage service, making any use of the Sewer Service Facilities, to any property or any portion thereof located outside the Sewer Service Area.

#### **4.3 No Discharge of Hauled Wastewater Except at Treatment Facility.**

No Party may discharge, or permit or allow to continue any discharge of Hauled Wastewater to the Sewer Service Facilities or to any sewerage facility that is tributary to the Wastewater Treatment Plant; provided, however, that the Racine Utility may permit the discharge of any Hauled Wastewater at its Wastewater Treatment Facility in accordance with Section 3.1 of this Agreement.

### **V. CAPACITY ALLOCATION, TRANSFER AND UTILIZATION**

#### **5.1 Treatment Capacity Allocations.**

In conjunction with construction of the First Group of Improvements to the Sewer Service Facilities, the Initial SSR Parties (and the Wastewater Commission, if it is purchasing Banked Treatment Capacity Allocation) shall receive Treatment Capacity Allocations, subject to the associated flow and loading limits, set out on the attached Exhibits E1, E2, etc., one per Party, which are incorporated by reference. As each New Party joins the Agreement, the Wastewater Commission shall prepare and approve an insert to this Section 5.1 on which is set out the Treatment Capacity Allocation of such New Party, including the associated flow and loading limitations to which it is subject. Such Treatment Capacity Allocations may be modified from time to time in accordance with this Agreement. The only way in which a Party can increase any of its flow or loading limits is to acquire additional Allocated Treatment Capacity; provided, however, that, as of the Effective Date of this Agreement, a relatively small amount of unattached Average Daily BOD Loading (508 pounds), Peak Monthly BOD Loading (610 pounds), Average Daily TSS Loading (1,015 pounds), Peak Monthly TSS Loading (1,330 pounds), Average Daily P Loading (10 pounds) and Peak Monthly P Loading (12 pounds) for future Class II - Industrial User development is available pursuant to Subsection 5.3d of this Agreement.

In return for such Treatment Capacity Allocation, each SSR Party shall timely pay to the Wastewater Commission its proportionate share of the Capital Costs of the total Treatment Capacity Allocation created by construction of the First Group of Improvements, or any subsequent improvements to the Sewer Service Facilities, as applicable, pursuant to a Cost of Service Cost-Based Allocation approved by the Wastewater Commission in accordance with this Agreement.

#### **5.2 Conveyance Capacity Allocations.**

In conjunction with construction of the First Group of Improvements to the Sewer Service Facilities, the Initial SSR Parties (and the Wastewater Commission if it is purchasing Banked Conveyance Capacity Allocation) shall receive the Conveyance Capacity Allocations set out on the attached Exhibit F, one per Party, which are incorporated by reference. As each New Party joins the Agreement, the Wastewater Commission shall prepare and approve an insert to this Section 5.2 on which is set out the Conveyance Capacity Allocation of such New Party. Such Conveyance Capacity Allocations may be modified from time to time in accordance with this Agreement.

In return for such Conveyance Capacity Allocation, each SSR Party receiving such an allocation shall timely pay to the Wastewater Commission, its proportionate share of the Capital Costs of the Conveyance Capacity Allocation created by construction of the First Group of Improvements, or any subsequent improvements to the Sewer Service Facilities, as applicable, pursuant to a Cost of Service Cost-Based Allocation approved by the Wastewater Commission in accordance with this Agreement.

### **5.3 Transfer of Capacity Allocation.**

a. Transfers of Capacity Allocation Subject to Certification by Wastewater Commission. To the extent that a Party has not utilized all of its Treatment Capacity Allocation, or all of its Conveyance Capacity Allocation, it may sell or otherwise permanently transfer, or may lease, loan or temporarily transfer, to any other SSR Party or to the Wastewater Commission, all or any portion of such unused capacity allocation, in Standard Transfer Units (to the extent the transferring Party has a Standard Transfer Unit) on any terms and conditions mutually agreeable to such Parties; provided, however, that before any such transfer becomes effective, the Wastewater Commission shall certify that the proposed transfer (or some specified portion thereof) satisfies the requirements of this Section 5.3. Such certification shall not be unreasonably delayed or denied. The Wastewater Commission may impose reasonable conditions on any such certification to the extent needed to ensure compliance with the requirements of this Section 5.3.

b. Restrictions/Certification. The Wastewater Commission shall certify any proposed permanent transfer of capacity allocation, or any portion thereof, if the capacity allocation which the transferring Party is seeking to transfer is not utilized and is otherwise available for transfer, and if the transferee Party has sufficient Allocated Conveyance Capacity in the downstream Sewer Service Facilities, and/or there is sufficient unallocated and unused conveyance capacity available in such facilities, to accommodate any anticipated Wastewater discharges of such Party without problems. The Wastewater Commission shall certify any proposed temporary transfer of capacity allocation, or any portion thereof, if the proposed transfer is for a specific period of time, if the transferee Party will clearly have acquired at least as much additional allocated capacity of the same class as is involved in the temporary transfer by the end of such period, and no problems will result from the proposed temporary transfer. The Parties involved in the proposed transfer may submit with their application any supporting information or materials they believe are relevant. The Wastewater Commission may require the Parties to the proposed transfer to submit to it any information, which it believes, is necessary to evaluate the proposed transfer. In determining whether the allocated capacity that is proposed to be transferred is unused and available for transfer, the Wastewater Commission shall subtract from the transferring Party's allocated capacity of the appropriate class the maximum historical Average Daily Flow of the transferring Party with respect to Treatment Capacity Allocation (or at any higher Average Daily Flow associated with the maximum historical Average Daily BOD, TSS, P Loading or with the maximum historical Peak Hourly Flow or Peak Daily Flow of such Party), and the maximum historical Peak Hourly Flow of such Party with respect to Conveyance Capacity Allocation, unless the Wastewater Commission determines that any such maximum

historical figure is no longer the operative figure for such Party in light of substantial subsequent modifications to such Party's Collection Facilities or to the volume or nature of the Wastewater discharged to such Collection Facilities, in which event the Wastewater Commission shall subtract the adjusted maximum historical figure that the Wastewater Commission has determined to be appropriate. The Wastewater Commission shall then further subtract from such Party's allocated capacity a reasonable projection of the future utilization by such Party of its allocated capacity as a result of approved Sewer Extensions and connections, which are not yet in use or not yet fully utilized. The Wastewater Commission shall further subtract from such Party's allocated capacity a reasonable projection, with respect to Peak Hourly Flow, of additional Infiltration and Inflow to be anticipated in the event of the maximum storm event which cannot lawfully be Bypassed by such Party. The resulting difference shall be the amount of allocated capacity, which is unused and available for transfer.

c. **Transfer of Banked Allocated Capacity.** Subject to the requirements stated in this Section 5.3 and not earlier than 120 days after the Effective Date of this Agreement, the Wastewater Commission shall transfer any Banked Allocated Capacity which it has acquired to any SSR Party desiring to acquire it, on a first-come-first-served basis, upon written request from the acquiring SSR Party specifying the specific amount and class of allocated capacity it desires to purchase. Upon receipt of such a request, the Wastewater Commission shall promptly determine and notify the requesting Party in writing of the purchase price and related terms and conditions for the purchase of such allocated capacity. The Wastewater Commission shall recover any initial cash payment for such capacity, plus any debt service payments (principal and interest) associated with such allocated capacity, plus any payments made by the Wastewater Commission for the upgrading of such capacity, plus the carrying costs of such capacity (at the average State Local Government Investment Pool rate for such carrying period). Additionally, the acquiring SSR Party shall assume, by agreement, any remaining debt service obligation for or associated with such allocated capacity, if possible, or make other satisfactory arrangements with the Wastewater Commission for the payment of such remaining obligation. To the extent the Wastewater Commission has put any such costs in the Sewer Service rates, the payment received for the transfer shall be credited to Sewer Service rates, including any depreciation and/or ROI since the date on which such costs were put in Sewer Service rates. No such transfer shall be effective until the Wastewater Commission has certified the transfer in accordance with Subsection 5.3b, above.

d. **Transfer of Unattached Loading Capacity.** The Racine Utility shall transfer to any SSR Party actually needing additional Average Daily BOD Loading, Peak Monthly BOD Loading, Average Daily TSS Loading, Peak Monthly TSS Loading, Average Daily P Loading or Peak Monthly P Loading for actual use by a Class II - Industrial User, free of charge on a first-come-first-served basis, the unattached loading capacity set out in Section 5.1 of this Agreement.

e. **Notice and Comment Regarding Proposed Transfer.** Promptly after receiving a request for certification of a proposed transfer of capacity allocation, the Wastewater Utility shall give written notice of such proposed transfer to each of the other Parties. Any Party may submit to the Wastewater Commission and to each of the other Parties written comments or suggestions regarding the proposed transfer, within 40 days after such notice, which the Wastewater Commission shall review and consider in evaluating the proposed transfer.



f. Notice of Resulting Modifications. The transferring Party shall immediately notify the Wastewater Commission in writing upon the transfer of any capacity allocation taking effect. The Wastewater Commission shall promptly prepare and approve dated inserts to this Agreement modifying Sections 5.1, 5.2, 2.4 and/or 2.7 of this Agreement, in accordance with the procedures of Subsection 2.8o of this Agreement, and give each Party written notice of the transfer and include a dated copy of the inserts, which shall automatically become a part of this Agreement without amendment.

g. Payment of Evaluation Costs/Accounting. The transferee Party shall pay to the Wastewater Commission, within 60 days of written demand, the costs incurred by the Wastewater Commission (or the Racine Utility) in evaluating and processing any proposed or mandated transfer of allocated capacity, which payment shall be credited to the OMR account; provided, however, that in the event a proposed transfer is evaluated by the Wastewater Commission but not made, for whatever reason, the proposed transferring Party shall pay all such costs.

h. Transfer Involving Clean Water Fund Financing. The Parties acknowledge that in the event of a transfer of allocated capacity financed by means of Clean Water Fund Financing, the transferring Party may not be able to assign the loan and may need to continue making any principal and interest payments on that portion of the Clean Water Fund Financing associated with the transferred capacity, and the transferee Party may not be able to participate in the Clean Water Fund Financing with respect to such transferred capacity.

i. Annual Notice of Maximum Historical Parameters for Each SSR Party. Annually, at a convenient time reasonably promptly after January 1 of each year, the Wastewater Commission shall cause the Racine Utility to notify each SSR Party in writing of its actual (or adjusted as appropriate) maximum historical Peak Hourly Flow, Daily Peak Flow, Peak Monthly Flow, Average Daily BOD Loading, Peak Monthly BOD Loading, Average Daily TSS Loading, Peak Monthly TSS Loading, Average Daily P Loading and Peak Monthly P Loading (and any imputed higher Average daily Flow associated with the maximum historical flow or loading figures of such Party in light of the Standard Transfer Unit ratios), and its actual (or adjusted as appropriate) maximum historical Peak Hourly Flow at each location relevant to Allocated Conveyance Capacity. (See Subsection 5.3b of this Agreement for applicable methodology.)

j. Annual Notice of Unmetered Cross-Boundary Usage. Not later than July 31, 2002, and annually thereafter, the SSR Parties having arrangements with other Parties or non-Parties regarding the unmetered Wastewater flow of one Party or other entity included within the metered Wastewater flow of a second Party or other entity, which should be taken into account in determining the Net Discharge of Wastewater of each such Party or entity and the maximum historical usage parameters of such Party or entity under Subsection 5.5g of this Agreement shall jointly submit to the Wastewater Commission an agreed upon statement setting out the Average Daily Flow, Peak Hourly Flow, Peak Daily Flow, Peak monthly Flow, Average Daily BOD Loading, Peak Monthly BOD Loading, Average Daily TSS Loading, Peak Monthly TSS Loading, Average Daily P Loading and Peak Monthly P Loading to be deducted from or added to the Metered Wastewater usage of each Party or other entity. In the absence of such agreed-

upon jointly submitted information, the Wastewater Commission shall be free to rely upon the Metered Wastewater flow data and sampling data.

#### **5.4 Utilization of Allocated Capacity/Limitations.**

Subject to all applicable provisions of this Agreement, each Party possessing allocated capacity shall have the right to use such capacity in accordance with this Agreement. Without limitation, however, the exercise of such right shall be conditioned on the fact that such Party does not have an uncured default under Section 12.16 of this Agreement or is otherwise conforming with All Applicable Laws. Racine, the Racine Utility and the Wastewater Commission shall have no responsibility for arrangements necessary for the conveyance of any Party's Wastewater to the Sewer Service Facilities.

#### **5.5 Limitations on Capacity Allocation Utilization Above Certain Thresholds.**

a. 80% of Allocated Capacity. Whenever any Party has actually utilized 80% or more of any class of capacity allocation under this Agreement (or of any associated flow or loading limitation set out in Section 5.1 of this Agreement or in any associated exhibit), the Wastewater Commission shall promptly notify such Party in writing. At such time, the discharging Party shall have the option of engaging with the Wastewater Commission in a joint planning project, at the cost of the discharging Party, to determine whether and under what circumstances there is any reasonable possibility that the Wastewater discharged by such Party will exceed such Party's capacity allocation, and if so what actions can reasonably be taken by such Party to eliminate any such reasonable possibility. The principal burden of formulating the plan shall be on the discharging Party, but the Wastewater Commission shall fully cooperate with and assist such Party. In the event that the discharging Party and Wastewater Commission agree upon a plan which will eliminate any such reasonable possibility of exceeding the Party's allocated capacity (e.g. the elimination of excess Infiltration and Inflow, or the construction of an appropriately-sized equalization basin, or the purchase of additional allocated capacity), and the discharging Party satisfactorily implements such plan, the Wastewater Commission shall waive any restrictions imposed under the following subsections unless and until the metered discharge data subsequently demonstrates that the plan is not working as anticipated or that there are unanticipated problems.

b. 90% of Allocated Capacity. Whenever a Party has actually utilized 90% or more of any class of capacity allocation under this Agreement (or of any associated flow or loading limitation set out in Section 5.1 of this Agreement or in any associated exhibit), the Wastewater Commission shall promptly notify the discharging Party in writing. From and after that time, additional Sewer Extensions tributary to the particular facility in which the discharging Party has the capacity allocation in question shall not be permitted until such time as the discharging Party has satisfactorily demonstrated to the Wastewater Commission that full use of any proposed Sewer Extension will not exceed the Party's allocated capacity (or any associated flow or loadings limitation set out in Section 5.1 of this Agreement or in any associated exhibit) using the methodology set out in Subsection 5.3b of this Agreement. Upon reasonable written notice, at any time after a SSR Party has discharged Wastewater to the Sewer Service Facilities at a level at or above 90% of such Party's allocated capacity (or of any associated loading or

flow limit), the Wastewater Commission may survey or test the Collection Facilities of such Party for excess Infiltration and Inflow, and such Party shall grant to the Racine Utility access to all locations in such Party's collection system deemed appropriate by the Racine Utility for such purpose. Such Party shall pay the Wastewater Commission the cost of any such survey or testing within 60 days of written notice of such cost.

