

WATER QUALITY TRADING AGREEMENT

This Water Quality Trading Agreement ("Agreement") is made by and between the Town of Beloit, Wisconsin ("Town") and the City of Columbus, Wisconsin ("City"), also referred to as the "parties." In consideration for the obligations and covenants set forth below, the parties agree as follows:

A. Water quality trading ("WQT") is an alternative compliance option for Wisconsin Pollutant Discharge Elimination System ("WPDES") permit holders and it is authorized by Section 283.84 of the Wisconsin Statutes.

B. The Wisconsin Department of Natural Resources ("WDNR") has issued Water Quality Trading Guidance ("Guidance"). The most recent version was published in August, 2013 and the United States EPA accepted it.

C. This Agreement sets forth an arrangement to meet the terms and requirements of WQT as set forth in Section 283.841 of the Wisconsin Statutes, so that the Town shall achieve compliance with its WPDES permit.

D. Funds exchanged as part of this Agreement shall be used to purchase credits that will reduce pollutant loads identified in the Rock River Total Maximum Daily Load ("TMDL").

E. Before WDNR can modify or reissue WPDES permits that allow trading, the Town must submit a trading plan ("WQT Plan") and checklist ("WQT Checklist"). The Town submitted its WQT Plan and WQT Checklist to WDNR by July 1, 2019.

F. The Town is a WPDES permit holder (Permit No. WI-0026930-08-0) that discharges to the Rock River. The Town will purchase total phosphorus ("TP") credits pursuant to this Agreement to fulfill its permit requirements.

G. The City is a WPDES permit holder (Permit No. WI-0021-008-09-0) in the Nolan Creek-Crawfish River Watershed and the City shall generate and sell TP credits pursuant to this Agreement to the Town.

H. All water quality credits generated and purchased pursuant to this Agreement shall be used for compliance within the month and year that the credits are generated and are not available for use before they are actually generated.

1. Purchase and Sale of TP Credits.

Subject to the conditions set forth in this Agreement, the City agrees to sell to the Town and the Town agrees to purchase from Seller 1,100 TP credits annually. The initial price per credit shall be \$55. The price per credit shall increase on January 1, 2021 and on January 1 every year thereafter during the term of this Agreement by the percent increase in the unit price used in the Multi-Discharger Variance (MDV) as calculated by the Wisconsin Department of Natural Resources (WDNR), or 2%, whichever is less. In the event that the MDV is no longer used by the WDNR, the increase shall be 2%. The City shall generate and otherwise make TP credits available for purchase pursuant to the Agreement no later than January, 2020.

2. Payment Terms.

The Town shall make two installments every year to the City for its TP credits. The first installment shall be made no later than January 31 of each year. The second installment shall be made no later than June 30 of each year.

The Town shall be prepaying for its annual TP credits.

If this Agreement fails to become effective within sixty (60) days of the Town making its initial payment to the City, the City shall reimburse the Town for the entire amount of its initial payment within ninety (90) days. If this Agreement terminates, regardless of the reason, and funds remain on account with the City for which TP credits have not yet been generated, the City shall refund to the Town the balance of the funds, prorated based on a monthly basis of pounds used, within thirty (30) days. The City shall notify The Town within ten (10) days of the City becoming aware that pollutant reduction credits provided by the City are unavailable for whatever reason.

3. Verification of Credit.

The City shall verify credit generation through effluent monitoring reported to the WDNR on monthly discharge monitoring reports ("DMRs"), with concentrations converted to a monthly mass, said mass to be compared to the monthly mass limit provided by the City's WPDES permit. The City shall comply with the WQT Plan submitted by the Town by July 1, 2019, subject to any conditions of approval by WDNR.

4. Agreement Timing, Termination and Renewal.

This Agreement shall be effective upon execution by the parties.

This Agreement shall expire on December 31, 2040, which is twenty (20) years from its start date of January 1, 2020, the date on which the Town begins to apply TP credits to meet its daily TMDL TP allocation. This Agreement may be mutually extended by both parties if done so in writing.

This Agreement may be modified only by a written amendment signed by both parties, or their agents.

The City may not opt out of the Agreement unless it provides the Town with three (3) years written notice of termination to the Town.

Every five (5) years during the term of this Agreement, the parties shall address any issues with this Agreement and amend, modify or mutually terminate as needed.

This Agreement and the terms contained herein shall be binding on and enforceable against the parties, their successors, and assigns for as long as this Agreement remains in effect.

