

**FIDUCIARY AGREEMENT
BETWEEN THE COUNTY OF WAYNE AND THE ALLIANCE OF DOWNRIVER
WATERSHEDS**

THIS AGREEMENT is entered into this _____ day of _____, _____ (“the Effective Date of this Agreement”), between the County of Wayne, Michigan, a body corporate and Charter County ("County") and The Alliance of Downriver Watersheds ("ADW"), formed under the provisions of the Part 312 Watershed Alliances, Natural Resources and Environmental Protection Act as amended by Public Act 517, 2004.

RECITALS

WHEREAS, the ADW is composed of twenty-five communities, Wayne County, and other public agencies within the Ecorse Creek, Combined Downriver and Lower Huron River Watersheds (“the Members”); and

WHEREAS, the ADW exists to facilitate the cooperative management of the Ecorse Creek, Combined Downriver and Lower Huron River Watersheds and to allow for mutual assistance in meeting the storm water permit requirements under the Michigan Department of Environmental Quality’s watershed-based, general storm water discharge permit, and similar permits issued by other governmental agencies; and

WHEREAS, meeting the storm water permit requirements will further the goal of improving water quality and recreational uses of the Ecorse Creek, Combined Downriver and Lower Huron River Watersheds; and

WHEREAS, the County has agreed to perform certain functions relating to the collection and expenditure of assessments paid by the Members under the terms of the agreement entitled “Bylaws, Alliance of Downriver Watersheds” dated June 16, 2006 (Attachment A)(“ADW Bylaws”); and

WHEREAS, the assessments paid by the Members of the ADW Bylaws will be used to support the ADW’s activities, and to provide the required local matching funds for any future federal and state grant funds (“Grant Funds”);

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, the parties hereby agree as follows:

**ARTICLE I
SCOPE OF PROJECT**

1.1 The ADW shall provide to Wayne County, on the Effective Date of this Agreement, a list of the communities and other public entities that have agreed to participate in the ADW and the amount that each should be invoiced for ADW budget year 2007.

1.2 The ADW shall provide to Wayne County, on the Effective Date of this Agreement, a copy of the approved budget for ADW budget year 2007.

1.3 The ADW shall allow Wayne County the opportunity, during regularly scheduled meetings of the ADW, to report activities and seek direction, if necessary, relating to its fiduciary responsibilities under this Agreement.

1.4 The County shall invoice each Member identified by the ADW for the amount specified in the ADW Bylaws, maintain records of payments received, and provide the ADW with an accounting of payments received from each Member.

1.5 The County shall deposit the payments received from the Member in an account, and will use the funds to support the activities of the ADW.

1.6 The assessments shall be used only in the amounts and for the services identified in the approved ADW budget, and to provide the required local match for possible Grant Funds.

1.7 The County shall prepare and maintain records of disbursements from the ADW's account.

1.8 The County shall allow the ADW full and complete access to records concerning assessments received and expenditures made from the account, and shall, at the request of the ADW, make those records available for inspection and/or audit by the ADW or its agent.

1.9 Wayne County contracts for an audit of its financial records, accounts and procedures every year. Wayne County's audit meets the test of local agency audits required by the state under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a. Wayne County submits the results of the annual audit to the state treasurer as required by state law.

1.10 During the time period that Wayne County acts as fiduciary for the ADW, the County's annual audit will be utilized by the ADW to comply with Section 31205 of PA 517 of 2004, the Watershed Alliances Act.

1.11 Pursuant to Article III.A.4 and Article VI.A of the ADW Bylaws, the County is providing the services identified in this Agreement in lieu of a cash payment of its assessment for 2007 shown in Appendix B of the ADW Bylaws.

ARTICLE II WAIVER OF BREACH

2.1 No failure by a party to insist upon the strict performance of any term of this Agreement, or to exercise any term after a breach, constitutes a waiver of any breach of the term. No waiver of any breach affects or alters this Agreement, but every term of this Agreement remains effective with respect to any other existing or subsequent breach.

ARTICLE III TERMINATION

3.1 This Agreement shall terminate on December 31, 2007.

3.2 This Agreement may be terminated in whole or in part in writing by the County for its convenience. The ADW must be given: (1) not less than thirty (30) calendar days written notice of intent to terminate; and (2) an opportunity for consultation with the County prior to termination.

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3.3 Upon receipt of a termination notice pursuant to this Article, the County shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the ADW all data, reports, or other information maintained by the County in performing under the terms of this Agreement, whether completed or in process.

3.4 Upon receipt of a termination notice pursuant to this Article and after payment of any outstanding invoices from contractors to the ADW for goods and services rendered to the ADW prior to the date of termination of this agreement, the County shall return any surplus ADW funds to ADW members using the allocation methodology used to invoice members under Article 1.4 or to the ADW designated fiduciary agent.

3.5 Upon termination pursuant to this article, the ADW may take over the work and prosecute the same to completion by Agreement with another party or otherwise.

3.6 All notices of termination will be sent to the party representatives identified in Article X via certified mail, postage prepaid and return receipt requested.

ARTICLE IV LIABILITY

4.1 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the ADW and/or the Members shall be the sole responsibility of the ADW and/or the Communities, and not the responsibility of the County. Nothing herein will be construed as a waiver of any governmental immunity that the ADW, the Members, their agencies, or their employees may have as provided by statute or modified by court decisions.

4.2 All liability, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities of the County will be the sole responsibility of the County and not the responsibility of the ADW or the Members. Nothing herein will be construed as a waiver of any governmental immunity that the County, its agencies, or employees may have as provided by

statute or modified by court decisions.

ARTICLE V ASSIGNABILITY

5.1 Neither of the parties hereto may assign this Agreement without the prior written consent of the other.

ARTICLE VI VALIDITY

6.1 If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the contract or make execution impractical.

ARTICLE VII ENTIRE AGREEMENT

7.1 This document, including any attachments, contains the entire agreement between the parties.

7.2 Neither party has made any representations except those expressly set forth herein.

7.3 No rights or remedies are, or will be acquired, by either party by implication or otherwise unless set forth herein.

ARTICLE VIII JURISDICTION AND GOVERNING LAW

8.1 This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan.

ARTICLE IX EFFECTIVE DATES

9.1 This Agreement becomes effective immediately upon signing by both parties and shall apply with respect to all assessments received and expenditures made pursuant to the ADW Bylaw, until December 31, 2007. This Agreement, unless extended by mutual written agreement, expires on December 31, 2007.

ARTICLE X
PARTY REPRESENTATIVES

10.1 The County's representative for this Agreement is the Director of the Water Quality Division, Department of Environment. The ADW's representative for this Agreement is the Chair elected under the Bylaws. Either party may assign alternate representatives upon written notification of the other party.

10.2 Contact information for party representatives is as follows:

Wayne County
Ms. Kelly A. Cave, P.E.
Director, Water Quality Division
Chief Engineer
Department of Environment
Wayne County
415 Clifford
Detroit, MI 48226
313-224-8282 phone
313-224-0045 fax

Alliance of Downriver Watersheds
Mr. Craig A. Lyon
Chair, Alliance of Downriver Watersheds
Director, Water & Sewer Department
City Engineer
City of Taylor
25605 Northline Road
Taylor, MI 48180
734-374-1373 phone
734-946-0010 fax

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first written above.

COUNTY OF WAYNE, MICHIGAN

ALLIANCE OF DOWNRIVER
WATERSHEDS

By: _____

By: _____

Robert A. Ficano
Its: Chief Executive Officer

Its: _____