c. 95% of Allocated Capacity. Whenever a Party has actually utilized 95% or more of any class of capacity allocation under this Agreement (or of any associated flow or loading limitation set out in Section 5.1 of this Agreement or in any associated exhibit), the Wastewater Commission shall promptly notify the discharging Party in writing. From and after that time, no additional Sewer Extensions tributary to the facility in which the discharging Party has the capacity allocation in question shall be permitted by the Wastewater Commission, and no additional customer connections tributary to the particular facility in which the discharging Party has the capacity allocation in question shall be permitted by the discharging Party, until such time as the discharging Party has satisfactorily demonstrated to the Wastewater Commission that full use of any proposed customer connection or Sewer Extension will not exceed the Party's allocated capacity (or any associated flow or loadings limitation set out in Section 5.1 of this Agreement or in any associated exhibit) using the methodology set out in Subsection 5.3b of this Agreement, including without limitation consideration of future connections of sewered properties that are currently vacant or underutilized. The Wastewater Commission shall expeditiously consider any proposed demonstration by a Party that additional customer connections will not exceed the Party's allocated capacity or any associated flow or loadings limitation.

d. Exceeding Allocated Capacity. Whenever a Party has actually exceeded any capacity allocation under this Agreement (or any associated flow or loadings limitation set out in Section 5.1 of this Agreement or in any associated exhibit), the Racine Utility shall notify the Party in writing. From and after that time, no additional Sewer Extensions or customer connections tributary to the particular facility in which the discharging Party has the capacity allocation in question shall be allowed under any circumstances until such time as (1) modifications have been made to such Party's sewerage system and/or operations, and the results of such modifications have been in effect for a sufficient period of time to demonstrate satisfactorily that any reasonable possibility of exceeding the Party's capacity allocation in the future has been eliminated, using the methodology set out in Subsection 5.3b of this Agreement, or (2) until such time as the Party has acquired sufficient additional allocated capacity to accomplish the same result.

e. Wastewater Commission May Formulate and Require Implementation of Its Own Plan. If the discharging Party has not, within 90 days after notice that it has exceeded its capacity allocation, formulated and made substantial progress toward the implementation of a plan, which is satisfactory to the Wastewater Commission, to eliminate any reasonable possibility of further exceeding such Party's capacity allocation, the Wastewater Commission may, in addition to any other remedy, formulate its own plan to achieve such goal and require the Party to implement such plan.

f. Costs Incurred Under This Section 5.5. The Wastewater Commission shall charge all costs incurred by it or the Racine Utility in connection with the performance of its duties pursuant to Subsections 5.5b-e, above, including without limitation actual reasonable and itemized engineering and attorneys' fees against the SSR Party or Parties causing it to incur such costs. Such Party or Parties shall pay such costs within 60 days of receiving an invoice.

g. Annual Notice of Allocated Capacity Usage. Annually, at a convenient time reasonably promptly after January 1 of each year, the Wastewater Commission shall cause the Racine Utility to notify each SSR Party in writing of how much of such Party's allocated capacity (of each class of such capacity), and how much of each associated flow or loadings limitation, it is actually using, based on the maximum historical recorded data, or any adjustment of that data that the Wastewater Commission has approved.

#### **5.6 Prohibitions/Metering Bypasses.**

Except as otherwise provided in Section 5.7 of this Agreement, and except in the case of an Upset, no Party may discharge to the Sewer Service Facilities or to sewerage facilities that are tributary to the Wastewater Treatment Facility: (1) any Net Discharge of Wastewater flows or loadings in excess of the treatment capacity allocated to such Party in Section 5.1 of this Agreement (or in excess of any associated flow or loadings limitations set out in Section 5.1 of this Agreement); or (2) in excess of any conveyance capacity allocated to such Party in Section 5.2 of this Agreement; or (3) in excess of the unused available capacity of any conveyance facility of the Sewer Service Facilities where capacity is not allocated by this Agreement. No Party shall avoid discharging Wastewater to the Sewer Service Facilities by Bypassing Wastewater except under circumstances and to the extent permitted by applicable DNR and/or EPA regulations and/or an Upset. All Bypasses shall be metered by the SSR Party, and any SSR Party that Bypasses Wastewater shall give written notice to the Wastewater Commission within 48 hours stating the date, duration and quantity of any Bypass and whether it was authorized by applicable DNR and EPA regulations.

#### **5.7 Racine Utility Authorization and Acceptance of Discharges in Excess of Capacity Allocation.**

The Racine Utility may authorize and accept a specific discharge from a SSR Party in excess of such Party's allocated capacity under circumstances where the Racine Utility reasonably believes that no serious harm or adverse effects will result. Such authorization and acceptance shall be promptly reported to the Wastewater Commission in writing and shall not have the effect of waiving or avoiding a breach of this Agreement (other than possibly avoiding a breach because of unauthorized Bypassing), and shall not be a defense to any remedy available to the Wastewater Commission, or any aggrieved Party other than mitigation of damages. Any discharge in excess of a Party's allocated capacity must be authorized from the Racine Utility in advance of such discharge, but such authorization may be requested orally. Any such oral authorization shall promptly be confirmed in writing by the Racine Utility.

## **5.8 Costs of Exceeding Capacity Allocations.**

Whenever a SSR Party discharges Wastewater to the Sewer Service Facilities in excess of the capacity allocated to such Party, the Wastewater Commission shall charge such Party for any fine, penalty or forfeiture incurred by Racine, the Racine Utility or the Wastewater Commission and may assess any costs incurred by any of them (including without limitation, for employees, equipment and materials) as a result of such discharge. The discharging Party shall pay any such charges within 60 days of receipt of a fully itemized invoice.

## **5.9 Enforcement by the Wastewater Commission.**

The Wastewater Commission shall enforce the provisions of Article V of this Agreement fairly and equitably for the mutual benefit of all of the Parties.

## **5.10 Flow Measurement And Sampling.**

a. Metering Flows/Related Equipment. The actual flow of Wastewater from each SSR Party shall be measured at metering stations which shall be installed to measure accurately the total volume and peak flows of Wastewater discharged to the Sewer Service Facilities of the Racine Utility by such SSR Party and to transmit the flow information to the Racine Utility; provided, however, that appropriate correction shall be made for remote flow equalization pre- and post-equalization. Each SSR Party shall furnish, install, and maintain appropriate flowmeter equipment, at appropriate locations and at its cost, after written approval by the Racine Utility of the proposed equipment and the location and manner of its installation, which approval shall not be unreasonably withheld. The Racine Utility shall furnish, install and maintain a SCADA system and related telemetry equipment to communicate with the Wastewater Treatment Facility control center. The cost of such SCADA and telemetry equipment shall be treated as an OMR expense. Additionally, each SSR Party shall furnish, install and maintain appropriate flowmeter equipment to measure accurately the volume of Wastewater Bypassed by such Party, after review and approval in writing by the Racine Utility of the proposed equipment and the location and manner of its installation. Such approval shall not be unreasonably withheld. Thereafter, such Party may Bypass wastewater only at such metered location(s).

b. Grab Samples and Monitoring. Upon reasonable oral notice to any SSR Party, the Racine Utility may from time to time take such grab samples of Wastewater and conduct such monitoring at any of the metering stations as it deems appropriate, in its reasonable discretion, to determine the waste loadings or waste characteristics of such Party's Wastewater or to verify the flow rate of such Wastewater. Upon reasonable oral notice to any SSR Party, the Racine Utility may take such samples or conduct such monitoring as it deems appropriate, in its reasonable discretion, at any locations in such Party's Collection Facilities deemed appropriate by the Racine Utility, to identify sources of potentially toxic or hazardous Wastewater discharges or other discharges not in compliance with federal, state or local pretreatment requirements, or not in compliance with applicable permits or agreements, or Wastewater discharges that are otherwise not compatible with the Sewer Service Facilities.

c. Metering. Each SSR Party shall maintain all metering equipment in good operating condition, and shall replace such equipment as necessary (subject to review and approval by the Racine Utility, as though such replacement equipment were original equipment). All such metering equipment shall be calibrated at least every six months by a qualified technician in accordance with the meter manufacturer's recommended procedures. The cost of such calibration and adjustment shall be paid by the SSR Party. Each SSR Party shall be responsible for establishing and maintaining the required service schedule and shall notify the Racine Utility in writing of any scheduled meter calibration, not less than 10 days prior to such calibration, so that the Racine Utility can coordinate verification of the accuracy of the SCADA system and related telemetry equipment. Each such SSR Party shall obtain and promptly provide to the manager of the Racine Utility's Wastewater Treatment Facility a copy of a calibration report summarizing the results of each calibration.

## **VI. PAYMENT FOR SEWER SERVICE BY SSR PARTIES**

### **6.1 Payment for Future Growth Work Improvements.**

a. Future Growth Work Improvements. Each of the SSR Parties shall timely pay to the Wastewater Commission, up front and within 60 days after written demand, or in accordance with a noticed payment schedule approved by the Wastewater Commission (or to the State, as appropriate, to the extent that the SSR Parties obtain individual Clean Water Fund loans pursuant to which the proceeds of such loans are disbursed to pay such Capital Costs directly), its proportionate share of the Capital Costs of the Future Growth Work improvements included in the First Group of Improvements, allocated to it in accordance with the Cost of Service Cost-Based Allocation attached to this Agreement as Exhibit G and incorporated by reference, as updated or modified by the Wastewater Commission from time to time, in accordance with this Agreement. The SSR Parties each acknowledge that the actual costs of the 1998 Recommended Improvements to the 2001 Sewer Service Facilities, including the Future Growth Work improvements, will not be known until after such improvements are completed, and that there will need to be a reallocation of costs if less than all of the 1998 Recommended Improvements to the 2001 Sewer Service Facilities are actually constructed as the First Group of Improvements or if there is any change in the allocation of capacity.

b. Clean Water Fund Financing. Each of the SSR Parties shall be entitled to participate proportionately in the benefit of Clean Water Fund Financing of the Future Growth Work Improvements, if such financing can be obtained, either in the form of individual subsidized interest-rate loans to the various SSR Parties (the Parties' preference), or in the form of a single subsidized interest rate loan to Racine or the Wastewater Commission in which the individual SSR Parties can participate in accordance with this Agreement. (Alternatively, however, each of such Parties may utilize local borrowing or other sources of funds to finance its share of the construction of the project.) All Clean Water Fund Financing proceeds obtained by the SSR Parties for Future Growth Work improvements shall be applied to the Capital Costs of the Future Growth Work Improvements. Any portion of a Party's share of the Future Growth

Work not covered by Clean Water Fund Financing proceeds shall be paid by such Party directly when due.

c. Notice/Disposition of Financing Application. The Wastewater Commission shall give prompt written notice to each of the Parties of the disposition of the Racine Utility's application for Clean Water Fund Financing for the First Group of Improvements, including, without limitation, the amount of such financing available, the principal terms and whether individual loans will be made to the Parties or a single loan will be made to Racine or the Wastewater Commission.

d. Financing Not Available. If Clean Water Fund Financing is not available for the First Group of Improvements, or if the amount of such available financing is less than 75% of the total estimated total project costs of such improvements, each SSR Party shall give written notice to the Wastewater Commission and each of the other Parties within 40 days after the date of the Wastewater Commission's notice pursuant to Subsection 6.1c, above, whether it still desires to purchase all or some specified portion of the capacity allocated to it in Sections 5.1 and 5.2 of this Agreement or in associated exhibits. Within such 40-day period, the Wastewater Commission shall give notice to each of the other Parties whether and to what extent it intends to proceed with construction of the Deficiency Work improvements.

e. Potential Reduction in Project/Procedure. In the event it appears that the construction project for the First Group of Improvements will need to be reduced, the Wastewater Commission shall promptly schedule a meeting with representatives from each of the Parties regarding the preparation of inserts to modify the capacity allocations of the Parties under Sections 5.1, 5.2, 2.4 and/or 2.7 of this Agreement and the preparation of an adjusted Cost of Service Cost-Based Allocation in connection with any adjustment of the First Group of Improvements, to be provided. Not later than 15 days after such meeting, unless the Wastewater Commission votes to postpone such cutoff to a date certain, the Wastewater Commission shall give written notice to each of the other Parties of its final determination with respect to the amount of the Deficiency Work improvements to be constructed as part of the First Group of Improvements. Failure to give such notice shall be interpreted as a commitment by the Wastewater Commission to proceed with construction of all of the Deficiency Work improvements. Not later than 15 days after such meeting, unless the Wastewater Commission votes to postpone such cutoff to a date certain, each of the SSR Parties shall give written notice to each of the other Parties of the amount of allocated capacity of each class that it will purchase in the Future Growth Work improvements to be constructed as part of the First Group of Improvements. Failure to give such notice shall be interpreted as a commitment by the SSR Party to proceed with the purchase of the allocated capacity set out for such Party in Sections 5.1 and 5.2 of this Agreement. Such notices shall be binding on the Parties giving them. Not later than 15 days after the cutoff date for such notices from the SSR Parties, unless the Wastewater Commission votes to postpone such cutoff to a date certain, the Wastewater Commission shall determine and give written notice to each of the other Parties of its final determination of the amount of allocated capacity in the Future Growth Work improvements to be constructed as part of the First Group of Improvements. The Wastewater Commission shall then proceed promptly to prepare and approve appropriate inserts modifying this Agreement in light of the Parties' commitments, in accordance with Section 2.8o of this Agreement, and shall proceed to prepare

or cause to be prepared, approve and give notice of an appropriate adjusted Cost of Service Cost-Based Allocation, in accordance with Subsection 2.8o of this Agreement. The Wastewater Commission shall then proceed to provide the First Group of Improvements, as adjusted, pursuant to this Section 6.1.

f. Management Agency/Clean Water Fund Financing. The Wastewater Commission shall serve as the designated management agency under the Clean Water Fund program for the design and construction of the Project (unless that is not legally possible, in which case Racine, through the Racine Utility and the Wastewater Commission shall serve in such capacity). This designation requires the Wastewater Commission (or Racine) to assist each of the SSR Parties in applying for Clean Water Fund Financing assistance, award all contracts and oversee the design and construction. Each of the SSR Parties hereby appoints the Wastewater Commission (or Racine, under the circumstances set out above) as its agent for project management responsibilities under the Clean Water Fund program, but only for such purpose. These responsibilities shall include, but shall not be limited to, preparing and letting of contracts, submitting invoices, applying for and receiving disbursements of Clean Water Fund Loan proceeds and expending such proceeds on project costs by paying contractors on behalf of each of the SSR Parties. As the designated management agency, the Wastewater Commission (or Racine) shall comply with all requirements of Wisconsin Administrative Code, Chapter NR 162 to ensure the adequate construction of the proposed improvements. Each Clean Water Fund loan disbursement made by the Wastewater Commission (or Racine) with respect to the Future Growth Work shall be allocated to each of the SSR Parties (and the Wastewater Commission, if appropriate) in accordance with their proportionate percentages of the Future Growth Work component of the First Group of Improvements, and to the Wastewater Commission with respect to the Deficiency Work component of the First Group of Improvements, as set out on Exhibit B. The Wastewater Commission shall maintain and provide to each of such Parties records of such disbursements and expenditures sufficient to allow each such Party to comply with its obligations under its financial assistance agreement with the State of Wisconsin Clean Water Fund. Such records shall be audited annually in accordance with Section 12.1 of this Agreement.