5. City's Warranties.

The City hereby represents and warrants to the Town and such warranties shall be applicable and in full force and effect throughout the entire term of this Agreement:

a. The City has the authority to enter into this Agreement and to fulfill its obligations contemplated herein.

b. The City has not entered into any other Agreement that would impede the TP credit generation required by this Agreement. Should, for whatever reason, the City fail to generate the TP credits required in this Agreement, the Town shall be held harmless and not responsible for any detrimental results for the City's failure.

c. The City agrees to generate the TP credits in exchange for payment as outlined in this Agreement.

6. Default, Remedies and Dispute Resolution.

In the event that the parties are unable to reconcile a dispute arising out of or related to this Agreement, the parties agree to first submit the claim to mediation. The parties shall mutually agree on a mediator. The mediation process shall be held in the State of Wisconsin.

All disputes arising out of or relating to this Agreement not otherwise settled in mediation shall then move to arbitration.

The parties shall be responsible for their own attorney's fees related to mediation and/or arbitration, unless the mediator or arbitrator determine otherwise. The parties shall share equally the common costs associated with mediation and/or arbitration.

For any litigation arising out of or relating to this Agreement, including but not limited to enforcement of any term or condition of this Agreement, the prevailing party in any action brought for the purpose of enforcing this Agreement shall be entitled to recover attorney's fees, reasonable expenses and other costs associated with enforcement from the non-prevailing party.

Failure by either party to enforce any term or condition of this Agreement shall not constitute a waiver of that term or condition or of any other term or condition of this Agreement.

The parties agree that a cause of action for breach of any provision of this Agreement shall not accrue until the non-breaching party actually discovers the breach.

The breaching party agrees to indemnify, defend and hold the non-breaching party harmless from and for any and all losses, damages, penalties or fines incurred as a result of the breaching party's breach of this Agreement.

7. Representations.

The parties each make the following representations, as applicable:

a. Each party may authorize an agent to represent it on its behalf. Such agents must have notarized authorization to act on behalf of the City or the Town.

b. The parties (or their agents) warrant that the person signing this Agreement is individually authorized and competent to enter into this Agreement and bind his/her party to the terms herein.

c. The parties have read this Agreement and agree to be bound by its terms.

d. If either party knowingly makes a false or incorrect representation, upon which the other party materially relies, then such a false or incorrect representation shall constitute a material breach of this Agreement and the non-breaching party may terminate this Agreement or seek equitable relief, along with any other appropriate relief.

8. Miscellaneous.

This Agreement shall be governed under and construed pursuant to the laws of the State of Wisconsin and, as applicable, the laws of the United States. Each party acknowledges that it has been given the opportunity to obtain counsel, or that it is represented by counsel, and it has reviewed the entire Agreement and are fully informed of the contents and legal effects thereof.

This Agreement shall be terminated if the WDNR issues a letter disapproving the WQT Plan associated with this Agreement.

If any provisions of this Agreement are held illegal, invalid or unenforceable by a court of competent jurisdiction, such provision(s) shall be deemed severable and the remaining provisions of this Agreement shall remain in full force and effect.

This Agreement constitutes the entire agreement by the parties and supersedes all prior written or oral communications.

Except where specifically provided otherwise in this Agreement, whenever any notice, demand or request is required or provided for under this Agreement, such notice, demand or request shall be made in writing by either email, postage prepaid, certified or registered mail.

Town of Beloit
Town Administrator
2871 South Afton Road
Beloit, Wisconsin 53511
608-364-2980

City of Columbus
City Administrator
105 North Dickason Boulevard
Columbus, Wisconsin 53925
920-623-5900

This Agreement may be executed in two or more counterparts, each of which is deemed original, but all constitute one and the same instrument. The parties agree that a facsimile copy of a signature, including a PDF of such signature, shall be deemed an original and binding.

By executing this Agreement, each party grants the other permission to share the price of pollution credits sold and purchased pursuant to the Agreement.

SIGNATURES

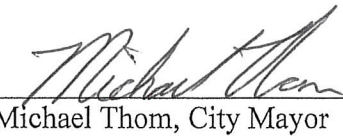
Town of Beloit:

City of Columbus




Tammy Maegi, Town Chair

Date: 6-17-19



Michael Thom, City Mayor

Date: 6-26-19



Gene Wright, Town Administrator

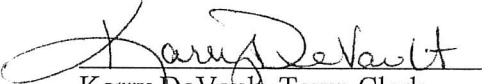
Date: 6-17-19



Patrick Vander Sanden, City Administrator

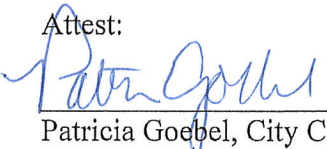
Date: 6/26/2019

Attest:



Karry DeVault, Town Clerk

Attest:



Patricia Goebel, City Clerk