g. Individual Clean Water Fund Loans. In the event individual Clean Water Fund loans are obtained in connection with construction of the First Group of Improvements, each SSR Party shall timely make all required principal and interest payments and shall be solely responsible for repayment of its own Clean Water Fund loan.

h. Single Clean Water Fund or Other Loan. In the event that the Wastewater Commission or Racine must undertake a single Clean Water Fund loan in connection with construction of the First Group of Improvements, or must undertake any local borrowing to finance the project, each of the SSR Parties shall timely pay to the Wastewater Commission (or Racine) its proportionate share of such debt and any related debt service costs on a payment schedule approved by the Wastewater Commission. The Wastewater Commission shall promptly notify each SSR Party in writing of any payment schedule received from the State with respect to a Clean Water Fund loan, or from any other financing source, and shall attach to such notice a copy of such payment schedule. The Wastewater Commission shall notify each SSR Party in writing, as early as practicable, of the amount due from each SSR Party with respect to each payment due to the State or to another financing source and the due date thereof. The due



date by which the Wastewater Commission shall be entitled to receive such payments from the SSR Parties shall be 15 days prior to the date on which the Wastewater Commission's (or Racine's) payment is due to the State or another financing source.

i. **Untimely Payment/Limitation of Rights.** In addition to any other consequence of an SSR Party breaching its obligation to make timely payments under Subsections 6.1g and h, above, any Party which is currently in default of its obligation to make timely payment to the Wastewater Commission (or Racine) of its share of a payment owed by the Wastewater Commission to the State pursuant to a Clean Water Fund loan, or its share of a payment owed as a result of a local borrowing under Subparagraph 6.1g and h, above, shall be subject to the same limitations of rights as are set out in Section 2.2 of this Agreement.

j. **Warranties/Compliance with Clean Water Fund Loan Agreement.** Each SSR Party warrants to each of the other SSR Parties that it shall comply with all terms and conditions of any Clean Water Fund loan agreement with the State of Wisconsin in connection with the First Group of Improvements.

k. **Warranties/No Action to Cause Breach.** In the event the SSR Parties obtain individual Clean Water Fund loans in connection with construction of the First Group of Improvements, Racine and the Wastewater Commission each warrants to each of the SSR Parties that they shall not take any action which would result in any of such Parties breaching the terms and conditions of its own Clean Water Fund loan agreement with the State.

l. **Acknowledgement/Individual Clean Water Fund Loans.** In the event the SSR Parties obtain individual Clean Water Fund loans in connection with construction of the First Group of Improvements, Racine and the Wastewater Commission acknowledge that the SSR Parties have authority to take certain actions regarding construction of the First Group of Improvements or operation or maintenance of the construction project if actions by Racine or the Wastewater Commission make a violation of such Parties' Clean Water Fund loans likely. Examples of actions such Parties may be authorized to take include, but are not limited to, the following: (1) to ensure adequate construction and completion of the project; (2) to prevent erosion during construction of the project; (3) to provide and maintain adequate construction inspection of the project; (4) to assure that the project is efficiently operated and maintained; (5) to administer the user charge system and sewer use ordinance; and (6) to provide timely sewerage service to all users within the delineated Sewer Service Area. The Parties shall fully cooperate with one another in this regard to avoid any disruption of or confusion relating to the construction project.

## **6.2 Payment for Unplanned Upgraded Sewer Service Facilities.**

With respect to any Unplanned Upgraded Sewer Service Facilities, each SSR Party shall timely pay the Wastewater Commission, up front and within 60 days after written demand, or in accordance with a noticed payment schedule approved by the Wastewater Commission, its fair proportionate share of the Capital Costs of such upgraded facilities in accordance with its percentage share of total Allocated Treatment Capacity, as set forth in or derived from Section 5.1 of this Agreement, as updated by the Wastewater Commission from

time to time in accordance with this Agreement, and a Cost of Service Cost-Based Allocation prepared by or for the Racine Utility and approved by the Wastewater Commission, except as provided in Subsection 6.1(i), above, with respect to individual Clean Water Fund loans, and except to the extent that the Wastewater Commission chooses to treat the Capital Costs of Minor Unplanned Upgraded Sewer Service Facilities as Existing Capital Costs in accordance with Section 3.5 of this Agreement.

### **6.3 Payment for Unplanned Expanded Sewer Service Facilities.**

With respect to any Unplanned Expanded Sewer Service Facilities, each SSR Party shall timely pay the Wastewater Commission, up front and within 60 days after written demand, or in accordance with a noticed payment schedule approved by the Wastewater Commission, its fair proportionate share of the Capital Costs of such facilities in accordance with its percentage share of the Allocated Treatment Capacity and/or any Allocated Conveyance Capacity created by such facilities or improvements, in accordance with a Cost of Service Cost-Based Allocation prepared by or for the Racine Utility and approved by the Wastewater Commission, except as provided in Subsection 6.1, above, with respect to individual Clean Water Fund loans.

### **6.4 Sewer Service Rates and Other Sewerage Service Charges/Budget.**

a. Rate Methodology. Each of the SSR Parties shall pay to the Racine Utility, for Sewer Service provided under this Agreement, Sewer Service rates and other sewerage service charges which shall be established by the Wastewater Commission on an annual basis as hereinafter provided. Such rates shall provide for recovery by the Wastewater Commission, from each such Party, of such Party's fair proportionate share of the annual costs of OMR, Existing Capital Costs, and Future Capital Costs that are treated like Existing Capital Costs in accordance with this Agreement (e.g. the Capital Costs of the Deficiency Work and the Capital Costs of Minor Unplanned Upgraded Sewer Service Facilities that are treated by the Wastewater Commission like Existing Capital Costs) in accordance with the methodology set forth on the attached Exhibit H, which is incorporated by reference, for the particular budget year. The Wastewater Commission shall be entitled to recover depreciation and ROI relating to Existing Capital Costs or to any Capital Costs treated like Existing Capital pursuant to this Agreement. The wholesale Sewer Service rates and charges imposed by the Wastewater Commission on the Outlying SSR Parties shall be the same as those imposed upon Racine, except as may be required by law or may reflect distinctly different services, and the costs of OMR work performed by the Racine Utility on the Collection Facilities of Racine or any other Parties or non-Party Anticipated Parties (including, without limitation, equipment, materials and labor) which shall be kept strictly separate from the costs of OMR work on the Sewer Service Facilities, shall be separately accounted for in the annual audit conducted pursuant to Section 12.1 of this Agreement, and shall be charged to the Parties or non-Parties receiving such services. The Wastewater Commission may fine tune the application of this basic rate methodology to fit new facts and circumstances, as they develop over time, in accordance with this Agreement, but the Wastewater Commission shall not change the basic methodology without the written consent of the SSR Parties. The Wastewater Commission may charge individual SSR Parties for the costs of dealing with individual problems relating to that Party alone, e.g. the discharge of substantial

quantities of oil or grease which clogs an Interceptor. The Wastewater Commission shall not individually charge a SSR Party for unpaid pretreatment charges incurred by an Industrial user within its territory.

b. Annual Budget. The Wastewater Commission shall prepare and approve an annual budget, which shall include all anticipated revenue and expenditures for the budget year. The Wastewater Commission shall prepare a Cost of Service Study, from time to time as appropriate, for the purpose of determining unit treatment costs for all Wastewater components requiring treatment. The unit costs shall be applied as a surcharge to Wastewater, which exceeds the parameters of Normal Domestic Strength Wastewater. Projected revenues from the surcharges shall be applied as a credit to total budgeted expenditures prior to calculation of volumetric rates. The Wastewater Commission shall also develop billable flow projections for the corresponding billing year. The budget and flow projections shall be used as the basis for Sewer Service rates. In addition, the Wastewater Commission shall compute a rate base for purposes of calculating the annual ROI on Existing Capital Costs and any Future Capital Costs that are treated like Existing Capital Costs in accordance with this Agreement.

c. Rate Base. The rate base for purposes of determining the ROI on Existing Capital Costs (and on Future Capital Costs that are treated like Existing Capital in accordance with this Agreement) shall be equal to total Existing Capital Costs (including all Future Capital Costs that are treated like Existing Capital Costs in accordance with this Agreement), reduced by the following: (1) grants or contributions in aid of construction net of accumulated amortization of such grants or contributions, and (2) accumulated depreciation to date. The annual ROI shall be equal to the rate base multiplied by a percentage, determined in the reasonable discretion of the Wastewater Commission, which shall not exceed 8%. Depreciation and ROI shall not be recovered on any portion of the Capital Costs for which the SSR Parties have paid directly or for which they have contractually assumed responsibility for direct payment of their proportionate shares. The initial ROI on Deficiency Work shall not exceed 2% and can be changed in the future by majority vote of the Wastewater Commission.

d. Billing/Payment. The Wastewater Commission shall bill each of the SSR Parties quarterly, and each of such Parties shall timely pay to the Wastewater Commission the billed amount in full within 30 days after the date of billing. A SSR Party's account shall be considered delinquent if not timely paid. Delinquent payments shall be subject to a monthly late payment charge in accordance with Subsection 6.5a of this Agreement.

e. Advanced Capital Reserve Account Funds. In the event the Wastewater Commission advances Capital Reserve Account Funds to meet OMR costs or any Capital Costs that are put in rates, the Wastewater Commission may add to the next convenient quarterly billing a cost-of-money charge for the use of such Capital Reserve Account Funds computed on a monthly basis using 5% per year simple interest. The Wastewater Commission shall adjust this interest rate promptly after January 1, and notify each of the SSR Parties of such adjustment, in accordance with Subsection 2.8n of this Agreement, based on the average Wisconsin Local Government Investment Pool rate for the preceding calendar year.

f. Reconciliation of Budget. Any differences between actual revenues, expenses and amounts budgeted at the end of the budget year shall be reconciled, system-wide, in the next year's budget. An example of the reconciliation method is set forth in Exhibit H.

g. Delivery to Parties of Proposed Budget. Copies of the proposed annual Wastewater Commission budget shall be delivered to all Parties by the Wastewater Commission upon becoming available, and in any event no later than October 5 of each year.

h. Retail Rates. The Wastewater Commission may impose on retail Sewer Service customers within Racine, or within other SSR Parties where the Racine Utility provides retail services, such retail charges as it may determine, in its reasonable discretion; provided, however, the retail charges, when considered in conjunction with wholesale payments made for such service by the municipality in which the retail customers are located, shall result in the payment of charges not less than the rates imposed on SSR Parties under this Agreement after adjustment for any extra services provided to such municipality and/or retail customers. In no event shall the SSR Parties be required to subsidize Sewer Service provided to such retail customers. The Racine Utility may, upon approval of the Wastewater Commission and with the agreement of any other Party (whether entered into before or after the Effective Date of this Agreement), treat retail Sewer Service customers of such Party as its own retail customers in circumstances where it is not cost-effective to meter the flows of such customers or for any other reason.

#### **6.5 Default in Making Timely Payment.**

a. Late Payment Charge. Payments due to Racine or the Wastewater Commission under Article VI of this Agreement shall be considered delinquent if not timely paid when due. Delinquent payments shall be subject to a late monthly payment charge corresponding to 6 percentage points above the prime rate (the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks, as published in the Wall Street Journal).

b. Condition Precedent to Action or Complaint. Timely payment in full of any amount due to Racine or to the Wastewater Commission from any RSP Party under Article VI of this Agreement, and all related late payment charges, within 15 days after notice of default, shall be a condition precedent to such Party (or any Related Party) commencing or maintaining a legal action or a complaint to the PSC relating to this Agreement or to any act or failure to act of Racine or the Racine Utility or the Wastewater Commission under or with respect to this Agreement, and shall also be a condition precedent to receiving initial Sewer Service, or to receiving any Treatment Capacity Allocation or Conveyance Capacity Allocation, or to constructing any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or to receiving any approval for plans on the construction of any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or to making new connections to any existing tributary to the Wastewater Treatment Facility, or to making any new connections to any existing sewerage facilities that are tributary to the Wastewater Treatment Facility.

## VIII. REVENUE SHARING

### 7.1 Revenue Sharing.

#### a. General Provisions.

(1) Each RSP Party shall participate in a revenue sharing plan whereby property tax revenues are shared in accordance with this Agreement, pursuant to Wis. Stat. § 66.0305, based upon the model described in Sections 7.1 and 7.2 of this Agreement.

(2) The Wastewater Commission shall calculate the amount of Revenue Sharing Payments that are due and payable by RSP Parties in the following calendar year, and shall notify each RSP Party of such amounts in writing, and shall include with such notice copies of appropriate source documents, on or before July 1 of each year (or as soon thereafter as is reasonably practicable in the first year of this Agreement). Such Revenue Sharing Payment amounts shall be based upon the current year's municipal budgets and the prior year's municipal populations and equalized property values. For example, the 2003 payments calculated in 2002 shall be based on each RSP Party's 2002 municipal budget (used to determine the taxes levied in 2001 and collected in 2002), 2001 population and 2001 equalized property value. Revenue Sharing Payments shall be billed by the Wastewater Commission in the year following their calculation, on or before January 15, and shall be paid to the Wastewater Commission by each RSP Party that is a Net Contributing Party on or before March 1 of such year.

(3) The Wastewater Commission shall collect the Revenue Sharing Payments and distribute payments to each of those RSP Parties that is determined to be a Net Recipient Party within 15 days of receipt of payments from all Net Contributing Parties; provided, however, that in the event that a Revenue Sharing Payment from a Net Contributing Party is late, the Wastewater Commission shall proceed to make what payments it can to the Net Recipient Parties from the Revenue Sharing Payments that have been collected, and if there is more than one Net Recipient Party, such payments shall be proportional to the amounts due to such Net Recipient Parties.

#### (4) Term

(a) The base term of the revenue sharing portion of this Agreement, as to each RSP Party with respect to which this Agreement becomes effective on or prior to August 31 of a particular year, shall be 30 payment years, with the first Revenue Sharing Payment to be made in the first year after this Agreement becomes effective as to such RSP Party and terminating on December 31 of the 30<sup>th</sup> year after this Agreement becomes effective as to such RSP Party (e.g. with respect to the RSP Parties as of the Effective Date of this Agreement, the first Revenue Sharing Payment shall be made in 2003, and the base term of the revenue sharing portion of the Agreement shall terminate on December 31, 2032).

(b) The base term of the revenue sharing portion of this Agreement, as to each RSP Party with respect to which this Agreement becomes effective after August 31 of a particular year, shall be 30 payment years, with the first Revenue Sharing Payment

to be made in the second year after this Agreement becomes effective as to such RSP Party and terminating on December 31 of the 31<sup>st</sup> year after this Agreement becomes effective as to such RSP Party.

(c) Notwithstanding Subsections 7.1a(4)(a) and (b), above, the term of the revenue sharing portion of this Agreement, as to each RSP Party, with respect to territory which is acquired by such RSP Party from a non-Party and which is within the 1998 Facilities Planning Area, shall be 30 payment years, with the first Revenue Sharing Payment relating to such acquired territory to be made in accordance with Subsection 7.2 c(1). The revenue sharing portion of this Agreement shall terminate with respect to each acquired territory on December 31 of the 30<sup>th</sup> year in which a Revenue Sharing Payment relating to such territory is made or received.

(d) Notwithstanding Subsections 7.1a(4)(a) and (b), above, the term of the revenue sharing portion of this Agreement as to each RSP Party, with respect to territory which is acquired by such RSP Party from another RSP Party after this Agreement has become effective to such other RSP Party and which is within the 1998 Facilities Planning Area, shall be 30 payment years, including any years in which the other RSP Party made or received Revenue Sharing Payments relating to such territory. However, the acquiring RSP Party shall make its first Revenue Sharing Payment with respect to such territory in accordance with Subsection 7.2c(1). The revenue sharing portion of this Agreement shall terminate with respect to each acquired territory on December 31 of the 30<sup>th</sup> year in which a Revenue Sharing Payment relating to such territory is made or received.

(e) Notwithstanding Subsections 7.1a(4)(a) and (b), above, the term of the revenue sharing portion of this Agreement, as to each RSP Party, with respect to territory of the RSP Party which is outside of the 1998 Facilities Planning Area but within an area to which the Wastewater Commission has undertaken to provide Sewer Service, shall be 30 payment years, with the first Revenue Sharing Payment relating to such territory to be made in accordance with Subsection 7.2c(1), following the Wastewater Commission's undertaking to provide service; provided, however, that if the RSP Party acquires the territory in question from a RSP Party who has already made or received one or more Revenue Sharing Payments relating to such territory, the methodology of Subsection 7.1a(4)(d), above, shall apply. The revenue sharing portion of this Agreement shall terminate with respect to such acquired territory on December 31 of the 30<sup>th</sup> year in which a Revenue Sharing Payment relating to such territory is made or received.

(f) When any payment period, determined in accordance with Subsections 7.1a(4)(c),(d), or (e) above, extends beyond the initial term of the payment period for the RSP Party in question, the annual payment amount shall be calculated using the "Share EV in Planning Area" factors in Table 2 (Table 2 appears at the end of this Section 7.1), in the same manner as a payment for a community lying only partially within the 1998 Facilities Planning Area.

(g) A Successor RSP Party and its predecessor shall be given credit, with respect to any particular portion of its territory, for the years in which any RSP Party made or received Revenue Sharing Payments relating to such territory.

(5) The boundaries of the area within which the revenues are to be shared pursuant to this Agreement are the Designated Territories of the respective RSP Parties, as shown with respect to Initial Parties on Maps E1, E2, etc., described in Section 2.4 of this Agreement or in related attached Exhibits E1, E2, etc., or as shown with respect to New or Successor Parties on Map E, Map E, etc., described in Section 2.7 of this Agreement or in related attached Exhibits E, E, etc.

b. Calculation of Revenue Sharing Payments.

(1) Obtain Municipal Data—The Revenue Sharing Payments shall be determined based upon the data identified in Tables 1a and 1b (Tables 1a and 1b appear at the end of the text of this Section 7.1 and, for purposes of illustration, show the data on which hypothetical 2001 Revenue Sharing Payments would be calculated, i.e. year 1999 equalized valuation and population and year 2000 municipal budget), which shall be obtained from the following sources:

(a) Net Population—The data used shall be the prior year final municipal population estimate as reported annually in “Official Population Estimates” by the Wisconsin Department of Administration, Division of Energy and Intergovernmental Relations, Demographic Services Center and the estimated population of any detention facilities located within the municipal boundary of the RSP Party as reported by the Department of Administration, Division of Energy and Intergovernmental Relations, Demographic Services Center. The net population of each RSP party shall be determined by subtracting the estimated population of any detention facilities located within the municipal boundary of the RSP Party from the prior year final municipal population estimate. Adjustments shall be made for the population of the following facilities in existence as of the Effective Date of this Agreement for each year that such facilities are in existence at the end of the prior calendar year: Racine Youthful Offenders (Racine), Racine County Jail (Racine), and the Racine Correctional Facility (Sturtevant). At such time as an additional detention facility is located within the municipal boundary of a RSP Party, the population of such facility shall be deducted annually in the same way from such Party’s estimated population.

(b) Total Equalized Value (TID in) (including Tax Increment Districts)—The data used shall be the prior year full value as reported in the report entitled “Town, Village, and City Taxes”, published annually by the Wisconsin Department of Revenue, Division of State and Local Finance.

(c) Total Equalized Value (TID out)(excluding Tax Increment Districts)—The data used shall be the prior year full value excluding TIF as reported in the report entitled “Town, Village, and City Taxes”, published annually by the Wisconsin Department of Revenue, Division of State and Local Finance.

(d) Total Commercial / Industrial Tax Base—The Total Commercial / Industrial Tax Base shall be the sum of the prior year commercial equalized value and the prior year manufacturing equalized value of each RSP Party. This data shall be obtained from the “Statement of Merged Equalized Values”, published annually by the Wisconsin Department of Revenue.

(e) Share of EV in Planning Area – For RSP Parties whose designated RSP territory is completely within the 1998 Facilities Planning Area and for Caledonia the percentage applied shall be 100%, except as may be required by Subsection 7.1a(4)(f), above. For RSP Parties whose designated RSP territory is not completely within the 1998 Facilities Planning Area (except Caledonia) and for RSP Parties to which Subsection 7.1a(4)(f) applies, percentages as per Table 1 b shall apply and the following additional information as officially reported by the local municipality will be required for computing Revenue Sharing Payments for lands within the planning area: the total equalized (full) value of all property in the 1998 Facilities Planning Area, the total commercial and manufacturing equalized value for all property in the 1998 Facilities Planning Area and the total base year commercial and manufacturing equalized value for all property in the 1998 Facilities Planning Area (base year data is not required in relation to Subsection 7.1a(4)(f) calculations).

(f) Base Year Commercial / Industrial Tax Base—The Base Year Commercial / Industrial Tax Base shall be the sum of the 1999 commercial equalized value and the 1999 manufacturing equalized value of each RSP Party. These values shall be as reported in the “Statement of Merged Equalized Values, 1999” published by the Wisconsin Department of Revenue.

(g) Total Local Tax Levy (TID out)—The Total Local Tax Levy (TID out) shall be the sum of the local taxes as reported on each municipality’s annual “Statement of Taxes” for the current year. Local taxes for purposes of this computation shall include “Special District Taxes”, “Other Special Purpose District Taxes”, and “All Other Town, Village or City Taxes”.

(2) Calculate Revenue Sharing Payments – The Revenue Sharing Payments for the RSP Parties shall be calculated in accordance with Table 2 incorporating data from Tables 1a and 1b and according to the formulas indicated in the second column of Table 2, entitled “Data/Formulas”. (Table 2 appears at the end of the text of this Section 7.1 and, for purposes of illustration, shows how hypothetical 2001 Revenue Sharing Payments would be calculated.) The following additional provisions shall be incorporated.

(a) Fixed (negotiated) percentages – “Percentage Base Year Commercial / Industrial Shared (K)”, “Percentage New Commercial / Industrial Shared (P)”, “Distribution Factor (V)”, and “Discount Percentage on Revenue Sharing Transfer (AK)” are negotiated numbers and shall remain fixed at the percentages identified in Table 2, unless otherwise specified in this Article VII.

(b) Guaranteed Base Equalized Value Per Capita (solved) shall be set each year at a figure that ensures that the sum of “Calculated Total Revenue Transfer,” (computed in Step 8 of Table 2) for the Anticipated RSP Parties shown in Table 2 equals zero.



(c) Determination of Net Contributing Party or Net Recipient Party (Step 8 of Table 2) – If the “Calculated Total Revenue Transfer” in Step 8 of Table 2 for a given party is negative, the RSP Party is a Net Contributing Party and shall make a payment of tax revenues to the Wastewater Commission according to the procedures set forth in this section. If the “Calculated Total Revenue Transfer” in Step 8 of Table 2 for a given Party is positive, the RSP Party is a Net Recipient Party and shall receive a payment from the Wastewater Commission according to the procedures set forth in this section.

(d) The portion of the “Calculated Total Revenue Transfer” allocated to tax incremental district value shall be determined by first multiplying the “Total Local Tax Rate” by the “TID Value Increment” and then subtracting the tax revenues that would be generated from the “TID Value Increment” times the “Effective Local Tax Rate”. This portion of “Calculated Total Revenue Transfer” shall be referred to as the “TID Revenue Transfer.”

(e) The “Discount Percentage on Revenue Sharing Transfer” associated with the territory of the following RSP Parties or Anticipated Parties, as of December 31, 2001, shall be 28 %: Racine, Mt. Pleasant, Caledonia. The “Discount Percentage on Revenue Sharing Transfer” associated with the territory of the following RSP Parties or Anticipated Parties, as of December 31, 2001, shall be 50%: Sturtevant, Elmwood Park, Wind Point, North Bay, Yorkville, Raymond, Somers. These discount rates shall carry forward with respect to such territory, notwithstanding reorganizations or reconfigurations of such Parties or Anticipated Parties, in accordance with Subsection 7.2 c(2) below.

(f) Sturtevant shall not be required to pay revenue sharing for properties within Sturtevant TID No. 3 until after such time as TID No. 3 is terminated pursuant to Wis. Stat. §66.1105. Calculations of “TID Revenue Transfer” shall commence on such parcels within TID No. 3 upon execution of this Agreement by Sturtevant and these calculations will cease with the Revenue Sharing Payments payment schedule at the end of the 30 payment years. Revenue Sharing Payments on these parcels shall commence with the year in which taxing units receive property tax receipts from the properties currently located within the Sturtevant TID No. 3. This exemption shall be accomplished in the following manner: the “Portion of TID Revenue Transfer Exempted (A1)” for Sturtevant shall equal that portion of the “TID Revenue Transfer (AH)” related to Sturtevant TID No. 3 as it and the related project plan existed on January 1, 2002.

(g) The amount of the payments owed to the Net Recipient Parties shall be equal to the sum of the payments collected from the Net Contributing Parties. If there is only one Net Recipient Party, that Party’s payment shall be equal to the sum of the payments collected from the Net Contributing Parties. If there is more than one Net Recipient Party, each Net Recipient Party shall receive a share of the total amount of payments collected from the Net Contributing Parties equal to that Net Recipient Party’s proportional share of the sum of the positive values in the “Calculated Total Revenue Transfer (AE)” for each Net Recipient Party.

c. Waiver of Revenue Sharing Payments Not Provided for in this Agreement. Racine shall not require from the RSP Parties any revenue sharing payments (other than the Revenue Sharing Payments described in this Agreement) for: the provision of sewer service after the term of this Agreement (as determined in accordance with Section 7.1a(4) above); the provision of municipal water service; or, conceptually, the provision of any other service to the Designated Territories of the RSP Parties and Racine hereby waives any right to collect the same.

## **7.2 Additional Rules for Calculating Revenue Sharing Payments.**

### **a. Missing Anticipated RSP Parties.**

(1) In the event that all of the Anticipated RSP Parties listed in Section 2.1 of this Agreement have not joined this Agreement, or in the event that the revenue sharing portion of this Agreement has expired with respect to some but not all of the Outlying RSP Parties, the Wastewater Commission shall obtain the necessary information from or relating to each of the Anticipated RSP Parties that are not Parties to this Agreement and shall use such information, together with the information reported by the RSP Parties, to work the formula set out in Section 7.1 of this Agreement and to determine the payments owed to the Net Recipient Parties and to be collected from and paid by the Net Contributing Parties.

(2) Until such time as Yorkville, Raymond, or Somers becomes a RSP Party, and the Designated RSP Territory for such Party is determined, the territory used for each in calculating Revenue Sharing Payments under Section 7.1 of this Agreement shall be the portion of Yorkville, Raymond, and Somers, respectively, that is located within the 1998 Facilities Planning Area.

### **b. Investigation of Data.**

(1) It is the intent of this Agreement that the data used in the calculations within the Revenue Sharing model are correct and accurate. Numbers from any of the data sources that are reported and/or published but are incorrect or inaccurate or do not reflect the property transfers as of January 1 of the year of calculation shall not be used in the calculations. The Wastewater Commission shall have administrative authority, in consultation with the affected Parties, to investigate the accuracy of the data received pursuant to Section 7.1 and to take such actions as may be necessary to obtain or derive accurate data.

(2) Any data input to the Revenue Sharing model that is disputed, as noticed in writing to the Wastewater Commission prior to July 1 of the second year following calculation of any particular Revenue Sharing Payments, shall cause the Revenue Sharing Payments to be recalculated using the correct data, if the disputed item is found to be in error by the Wastewater Commission. The Wastewater Commission shall promptly notify each RSP Party in writing of the corrected payment amounts and any amounts owed by the RSP Party as a result of the recalculation, including both additional payments and reimbursements of overpayments. Payments of any such amounts shall be made within 60 days of such notice.

### **c. Effect of Annexations or Other Changes in the Boundaries of RSP Parties.**

(1) Properties shall be included in the Revenue Sharing model based upon the RSP Party in which the territory was located as of January 1 of the year of calculation.

(2) In the event that a RSP Party entitled to a particular "Discount Percentage on Revenue Sharing Transfer (AK)" under this Agreement annexes or otherwise acquires territory from a RSP Party or a non-Party Anticipated Party (or detaches territory to a RSP

Party or a non-Party Anticipated Party) that is entitled to a different discount rate, or in the event that two RSP Parties or a RSP Party and a non-Party Anticipated Party entitled to different discount rates consolidate their territories, the rate of discount originally applicable to any territory involved in such a reorganization or reconfiguration shall continue to be applicable to such territory thereafter.

(3) The “Discount Percentage on Revenue Sharing Transfer (AK)” for each Net Contributing Party that is affected by Section 7.2c(2) of this Agreement shall be a weighted average percentage. This weighted average discount percentage (carried out to the fifth decimal place) shall be calculated annually by the Wastewater Commission and distributed, as a written notice to the RSP Parties, along with the supporting documentation in accordance with the timing requirements set forth in Subsection 7.1a(2). For the affected Party, this weighted average discount percentage shall annually replace the negotiated “Discount Percentage on Revenue Sharing Transfer (AK)” identified in Subsection 7.1b(2)(a) and shall be the sum of the equalized property value of all transferred territory times the percentage discount applied to such territory pursuant to Subsection 7.2 c(2), above, plus the pre-transfer equalized property value times the Net Contributing Party’s pre-transfer percentage discount, divided by the total equalized property value of the Net Contributing Party.

d. Racine’s Discretion to Waive Revenue Sharing Payments with Respect to Individual TIDs Under Certain Circumstances. At any time during the term of this Agreement, Racine, in its sole discretion, may waive, wholly or in part, Revenue Sharing Payments from any particular RSP Party that are attributable to property within a particular TID if Racine determines that proposed development within such TID is desirable and may not take place in the absence of such a waiver. Any such waiver shall be approved by written resolution adopted by the Racine Common Council. In the event of such an approved waiver, Racine shall promptly notify the affected RSP Party and the Wastewater Commission in writing of the waiver and its terms and include a copy of such resolution with such notice. No such waiver shall constitute providing Sewer Service on more favorable terms and conditions than the terms and conditions under which similarly situated Parties receive Sewer Service under this Agreement. Such waiver may be accomplished, at the discretion of Racine, through waiving payments on all or part of the value of the TID through the procedures in Step 8 of Table 2 (“Portion of TID Revenue Transfer Exempted”) or through waiving the full impact of all or part of the incremental value of the TID through the procedure in Step 4 of Table 2 (“Exempted TID Valuation”).

e. Project Costs. In the event that the law is changed so that Revenue Sharing Payments cannot legally be qualified as tax increment project costs, such change shall not be considered a Material Change of Circumstances.

### **7.3 Racine Investment Joint Impact Zone.**

Racine shall spend not less than \$6 million, 2001 net present value at 5% annually, of the total Revenue Sharing Payments that it receives from Mt. Pleasant under this Agreement on Capital projects within the zone depicted on Exhibit I, which is incorporated by reference. All Capital improvements using these funds shall be completed no later than 10 years after the Effective Date of this Agreement. The extension of Oakes Road by the City of Racine shall be undertaken in the same year as Mt. Pleasant’s participation in the reconstruction of

Chicory Road by Racine. All Capital projects undertaken using these funds shall conform to both communities' comprehensive plans.

#### **7.4 Racine Matching Funds For Three Mile Road Improvement.**

Racine shall spend from Revenue Sharing Payments that it receives from Caledonia under this Agreement an amount representing Racine's pro rata share of upgrading and improving Three Mile Road in the vicinity of the boundary between Racine and Caledonia, subject to the condition that Caledonia contemporaneously spends on the project its pro rata share of the cost of the project, or except as otherwise agreed by Racine and Caledonia.

#### **7.5 Default in Making Timely Payment.**

a. Late Payment Charge. Revenue Sharing Payments shall be considered delinquent if not timely paid when due. Delinquent Revenue Sharing Payments shall be subject to a late payment charge in accordance with Subsection 6.5a of this Agreement.

b. Condition Precedent to Action or Complaint. Timely payment in full of any amount due to Racine or the Wastewater Commission from any RSP Party pursuant to Article VII of this Agreement for Revenue Sharing Payments, and all related late payment charges, within 15 days of notice of default, shall be a condition precedent to such Party (or any Related Party) commencing or maintaining a legal action or a complaint to the PSC relating to this Agreement or to any act or failure to act of Racine or the Racine Utility or the Wastewater Commission under or with respect to this Agreement, and shall also be a condition precedent to receiving initial Sewer Service, or to receiving any Treatment Capacity Allocation or Conveyance Capacity Allocation, or to constructing any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or to receiving any approval for plans or the construction of any Sewer Extension or any other sewerage facility tributary to the Wastewater Treatment Facility, or to making any new connections to any existing sewerage facilities that are tributary to the Wastewater Treatment Facility.

### **VIII. CAPPED PAYMENTS FROM CAPITAL RESERVE ACCOUNT FUNDS BY THE WASTEWATER COMMISSION TO RACINE**

#### **8.1 Categories of Potential Payments.**

The Wastewater Commission may approve and make payments to Racine from the Capital Reserve Account Funds of the Racine Utility, pursuant to and in accord with Subsections 66.0811(3) and 66.0821(2)(b) of the Wisconsin Statutes and the PSC Decision, only for the items set out below and not in excess of the maximum amount set out below with respect to each item:

a. Payments at the rate of not more than \$660,000 per year to complete the reimbursement to Racine of \$6,690,407 for Sewer Service assets transferred to the Racine Utility

in 1977. These payments are expected to end in 2007. (As of December 31, 2001, \$3,300,000 of this amount has been paid.)

b. Reimbursement for any equity contributions made by Racine to the Racine Utility or to the Wastewater Commission after the Effective Date of this Agreement, plus reasonable interest, which reimbursement has been approved in advance of payment by the Wastewater Commission.

c. Payment to Racine with respect to the following subsidized regional cultural services and facilities that benefit the Anticipated Outlying Parties:

(1) The shortfall in Racine County funding for the Racine Public Library relating to the cost of serving the Anticipated Outlying Parties that are a city, village or town, in an amount not more than the amount determined in accordance with Section 8.2 or this Agreement.

(2) A share of the Racine subsidy for the Racine Zoological Gardens, in an amount not more than the amount determined in accordance with Section 8.3 of this Agreement; and

(3) A share of the Racine subsidy for the Charles A. Wustum Museum of Fine Arts, in an amount not more than the amount determined in accordance with Section 8.4 of this Agreement.

Except for the foregoing permitted payments to Racine, all Capital Reserve Account Funds shall be maintained and used by the Wastewater Commission for the benefit of the Racine Utility. Notwithstanding the foregoing, the amount of the Capital Reserve Account Funds maintained by the Wastewater Commission shall be reasonable and prudent in light of the needs and circumstances of the Racine Utility and All Applicable Laws and shall be subject to an annual independent audit.

## **8.2 Payments With Respect to Library Services.**

An annual Cost of Service Study shall be developed by the Wastewater Commission prior to July 1 of each year (except to the extent that this is not practicable in the first year of the Agreement) to determine a fair and reasonable maximum transfer of funds from the Wastewater Commission to Racine for services provided by the Racine Public Library to the Anticipated Outlying Parties that are either a city, village or town. These amounts are intended to cover any shortfall in funding from such Anticipated Outlying Parties as determined by comparing the costs to serve residents of such Anticipated Outlying Parties with the proportionate share of funding provided by Racine County to serve residents of such Anticipated Outlying Parties. The maximum allowable amount of the transfer shall be based upon the prior calendar year's circulation records and the prior calendar year's actual expenditures and payment from Racine County, and shall be calculated as follows:

a. Step 1-Determine the Racine County (excluding Racine) funding share as follows: From the prior calendar year's annual report for the Racine Public Library, determine what share of the library circulation to Racine County residents comes from residents of cities, villages and towns exclusive of Racine. (See Section b of Table 3, which appears at the end of the text of this Section 8.2. For purposes of illustration, Table 3 and the following Tables referred to in this Section 8.2 show how the 2001 payment amount is calculated.) Determine each such city, village or town's percentage share of the total circulation to non-Racine residents of Racine County (See Table 3, Section c).

b. Step 2-Determine the net local funding requirement as follows: Obtain the Racine Public Library actual expenditures, and the Racine paid library employees health insurance costs for the prior year. Add the health insurance costs to the library expenditures to obtain the total operating expenditures. (See Table 4, which appears at the end of the text of this Section 8.2.) Reduce total operating expenditures by state and other aids and fines and fees received. Add Racine's annual amortized library building capital cost to obtain the net local funding requirement.

c. Step 3-Determine the Racine County funding shortfall as follows: Multiply the net local funding requirement from Step 2 by the Racine County (excluding Racine) share from Step 1 to determine the Racine County allocated share of library costs based upon use. (See Table 5, which appears at the end of the text of this Section 8.2.) Reduce the allocated Racine County share of costs by the budgeted Racine County funding to obtain the funding shortfall (See Table 5).

d. Step 4-Allocate the funding shortfall as follows: Multiply the funding shortfall, as determined in Step 3, by each such Racine County city, village or town's share of the circulation to non-Racine residents of Racine County calculated in Step 1, above, to determine the maximum payment that can be made to Racine. (See Table 6, which appears at the end of the text of this Section 8.2)

e. Step 5-The maximum payment to Racine shall be the sum of the shares of the funding shortfall allocated to the Anticipated Outlying Parties that are either a city, village or town

f. Future capital costs expended by Racine for upgrades or expansions to the Library Facility shall be amortized over the expected life of the improvements. The annual cost of such improvements shall be added to the net local funding requirements as in Step 2 for the duration of the amortization period.















### **8.3 Payments With Respect to Zoo Services.**

The payment amounts set out below shall be used to determine a maximum transfer of funds from the Wastewater Commission to Racine in recognition of services provided by the Racine Zoological Gardens to the Anticipated Outlying Parties that are a city, village or town. The maximum amount of the transfer shall be limited to \$285,000 for 2002 and shall be increased by 3% per year for 2003, 2004, 2005, 2006 and 2007 with no future increases in subsequent years.

### **8.4 Payments With Respect to Museum Services.**

The payment amounts set out below shall be used to determine a maximum transfer of funds from the Wastewater Commission to Racine in recognition of services provided by the Racine Charles A. Wustum Museum of Fine Arts to the Anticipated Outlying Parties that are a city, village or town. The maximum amount of the transfer shall be limited to \$115,000 for 2002 and shall be increased by 3% per year for 2003, 2004, 2005, 2006 and 2007 with no future increases in subsequent years.

### **8.5 No Challenge By The Outlying Parties.**

The Outlying Parties shall not challenge (and hereby waive any right to challenge) any payments made by the Wastewater Commission to Racine in accordance with this Article VIII.

## **IX. COOPERATION RE LIBRARY SERVICES**

The Parties shall fully support the proposition that Racine County should assume the funding shortfall attributable to the Anticipated Outlying Parties that are a city, village or town with respect to intergovernmental library services so as to eliminate the need for the payments provided for in Subsection 8.1c(1) and Section 8.2 of this Agreement and shall fully cooperate with one another in seeking to encourage Racine County to assume such funding shortfall.

## **X. SEWER ORDINANCE RESPONSIBILITIES**

### **10.1 Sewer Ordinances.**

a. Compliance with Racine Sewer Ordinances. Each Outlying SSR Party, Racine (including the Racine Utility) and the Wastewater Commission shall comply with the Racine Sewer Ordinances, as such Ordinances are amended, supplemented or recreated from time to time, to the extent such ordinances are applicable.

b. Sewer Ordinances To Be Adopted By Outlying OAE Parties. Each Outlying OAE Party shall adopt as part of its own sewer ordinances the provisions of the Racine Sewer Ordinances set out below, as amended, supplemented or recreated from time to time, modifying such provisions only as may be necessary or desirable: (1) to make such provisions applicable to and enforceable by each OAE Party in such Party's Designated OAE Territory, to the extent permitted under applicable law; and (2) to make clear that references in such provisions to the "wastewater utility" or the "utility", or to the "general manager" or the "manager", or to the "board of standards" or to the "board", or to the "wastewater commission" or the "commission", or to the "common council" or to the "council," or to the "city" are references, respectively, to the Racine Utility, or to its General Manager, or to the Racine Board of Standards, or to the Wastewater Commission, or to the Racine Common Council or to Racine, to the extent permitted under applicable law; and (3) to make clear that the requirements, restrictions or prohibitions imposed thereby are enforceable by the Wastewater Commission as well as the SSR Party and that the rights created thereby are exercisable by the Wastewater Commission as well as by the SSR Party, to the extent permitted under applicable law: Sections 98-3 through 98-4, Sections 98-114 through 98-115, Sections 98-124 through 98-137, Subsections 98-143(4) and (5) and Sections 98-150 through 98-152. The OAE Party shall provide in its ordinances for an appeal pursuant to Subsections 98-143(4) and (5) of the Racine Ordinances and shall provide that any Industrial User shall comply with all of the applicable provisions of the Racine Ordinances, including Sections 98-147 through 98-156 as adopted or amended from time to time and including appropriate penalties. Each Outlying OAE Party shall also adopt sewer ordinance provisions permitting it or its Related SSR Party to take the actions required of it under Section 5.5 of this Agreement.

c. Adoption, Effectuation and Enforcement. Each Initial Outlying OAE Party shall adopt the provisions of the Racine Sewer Ordinances and other sewer ordinance provisions specified in Subsection 10.1b, above, modified in accordance therewith, within 90 days after the Effective Date of this Agreement. Each New Outlying OAE Party shall adopt such provisions of the Racine Sewer Ordinances in accordance with Subsection 2.5a(5) of this Agreement. Each Outlying OAE Party shall adopt any amendments, supplements or recreations of such provisions of the Racine Sewer Ordinances within 90 days after written notice of their adoption from Racine, subject to its right under Subsection 10.1h of this Agreement to challenge the validity or enforceability of any such changed provision, and subject to its right under Subsection 10.1f of this Agreement to have any changed provision that alters the Cost Benefit Balance of the Agreement dealt with as a Material Change of Circumstances under Subsection 2.8p and Section 12.7 of this Agreement. After adopting such sewer ordinance provisions, each Outlying OAE Party shall immediately effectuate, and shall thereafter maintain and vigorously enforce, such ordinance provisions.

d. SSR Party Obligations re Industrial Users. No SSR Party shall permit an Industrial User to connect to or discharge to a sewerage facility that is tributary to the Racine Wastewater Treatment Facility unless and until such Industrial User (1) has been issued a Wastewater discharge permit by the Racine Utility, which has neither expired nor been suspended or revoked, unless such requirement has been specifically waived in writing by the Racine Utility, and (2) has entered into any required written pretreatment agreement with the Racine Utility or the Wastewater Commission, which has neither expired nor been suspended or

terminated, unless such requirement has been specifically waived in writing by the Racine Utility or the Wastewater Commission.

e. Enforcement Cooperation. Each SSR Party and OAE Party shall cooperate fully with the Wastewater Commission in enforcing the provisions of the Racine Sewer Ordinances and its own parallel sewer ordinances against Users, in obtaining access to the property of Users for purposes of inspection, sampling or monitoring, and in obtaining access to the records of any User.

f. Amendments of the Racine Sewer Ordinances. In amending or otherwise changing the Racine Sewer Ordinances, Racine shall be guided by the principles set out in Subsection 2.8n of this Agreement. Prior to the adoption of any amendments or other changes to the Racine Sewer Ordinances, other than in an emergency situation, Racine shall give not less than 40 days prior written notice of its intent to amend or otherwise change such ordinances to each of the SSR Parties and to the Wastewater Commission and shall furnish each Party with a copy of the proposed ordinance. Before adopting any such amendment or other ordinance change, Racine shall review and consider any written comments made by the Parties during the notice period. The adoption of any such amendment or other change to the Racine Sewer Ordinances that cause a material alteration of the Cost Benefit Balance of this Agreement, shall be subject to the procedures of Subsection 2.8p, and if the problems are not thereby resolved, to the procedures of Section 12.7 of this Agreement. Racine shall promptly notify the Wastewater Commission and each SSR Party of any amendment to the Racine Sewer Ordinances.

g. Challenging the Racine Sewer Ordinances. Nothing in this Article X shall be deemed to prevent a SSR Party from challenging the validity or enforceability of any provision of the Racine Sewer Ordinances.

### **10.2 Challenge to Validity or Enforceability of Sewer Ordinance.**

In the event that the validity or enforceability of any ordinance that any OAE Party is required by this Agreement to enact, effectuate and enforce, or any part thereof, is challenged in a civil action, or in a notice of claim, or in a complaint to the PSC pursuant to Subsection 66.0821(5) of the Wisconsin Statutes, or in any other formal manner whatsoever, such OAE Party shall promptly notify the Wastewater Commission and Racine of such action, claim or complaint in writing and include in such notice copies of any relevant documents.

### **10.3 Invalid or Unenforceable Sewer Ordinance.**

In the event that any ordinance that any OAE Party is required to adopt, effectuate and enforce by this Agreement is held, adjudged or determined by any court, agency or other governmental authority of competent jurisdiction to be invalid or unenforceable, in whole or in part, such OAE Party shall promptly notify the Wastewater Commission and Racine of such decision, order or judgment in writing, and such OAE Party, Racine, the Racine Utility and the Wastewater Commission shall promptly meet to discuss how Racine or any other OAE Party might satisfy the intent of this Agreement by alternative means, including, without limitation, enacting another ordinance designed to satisfy the court's objections. Racine, the Wastewater

Commission and the OAE Parties shall use their best efforts to find, design and implement a reasonable means of successfully accomplishing the intent of this Agreement.

## **XI. COOPERATION OF RACINE AND THE WASTEWATER COMMISSION WITH CALEDONIA AND MT. PLEASANT RE INCORPORATION AND FIXING BOUNDARIES**

### **11.1 Support for Incorporation.**

Racine and the Wastewater Commission shall fully support any attempts by Caledonia (if Caledonia is a Party) and by Mt. Pleasant to incorporate as a city or village under any applicable Wisconsin law, including but not limited to supporting Mt. Pleasant in the presently pending incorporation proceeding designated as In the Matter of Incorporation Of Lands Comprising The Town Of Mount Pleasant, Case No. 98-CV-0982 (Racine County Circuit Court), and including but not limited to supporting any partial incorporation of Caledonia or Mt. Pleasant that is supported by the governing body of such town. Within 40 days after the date on which this Agreement becomes effective as to Caledonia or Mt. Pleasant, the Racine Common Council and the Wastewater Commission shall each adopt a written resolutions supporting the incorporation of Caledonia (if Caledonia is a Party) and/or of Mt. Pleasant. In addition, Racine and the Wastewater Commission shall each evidence their support of any such proposed incorporation of Caledonia (if it is a party) or Mt. Pleasant, at the reasonable request of the Party seeking incorporation made by written notice with as much lead time as is practicable and in no event with less than 10 days advance notice to Racine and the Wastewater Commission. A copy of any such notice shall also be given to the Racine Mayor. Such support may be evidenced by means of the Racine Mayor and/or other appropriate Racine officials designated by the Mayor, or by the Common Council, or by the Wastewater Commission appearing and making supporting statements at public meetings, providing supporting testimony in proceedings relating to such incorporation, and providing written statements evidencing such full support as appropriate. Statements, positions or actions by individual officials of Racine, not including the mayor, or individual members of the Racine Common Council, not collectively constituting a majority thereof, or individual members of the Wastewater Commission, not collectively constituting a majority thereof, in opposition to or not in full support of the incorporation of Caledonia or Mt. Pleasant shall not be deemed to constitute a breach of this Agreement by Racine or the Wastewater Commission; provided, however, that in the event such individual statements, positions or actions are believed by Caledonia or Mt. Pleasant to be seriously impeding or threatening their efforts to incorporate, they may bring such statements to the attention of Racine and the Wastewater Commission, by written notice, with an extra copy to the Racine Mayor, and Racine and the Wastewater Commission (or the General Manager of the Racine Utility, on its behalf), as appropriate, shall take prompt and reasonable actions to neutralize any adverse impact of any such statements, positions or actions. Racine and Sturtevant shall immediately withdraw their request for a hearing on the incorporation of Mt. Pleasant upon notice from Mt. Pleasant.

### **11.2 No Annexations/Fixing Boundaries.**

Pending the accomplishment of the incorporation of Caledonia (if Caledonia is a Party) or of Mt. Pleasant, Racine shall not annex or otherwise acquire any territory of such a Party without its written consent; and Racine hereby waives any right it might otherwise have to



annex or otherwise acquire any territory of such a Party without its written consent. Racine shall also fully support and cooperate with Caledonia (if Caledonia is a Party) and with Mt. Pleasant in fixing the boundary between Racine and each of such Parties as it existed on July 1, 2001, by means of any appropriate mechanism, including, but not limited to, any statutorily authorized boundary or settlement agreement; provided, however, that Racine shall not be obligated hereby to give up any rights, undertake any obligations, or incur any liability or substantial cost in connection with any such mechanism that is not provided for in this Agreement. A map showing the boundary of Caledonia and Racine as of July 1, 2001 is attached to this Agreement as Exhibit J and is incorporated herein by reference. A map showing the boundary of Mt. Pleasant and Racine is attached to this Agreement as Exhibit J and is incorporated herein by reference. The existing boundaries depicted in Exhibit J shall be incorporated into the following planning documents of the Specified Parties: master plans under Wis. Stat. § 62.23(3), official map under Wis. Stat. § 62.23(6) and a comprehensive plan prepared under Wis. Stat. §66.1001, to the extent such planning documents exist.

### **11.3 Extraterritorial Jurisdiction.**

a. Stormwater Regulation and Control. Caledonia (if Caledonia is a Party) and Mt. Pleasant shall promptly impose by ordinance and thereafter vigorously enforce, in areas that are tributary to Racine, stormwater management restrictions and controls that are at least as stringent as those which Racine imposes on developers and landowners within its own territory, and these Parties shall coordinate efforts to manage stormwater crossing municipal boundaries that are common to any two of them.

b. No Exercise of Extraterritorial Zoning or Platting Jurisdiction by Racine. Caledonia (if it is a Party) and Mt. Pleasant having undertaken in this Agreement to make Revenue Sharing Payments to Racine, so that Racine shares appropriately in the benefits of their development, and having undertaken not to permit Sewer Extensions which are not approved by the Wastewater Commission and to comply with and to adopt and enforce specified provisions of the Racine Sewer Ordinances, and to impose and enforce in areas tributary to Racine stormwater management restrictions and controls that are at least as stringent as those imposed by Racine, and Racine having undertaken in this Agreement to fully support the incorporation of Caledonia (if it is a Party), and Mt. Pleasant, which will eliminate any such extraterritorial jurisdiction, Racine has concluded that it has no further need to exercise extraterritorial zoning and platting jurisdiction in Caledonia (if it is a Party) or in Mt. Pleasant. Therefore, Racine agrees that it shall not exercise its extraterritorial jurisdiction under the Wisconsin platting and zoning statutes, as the same may be constituted from time to time, within Caledonia (if Caledonia is a Party) or within Mt. Pleasant, and hereby waives any right to exercise such extraterritorial jurisdiction.

### **11.4 Duration of Obligations.**

The obligations imposed on Racine and the Wastewater Commission by this Article XI shall continue with regard to Caledonia (if it is a Party) and Mt. Pleasant, respectively, throughout the term of this Agreement until such time as such Party is fully incorporated; provided, however, that the obligations of Racine and the Wastewater Commission under Section 11.1 shall cease as to such Party upon the incorporation of all or part of such Party.

## **XII. MISCELLANEOUS**

### **12.1 Annual Audit.**

The Wastewater Commission shall have a financial audit of the Racine Utility prepared each year by a qualified accounting firm. Such audit shall be prepared in accordance with generally accepted accounting principles as applied to Wastewater utilities and shall, without limitation, determine whether costs and charges incurred or made in connection with Side Agreements are properly allocated and accounted for in accordance with the terms of this Agreement.

### **12.2 Implementation.**

Each of the Parties shall promptly take such actions as may be necessary or desirable to effectuate and implement this Agreement.

### **12.3 Notices.**

a. **Written Notices.** Each notice required by or relating to this Agreement shall be in writing and shall specifically refer to this Agreement by name (the “Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement”) and shall refer specifically to the number of the section(s) or subsection(s) or to the designation of the exhibit(s), map(s) or table(s) to which the notice relates. Any such notice shall be delivered to each notice addressee of the Party receiving the notice by personal delivery (or alternatively, if the address specified for such notice addressee is an office address, by personal delivery during normal business hours to the person apparently in charge of such addressee’s office), or shall be mailed to such addressee by certified mail-return receipt requested, or shall be transmitted to such addressee by facsimile (provided that the notice is mailed the same day by first class mail), at the address stated in Sections 2.4 or 2.7 of this Agreement, as such address may be modified from time to time in accordance with this Agreement. Nothing in this Section 12.3 shall be deemed to require delivery of a notice to any such notice addressee by any particular means, provided that the means used is approved by this Agreement or is approved in writing by the recipient Party. The term “notice period”, used in this Agreement in connection with a notice that is required to be given a specified minimum period of time before a specified action is taken, shall be understood to refer to the period between the time the notice is effectively given and the time the specified action is taken.

b. **Changing Notice Address.** Each Party may, from time to time and as appropriate, change its notice addressees, change its notice address, or add additional addresses for notice by electronic mail or other communications media (which shall be treated like notice by facsimile), by written notice to the other Parties pursuant to this Section 12.3.

c. **Effective Date of Notice.** Each notice shall be effective upon delivery in person, or upon mailing by certified mail-return receipt requested, or two days after mailing by first class mail, or upon facsimile transmission with receipt confirmed, or upon actual receipt without regard to the method of delivery or transmission, whichever occurs first. Any time

period specified by this Agreement in connection with a notice requirement shall be determined with respect to the effective date of the notice unless a different intent is clearly stated.

d. **Emergency Notice.** The Wastewater Commission may reasonably shorten the time for any notice required by this Agreement when necessary to deal with a serious emergency situation; provided, however, that an emergency resulting from a failure of the Wastewater Commission to act promptly in response to circumstances clearly requiring attention shall not qualify as an emergency under this Subsection 12.3d.

e. **Waiver of Notice.** The governing body of any Party shall have authority to waive, in writing, any notice that it is entitled to receive under this Agreement.

#### **12.4 Waiver.**

Except as otherwise specifically provided in this Agreement, right of a Party under this Agreement can only be waived in writing. A waiver on one occasion, or in one set of circumstances, shall not be deemed to be a waiver of such right on any other occasion or in any other circumstances.

#### **12.5 Changing Escalator Index.**

In the event that any escalator index provided for in this Agreement or subsequently selected pursuant to this Section 12.5 is discontinued, or in the event that the methodology used to prepare any such index is materially altered, the Wastewater Commission shall select an alternative escalator index that approximates as closely as possible the results of the prior index, and shall modify this Agreement, without amendment, and notify the other Parties of such modification, all in accordance with Subsection 2.8o of this Agreement.

#### **12.6 Severability.**

In the event that any provision of this Agreement, or any part thereof, is held or determined by a court or agency of competent jurisdiction to be invalid or unenforceable, the balance of this Agreement shall be deemed to be severable and shall survive; provided, however, that such a holding or determination shall invoke the provisions of Subsection 2.8p of this Agreement and, depending upon the action taken by the Wastewater Commission pursuant to Subsection 2.8p, may invoke the provisions of Sections 12.7 and 12.8 of this Agreement.

#### **12.7 Curing Material Changes of Circumstances.**

a. **By Amendment.** Whenever a Material Change of Circumstances cannot be cured or is not cured by the Wastewater Commission in accordance with Subsection 2.8p of this Agreement, this Section 12.7 shall be invoked. In such event, the Wastewater Commission shall promptly schedule a meeting of representatives of the Parties on not less than 10 days prior written notice to begin discussing how best to restructure the Agreement and/or the relationship of the Parties so that the original Cost Benefit Balance agreed to by the Parties in this Agreement, or a reasonable approximation thereof, and the smooth and efficient administration

of this Agreement can feasibly be reestablished and maintained. As between the two, maintaining the Cost Benefit Balance is primary and maintaining the smooth and efficient administration of the Agreement is secondary. The Wastewater Commission shall schedule and conduct meetings of the Parties as often as may be helpful, and the Parties shall use their best efforts (including, but not limited to, holding special meetings) to rapidly find, design and implement a means of successfully accomplishing this purpose, including, but not limited to, the negotiation of appropriate amendments of this Agreement. In doing so, and in any follow-up mediation or arbitration conducted pursuant to this Section 12.7, each Party shall have the obligation to act in good faith in attempting to restore the original Cost Benefit Balance, or a reasonable approximation thereof, and the reasonably smooth and efficient administration of this Agreement.

b. By Mediation. In the event the Parties are not able to reach agreement within 60 days after the initial meeting of the representatives of the Parties, any Party may, by 60-day prior written notice to the others, require submission of such dispute to an impartial mediator, to be selected by the Parties during such 60-day period, for non-binding mediation if the dispute is not resolved during such 60-day period. The Parties participating in any mediation relating to revenue sharing shall be the Wastewater Commission and the RSP Parties. All of the Parties shall participate in any other mediation. The mediator selected shall be the best qualified individual the Parties can find to mediate their differences regarding how best to accomplish the purpose set out above in Subsection 12.7a. Within 30 days after the mediation notice, each Party to the mediation shall notify the other Parties in writing of its nomination of up to two disinterested potential mediators, together with appropriate background information regarding each. Not later than 60 days after the mediation notice, the Wastewater Commission shall conduct a meeting of representatives of the Parties, on not less than 20 days prior written notice, to select the mediator. If the Parties to the mediation are unable to agree upon a mediator by unanimous vote, the mediator shall be selected from the panel of potential mediators nominated by the Parties. The mediator shall be selected by use of a modified alternate strike method, as follows: Each Party or each group of Related Parties shall have a single vote to cast in each round of strikes against the nominated mediators. (If Related Parties cannot agree on how to cast their single vote, they shall cast such vote in even fractional shares.) In each successive round of strikes, the nominated mediator(s) with the greatest number of strikes shall be eliminated. In the event that the last two or more nominated mediators repeatedly receive the same number of strikes, the choice between the remaining nominated mediators shall be made by the flip(s) of a coin. The Parties shall jointly retain the mediator(s) through the Wastewater Commission. The Wastewater Commission shall cause a written notice to be sent to each participating Party upon retention of the mediator(s) stating the name and address of the mediator(s). The fees and expenses of the selected mediator shall be paid by the Wastewater Commission as an OMR cost. The Parties may be represented by legal counsel in the mediation, but each Party shall be responsible for its own attorneys' fees.

c. By Arbitration. In the event that the Parties are unsuccessful in reaching agreement with the assistance of the mediator within a reasonable period of time, any Party to the mediation may, by 60-day prior written notice to the other Parties to the mediation, require submission of such dispute to an impartial arbitrator, to be selected in the same manner and pursuant to the same procedures as the mediator, for binding arbitration if the dispute is not

resolved during such 60-day period. The Parties participating in any arbitration relating to revenue sharing shall be the Wastewater Commission and the RSP Parties. All Parties shall participate in any other arbitration unless a Party opts out by written notice to the other Parties and to the arbitrator. (Any Party, which opts out of the arbitration, shall nevertheless be bound by the results of the arbitration.) Unless otherwise specifically provided in this Subsection 12.7c, or otherwise agreed to by the Parties involved in the arbitration, the arbitration shall be conducted procedurally in accord with the then current Commercial Arbitration Rules of the American Arbitration Association; provided, however, that the Parties shall not be required to make use of or involve the American Arbitration Association in the proceedings. Without limitation, the arbitration procedure shall include written briefs to explain and advocate for and against the final proposed solutions of the Parties, a hearing to allow oral argument on the final proposed solutions, and discovery and evidentiary hearing relating to any questions of fact. Except as is otherwise specifically provided in this Subsection 12.7c, the arbitrator shall be limited in his or her decision to a selection of the final proposed solution of each participating Party that most closely reestablishes or approximates the original Cost Benefit Balance of this Agreement, and secondarily provides for the reasonably smooth and efficient administration of this Agreement. The Parties shall jointly retain the arbitrator through the Wastewater Commission. The Wastewater Commission shall cause a written notice to be sent to each participating Party upon retention of the arbitrator stating the name and address of the arbitrator. The fees and expenses of the arbitrator shall be paid by the Parties involved in proportion with the Allocated Treatment Capacity they control. The Parties may be represented by legal counsel in the arbitration, but each Party shall be responsible for its own attorneys' fees. The Parties shall submit their respective preliminary proposed solutions to the arbitrator and to each of the participating Parties by written notice within 10 days of the arbitrator retention notice. The Parties may amend their respective proposed solutions until having submitted their final proposed solutions under the direction of the arbitrator. The arbitrator shall select the final proposal that most closely restores the original Cost Benefit Balance of this Agreement and, secondarily provides for reasonably smooth and efficient operation of this Agreement, and he shall reject all other proposals, stating the reasons for his decision. The Parties to this Agreement shall be bound by the result of the arbitration, except as provided by law. Upon completion of the arbitration, the decision of the arbitrator shall become an automatic amendment to this Agreement and shall be binding upon the Parties; provided, however, that any decision of the arbitrator relating to revenue sharing shall not become final until the proposed decision has been processed by the arbitrator, on behalf of the Parties, as though it were an amendment to a revenue sharing agreement pursuant to and in accordance with Wis. Stat. § 66.0305. The decision of the arbitrator shall be deemed to be an administrative decision made pursuant to this Agreement by delegation of the Parties.

## **12.8 Linkages/Temporary Suspension of Obligations.**

a. Context. Notwithstanding Section 12.6 of this Agreement, relating to severability, the Parties acknowledge and agree that there is a fundamental balance between certain benefits and certain costs or burdens of this Agreement that assure each Party of obtaining the essential benefit of its bargain under this Agreement. In determining this balance, the following principles, which are not exclusive and not in any particular order, are important in establishing the Parties' benefit of their bargain:

(1) That by providing sewer service outside its municipal boundaries, Racine has experienced losses of tax base, population growth and non-residential commercial/industrial development;

(2) That the Outlying Parties and their Successors have a unique municipal, cultural and social identity, that they wish to preserve;

(3) That the Parties recognize the substantial economic integration between Racine and the Outlying Parties;

(4) That Mt. Pleasant and Caledonia, the two most populous urban towns in the State of Wisconsin, have achieved an urbanized level of economic, cultural and social self-sufficiency, which justifies their incorporation;

(5) That Racine through its losses of tax base, population growth and non-residential /commercial/industrial development over the years has found itself unable to fund the full range of municipal and economic development services because of the declining demographic characteristics of its population and its aging infrastructure;

(6) That Racine, through its Wastewater Utility, has been required to maintain safe, cost-effective and sufficient wastewater treatment capacity with the ability to allow future residential and non-residential growth within the territories of the Outlying Parties;

(7) That the Parties have concluded that it is not feasible for Racine to have future geographic and economic growth through the accretion of land to Racine, with the resulting loss of territory by the Outlying Parties;

(8) That since most of the future growth in the Greater Racine Area will occur within the territory of the Outlying Parties, the Outlying Parties should pay their proportionate share of the capital costs of improvements to the Wastewater Utility to serve the Outlying Parties' own future growth needs in exchange for the rights to own allocated capacity within the Sewer Service Facilities, which capacity could be used for their own needs or sold or transferred to other parties;

(9) That Racine has recognized that with Revenue Sharing Payments, it is critical for the Outlying Parties to maintain secure boundaries and that, with Revenue Sharing Payments, the Outlying Parties' growth will benefit Racine and that Racine will, therefore, not annex territory, except with the consent of the Party that would lose territory, exercise extra-territorial jurisdiction or deplete the Wastewater Utility reserve accounts beyond what has been agreed to by the Parties to this Agreement; and

(10) The Initial Parties have negotiated for several years the terms of this Agreement and the municipalities which could be Initial Parties but which elect not to become Initial Parties may suffer a detriment by not participating in Revenue Sharing or Sewer Service capacity allocation in accordance with this Agreement.

(11) All of the Parties have found that it is in their best interest to compromise and settle claims and potential claims or arguable rights with respect to the further extension of Sewer Service.

The Initial Parties to this Agreement believe that the terms of this Agreement provide the basis for economic, social and cultural integration so that one Party's benefit could be detriment to the other, but that the sum total of the benefits and detriments have balanced out. In the event there is a Material Change in Circumstances which causes a disruption to this balance, it is the responsibility of the Parties, the Wastewater Commission, mediator, and ultimately, the arbitrator to restore the benefits and detriments by not unduly or unfairly burdening one Party over another with either the detriments or the benefits of this relationship.

b. Linkages. Notwithstanding Section 12.6 of this Agreement, relating to severability, the Parties acknowledge and agree that there are fundamental linkages between certain benefits and certain costs or burdens of this Agreement that assure each Party of obtaining the essential benefit of its bargain under this Agreement, as follows:

(1) Expanded Sewer Service (and related approvals of Sewer Extensions and Allocated Sewer Service Capacity) – SSR Parties prepay the cost of their proportionate share of expanded Sewer Service Facilities to serve their future growth needs. One of the key linkages of this Agreement is that the SSR Parties prepay the cost of the proportionate share they desire of any Expanded Sewer Service Facilities. In return, they receive Expanded Sewer Service (and related approvals of Sewer Extensions) to serve their future growth needs and the right to use and transfer their Allocated Sewer Service Capacity in such expanded facilities in accordance with the Agreement.

(2) Expanded Sewer Service (and related approvals of Sewer Extensions and Allocated Sewer Service Capacity) – Revenue Sharing Payments. Another key linkage of this Agreement is the sharing of benefit from the growth and development made possible by extraterritorial Sewer Service in the form of revenue sharing. The Parties recognize in this Agreement that revenue sharing is an appropriate tradeoff for expansion of Sewer Service to the outlying areas, and the creation of Allocated Sewer Service Capacity rights to ensure the ability of the SSR Parties to use and/or transfer the allocated capacity they have purchased.

(3) Incorporation and boundary fixing cooperation for Caledonia and Mt. Pleasant-Level of Revenue Sharing Payments. Another important linkage of this Agreement is Revenue Sharing Payments in lieu of annexation or other required territorial transfers as a means of ensuring that the supplier of Sewer Service receives fair benefit for allowing the outlying communities to grow and develop. The tradeoff for the level of revenue sharing to be paid by Mt. Pleasant and Caledonia is Racine's cooperation in securing their boundaries and in assisting them to incorporate so, in part, they have the powers they need to manage their growth and development effectively.

(4) Capped payments from the Racine Utility Capital Reserve Account Funds to Racine-Revenue Sharing Payments. Yet another important linkage in this Agreement, affecting the level of Revenue Sharing Payments agreed to by the Parties, are the limitations imposed by this Agreement on transfers of funds from the Racine Utility to Racine. Revenue

sharing is an appropriate tradeoff for such limitations.

The listing of linkages in this Section 12.8 shall not be construed to exhaust the benefits to a Party as a part of the Cost Benefit Balance established under this Agreement and shall not limit the meaning of Material Change of Circumstances to the linkages listed above.

In the event that any Party fails to receive substantial performance of the provision to it of one of the fundamental benefits listed above, whether because of breach, or because of Material Change of Circumstances, or because of the invalidity or unenforceability of any provisions of this Agreement, or because of the operation of this Section 12.8, such Party's obligation to provide a linked fundamental benefit may be suspended in accordance with this Section 12.8. The intent of this Section 12.8 is to encourage the Parties to resolve their differences rapidly, to prevent a Party from taking unfair advantage of another Party and to preserve the status quo before the breach, Material Change of Circumstances, etc. This Section 12.8 shall only be invoked if an event results in a Party losing a major benefit of its bargain, at least temporarily. No Party shall invoke this Section 12.8 (other than in response to another Party's invocation of this Section 12.8) without having first invoked and pursued the procedures of Section 12.16, with respect to a breach, or the procedure of 2.8p with respect to any other qualifying event or circumstance. No party shall act or fail to act under this Section 12.8 in such a way as to materially and irreparably alter the original Cost Benefit Balance of this Agreement. Performance in full shall be due from a Party whose obligations have been suspended under this Section 12.8 upon the termination of the suspension, including payment of interest at the LGIP rate on any payments temporarily withheld unless the suspension arose because of a breach of this Agreement by the Net Recipient Party. The suspension of obligations under this Section 12.8 shall terminate automatically upon the adverse impacts of the breach Material Change of Circumstances or other event or circumstance being resolve pursuant to Subsection 2.8p, Section 12.7 or Section 12.16 of this Agreement or by judicial, legislative or administrative action.

### **12.9 No Challenges to the Validity or Enforceability of this Agreement.**

Except as is otherwise expressly provided in this Agreement, each of the Parties hereby waives any right to commence or maintain, and hereby agrees not to commence or maintain, any civil action to contest or challenge the validity or enforceability of this Agreement or any of its provisions. Except as is otherwise expressly provided in this Agreement, each of the Parties hereby waives any right to complain to the PSC, and hereby agrees not to complain to the PSC, pursuant to Subsection 66.0821(5) of the Wisconsin Statutes, that this Agreement or any provision of this Agreement is unreasonable or unjustly discriminatory on its face. Nothing in this Section 12.9 shall be construed as preventing a Party from commencing or maintaining a declaratory judgment action regarding the interpretation of this Agreement (provided and to the extent that the Party's position is consistent with a good faith interpretation of the Agreement and does not challenge the validity or enforceability of the Agreement or any of its provisions), or a certiorari action challenging a decision by the Wastewater Commission, or an action seeking equitable relief to enforce this Agreement, or an action seeking damages for breach of this Agreement. Nothing in this Section 12.9 shall be construed as preventing a Party from complaining to the PSC or maintaining such a complaint pursuant to Wis. Stats. § 66.0821(5) that a decision made by Racine (including the Racine Utility) or the Wastewater Commission under this



Agreement is unreasonable or unjustly discriminatory provided that, and to the extent that, such position is consistent with a good faith interpretation of this Agreement and does not challenge the validity or enforceability of the Agreement or any of its provisions.

**12.10 Interpretation.**

This Agreement shall not be deemed to have been drafted by any particular Party so as to be interpreted strictly against such Party.

**12.11 References.**

Any references in this Agreement to any particular agency, organization or official shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by law. Any references in this Agreement to any particular statute, ordinance, rule or regulation shall be interpreted as applying to such statute, ordinance, rule or regulation as amended or recreated from time to time.

**12.12 Section and Subsection Titles.**

Section and subsection titles in this Agreement are provided for convenience only and shall not be used in interpreting this Agreement.

**12.13 Successors.**

This Agreement shall benefit and be binding upon the Parties and their Successors.

**12.14 Complete Agreement.**

This Agreement represents the complete agreement of the Parties and supersedes all agreements, warranties, representations and promises, either written or oral, made during the course of negotiations leading up to this Agreement.

**12.15 Good Faith and Fair Dealing.**

The Parties hereby acknowledge that this Agreement imposes on each of them a duty of good faith and fair dealing.

**12.16 Enforcement/Remedies.**

a. Remedies.

(1) Each SSR Party shall have the right and standing to complain to the PSC, pursuant to Wis. Stat. § 66.0821(5), that any decision made or action taken by Racine (including the Racine Utility) or by the Wastewater Commission under or pursuant to this Agreement constitutes an unreasonable or unjustly discriminatory rate, rule or practice; provided, however, that no Party shall use such procedure to challenge the validity or enforceability of any provision of this Agreement.

(2) Each Party shall have the right and standing to seek a declaratory judgment in court regarding the proper interpretation of this Agreement or of the rights or obligations of the Parties under the provisions of this Agreement as stated. Each Party shall have

the right and standing to seek any available equitable or legal remedy in court to enforce this Agreement, and/or to seek damages for the breach of this Agreement, unless the PSC has primary jurisdiction over such matter under Wis. Stat. § 66.0821(5). No Party, however, shall have the right or standing to use such an action to challenge the validity or enforceability of any provision of this Agreement.

b. Notice of Breach or Dispute. If a Party believes that any other Party is in breach of this Agreement, or that a dispute exists about the meaning of the Agreement, or that it is entitled to invoke Section 12.7 notwithstanding curative action taken by the Wastewater Commission pursuant to Subsection 2.8p of this Agreement the aggrieved Party shall promptly serve written notice of the breach or dispute upon the other affected Parties, including Racine and the Wastewater Commission, specifying the provision(s) of this Agreement that are involved and the action, inaction, dispute or interpretation that gives rise to the notice. The interested Parties shall meet as promptly as practicable thereafter, and in any event within 30 days after the effective date of the notice, and shall endeavor in good faith to resolve any dispute or other matter amicably. If the initial meeting fails to resolve the dispute, the interested Parties shall meet again within 30 days after the first meeting, unless the Parties agree in writing at the first meeting that there is no possibility a second meeting will help resolve the dispute or other matter. After the second meeting or after any agreement not to hold a second meeting, the Parties may pursue remedies in the Circuit Court of Racine County for breaches of this Agreement; provided, however, that the Party allegedly in breach shall not be in breach if such Party cures the alleged breach within 30 days after such notice or commences steps which should reasonably cure the alleged breach within a period of time that is reasonable under the circumstances and diligently pursues such steps to completion, and the completion of such steps does cure the alleged breach. This Subsection 12.16b is intended by the Parties to waive their respective statutory right to any notice under Wis. Stats. § 893.80(1), to the extent such section is applicable.

c. Commencement of Civil Actions or Other Proceedings. No civil action and no complaint to the PSC may be commenced until after the meeting(s) required by Subsection 12.16b, above, except that a Party may commence an action seeking specific performance or injunctive relief prior to that time if, in that Party's good faith judgment, urgent action is necessary to protect the public health, safety or welfare from serious harm, and except as provided in Subsection 2.8j of this Agreement.

d. Litigation Expenses. Except as otherwise provided in this Agreement, or as the interested Parties may separately agree among themselves in writing, the prevailing Party in any civil action or any proceeding on a complaint to the PSC pursuant to Wis. Stat. §66.0821(5), shall be entitled to recover from the other Party its reasonable costs and expenses of litigation, including reasonable actual attorneys' fees.

### **12.17 Amendment.**

The revenue sharing portion of this Agreement may be amended by written agreement processed in accordance with Wis. Stat. § 66.0305 by the RSP Parties and the Wastewater Commission and duly approved by the Wastewater Commission and the governing body of each of the RSP Parties and executed by appropriate and duly authorized officers of such Parties. The provisions as to revenue sharing shall only be amended by unanimous consent of the RSP Parties. Any aspect of this Agreement

other than the revenue sharing provisions may be amended by written agreement duly approved by the Wastewater Commission and the governing bodies of the Parties representing 90% of the total average daily flow at the Racine Wastewater Treatment Facility and executed by appropriate and duly authorized officers of such Parties; provided, however, that no amendment that subjects a Party to different requirements, conditions or obligations than other similarly situated Parties shall take effect without the consent of such Party.

#### **12.18 No Third-Party Beneficiaries.**

This Agreement is intended to benefit only the Parties and their Successors, and nothing in this Agreement shall be interpreted as giving to any Person which is not a Party any legal or equitable rights whatsoever.

#### **12.19 Notice of a Material Change of Circumstances Affecting this Agreement.**

Whenever any Party believes that a Material Change of Circumstances has occurred, such Party shall promptly notify each of the other Parties in writing what the Material Change of Circumstances is and how it affects the Agreement or the rights of any Party.

#### **12.20 Limitations on Liability.**

Racine (including the Racine Utility) and the Wastewater Commission shall not be liable to any of the other Parties for any claims, losses or damages resulting from any break in an Interceptor or any other failure of physical facilities to perform (except for breaks or other failures caused by the negligence or willful misconduct of Racine, the Racine Utility or the Wastewater Commission), or from any loss of power, any act of God, any act of sabotage, terrorism or war, any strike, or any other cause beyond the reasonable control of Racine, the Racine Utility or the Wastewater Commission, or for any consequential damages; provided, however, that Racine (including the Racine Utility) and the Wastewater Commission shall have the duty to reasonably maintain the Sewer Service Facilities.

The full faith and credit of Racine shall stand behind the Wastewater Commission, and Racine shall indemnify and hold the Wastewater Commission harmless for any actions related to the operation of the Racine Utility or for its negligent or willful mismanagement of the Racine Utility; provided, however, that any liability of the Wastewater Commission shall be paid from the Capital Reserve Account Funds to the extent that reasonable and prudent reserves are maintained.

#### **12.21 Term/Termination.**

The term of this Agreement, as between Racine, the Wastewater Commission and each one of the Outlying Parties or groups of Related Outlying Parties, shall be 50 years. Except as otherwise specifically provided by this Agreement no breach of this Agreement by any Party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the Parties in general that the provisions of this Agreement shall be subject to specific performance, that injunctive relief shall be available to cure any breaches prospectively, and that damages shall be awarded to redress any harm occasioned by a breach; provided, however, that if a court of competent jurisdiction determines that a Party cannot or will not comply with the requirements of this Agreement, as evidenced by the expressed intent of the Party, or by the Party's past conduct (e.g. a pattern of similar serious breaches), and that such intent or conduct poses a serious threat to the public health, safety or welfare, the complaining Party may obtain as part of its remedy in court the termination or suspension of

specified obligations under this Agreement to the extent determined to be appropriate by such court; and further provided that a breach of this Agreement may lead to a suspension of obligations under Section 12.8 of this Agreement.

### **12.22 Survival of Rights and Obligations.**

The rights of the SSR Parties in Allocated Treatment Capacity and in conveyance capacity in the Sewer Service Facilities under this Agreement shall survive the termination of this Agreement; provided, however, such rights shall be subject to compliance with reasonable rules and regulations with respect to the treatment and conveyance of Wastewater. The obligations and rights as to revenue sharing in effect under this Agreement shall survive and continue after the termination of this Agreement as to territory subject to revenue sharing at the time of the termination of this Agreement until revenue sharing as to such territory shall have been in effect for 30 years as provided in Subsection 7.1a(4). Surviving revenue sharing obligations hereunder shall be calculated and administered by Racine under Article VII of this Agreement. Termination of this Agreement shall not have the effect of terminating or cancelling any payment obligation incurred under this Agreement before the termination. The Wastewater Commission shall cease to exist at the election of Racine upon termination of this Agreement.

### **12.23 Effective Date.**

This Agreement shall take effect for the limited purpose of creating the Wastewater Commission to administer this Agreement pursuant to Wis. Stat. § 66.0301 upon being duly approved and signed by Racine and Mt. Pleasant. This Agreement shall become fully effective with respect to the then-existing Parties upon being thereafter duly approved and signed, within 30 days after the date on which the Agreement was signed by the last to sign of Racine and Mt. Pleasant and by the Wastewater Commission. In the event this Agreement does not become fully effective within such 30-day period, it shall be null and void. The Wastewater Commission shall promptly give each Party and each Anticipated Party written notice of the Effective Date of this Agreement.

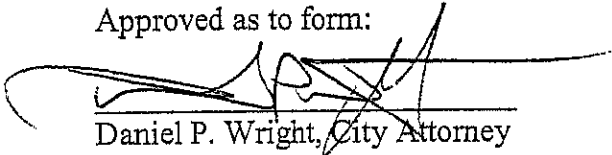
### **12.24 Approval/Authority.**

Each of the Parties hereby represents that this Agreement was duly approved by its governing body on the date stated below in accordance with all applicable state and local laws, and that its governing body has caused its duly authorized officers to execute this Agreement on its behalf on the date stated after each signature below.

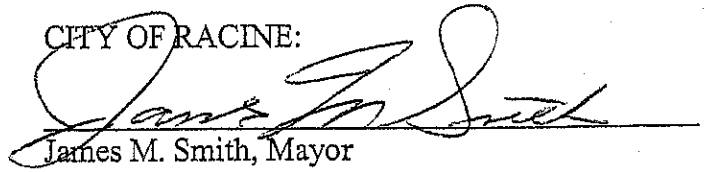
### **12.25 Settlement.**

This Agreement is intended to compromise and settle all claims and known disputes between or among the Parties as of December 31, 2001 relating to the provision of Sewer Service, Sewer Service moratoria, payment of reserve funds by the Racine Utility to Racine, municipal boundaries or annexations, or incorporation as a village or city, except as follows: None. Each Party shall promptly take such actions as may be reasonably required to implement the intent of this Section 12.25.

Approved as to form:

  
Daniel P. Wright, City Attorney

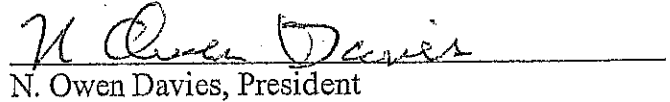
CITY OF RACINE:

  
James M. Smith, Mayor

Attest:

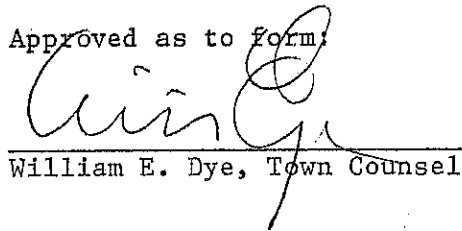
  
Karen M. Norton, City Clerk

RACINE WASTEWATER UTILITY COMMISSION:

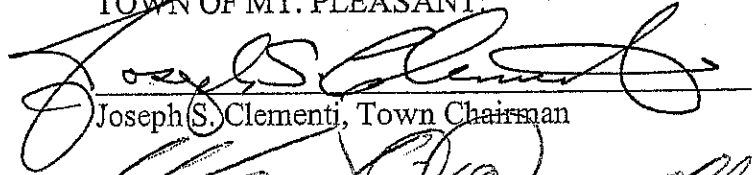
  
N. Owen Davies, President

  
Thomas J. Bunker, General Manager

Approved as to form:

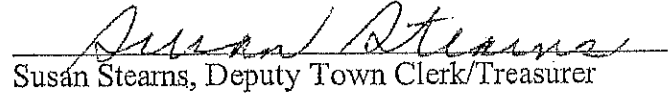
  
William E. Dye, Town Counsel

TOWN OF MT. PLEASANT:

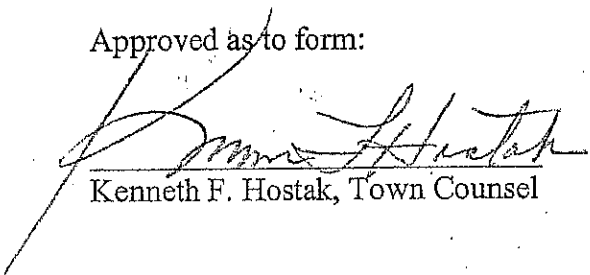
  
Joseph S. Clementi, Town Chairman

  
Kevin O'Donnell, Town Administrator

Attest:

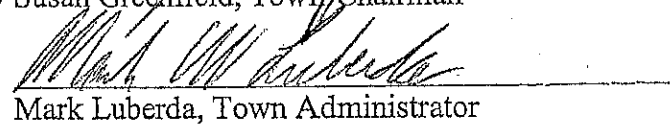
  
Susan Stearns, Deputy Town Clerk/Treasurer

Approved as to form:

  
Kenneth F. Hostak, Town Counsel

TOWN OF CALEDONIA:

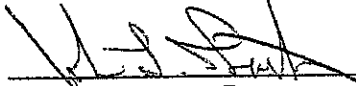
  
Susan Greenfield, Town Chairman

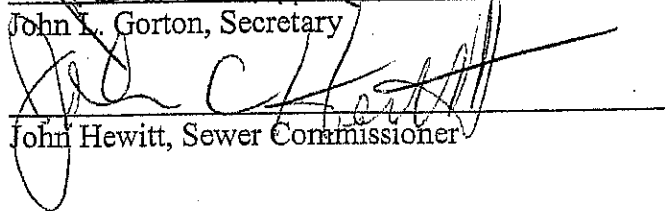
  
Mark Lubarda, Town Administrator

Attest:

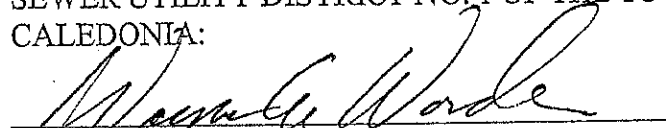
  
Wendy Christensen, Town Clerk

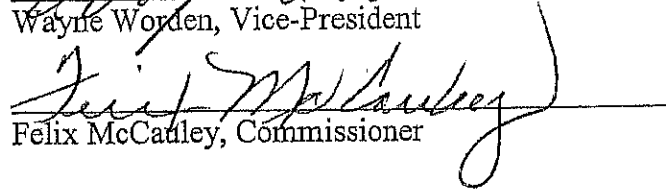
MT. PLEASANT SEWER UTILITY DISTRICT NO. 1:

  
\_\_\_\_\_  
John L. Gorton, Secretary

  
\_\_\_\_\_  
John Hewitt, Sewer Commissioner

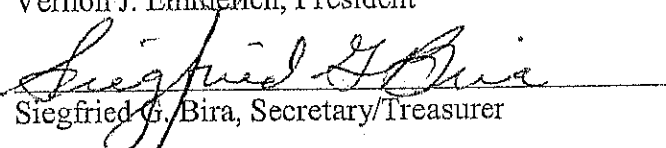
SEWER UTILITY DISTRICT NO. 1 OF THE TOWN OF CALEDONIA:

  
\_\_\_\_\_  
Wayne Worden, Vice-President

  
\_\_\_\_\_  
Felix McCatley, Commissioner

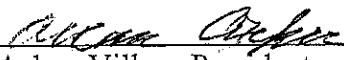
CRESTVIEW SANITARY DISTRICT:

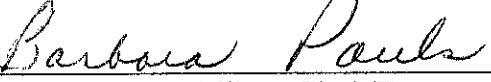
  
\_\_\_\_\_  
Vernon J. Emmerich, President

  
\_\_\_\_\_  
Siegfried G. Bira, Secretary/Treasurer

Dated this 8<sup>th</sup> day of May, 2002.

VILLAGE OF STURTEVANT:

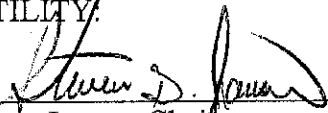
  
Allan Acker, Village President

  
Barbara Pauls, Village Clerk/Treasurer

  
James G. Henke, Village Administrator

Dated this 8<sup>th</sup> day of May, 2002.

VILLAGE OF STURTEVANT WATER AND SEWER  
UTILITY:

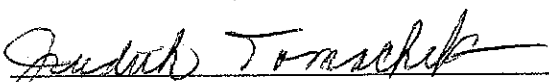
  
Steve Jansen, Chairman

  
Barbara Pauls, Village Clerk/Treasurer

Dated this 9 day of May, 2002.

NORTH PARK SANITARY DISTRICT:

  
Michael P. Kroes, President

  
Judith Tomachek, Secretary

Dated this 9<sup>th</sup> day of July, 2002.

TOWN OF SOMERS AND  
KR UTILITY DISTRICT:

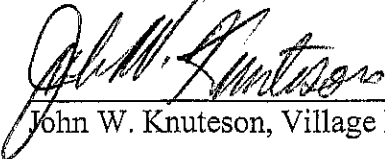
Carol J. Fischer  
Carol Fischer, Chairperson

Kay Goergen  
Kay Goergen, Clerk/Treasurer

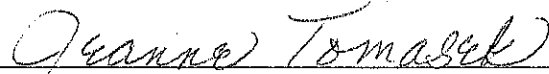


Dated this 24<sup>th</sup> day of February, 2003.

VILLAGE OF WIND POINT:

  
\_\_\_\_\_

John W. Knuteson, Village President

  
\_\_\_\_\_

Jeanne Tomasek, Village Clerk/Treasurer