

September 11, 2002 DRAFT

**ROUGE RIVER WATERSHED
LOCAL MANAGEMENT ASSEMBLY**

MEMORANDUM OF AGREEMENT

I. PURPOSE

It is the purpose of this Memorandum of Agreement (hereinafter the Agreement) to set forth the composition, duties, and responsibilities of the Rouge River Watershed Local Management Assembly (hereinafter the "Assembly") to be formed on a transitional basis, as more particularly described below. Local public agencies and communities believe there are substantial benefits that can be derived under this Agreement through cooperative management of the Rouge River and in providing mutual assistance in meeting the storm water permit requirements under the Michigan Department of Environmental Quality watershed-based, general storm water discharge permit, or similar storm water discharge permits issued to public entities within the Rouge River watershed.

The Agreement will also provide a framework for consideration of a new, permanent watershed organization with potentially broader responsibilities that could provide a more cost effective and efficient means to meet state and federal requirements, and public expectations for restoration and maintenance of the beneficial uses of the Rouge River.

II. HISTORY

The Rouge River watershed, located in southeast Michigan, runs through the most densely populated and urbanized land area in the state. The watershed is approximately 438 square miles in size and includes all or part of 48 municipalities in three counties, with a population of over 1.5 million. The industrial growth of the lower Rouge River in the first half of the twentieth century and the rapid residential and commercial growth in the last half of the century in the upper portions of the watershed created serious pollution problems. Despite pollution control efforts as early as the 1940s, when the Detroit wastewater treatment facility was built to serve many of the Rouge watershed communities, pollution problems have increased in the river. It has only been in the last decade that significant restoration of water quality has begun to be documented as a result of over one billion dollars of investments by area residents for pollution control.

In 1985, at the urging of local citizens and organizations the State of Michigan adopted the Rouge River Basin Strategy. In 1987, the International Joint Commission designated the Rouge River as one of the 43 most polluted areas in the Great Lakes. In 1989, the original Rouge River Remedial Action Plan (RAP) was completed and endorsed by a majority of the watershed communities. This original RAP called for an

ambitious twenty-year plan to address pollution problems. The progress in achieving restoration has been documented in Rouge River RAP Updates. In the early 1990s, the United States District Court, at the urging of local communities, facilitated a phased process for correcting combined sewer overflows (CSOs) affecting the river. In 1992, with the bipartisan assistance of the Michigan congressional delegation representing the watershed, Wayne County received the first U.S. Environmental Protection Agency grant for the Rouge River National Wet Weather Demonstration Project (Rouge Project).

The U.S. District Court, as part of its oversight responsibilities for pollution control on the Detroit River stemming from a court case filed in the 1970's and its role in facilitating the CSO resolution (i.e., the "Bulkley Settlement"), has maintained a continuing interest in the results of the Rouge Project. In the mid-1990s, the U.S. District Court strongly urged the 48 local public agencies within the Rouge River watershed to adopt a more comprehensive approach to control pollution from sources other than CSOs. The U.S. District Court proposed a watershed-wide authority under the Michigan Drain Code to manage water issues within the Rouge River watershed. At the same time, the U.S. EPA was required by a Federal Court consent judgment to adopt regulations to control storm water discharges under the Federal Clean Water Act.

As an alternative to the Drain Code authority proposed by the U.S. District Court, and to comply with the pending U.S. EPA storm water regulations, a group of local agencies and communities within the Rouge River watershed proposed a watershed-based approach to the control of pollution sources related to storm water discharges. In 1997, the MDEQ adopted this unique watershed approach developed by local agencies under the Rouge Project. Subsequently, 44 public agencies with storm water responsibilities within the Rouge River watershed entered into this voluntary general storm water permit which was later endorsed by the United States Environmental Protection Agency (U.S. EPA) as meeting Phase II federal storm water discharge regulation requirements that will be mandatory for most urban communities beginning in 2003.

The watershed-based storm water permit approach, developed with assistance from the Rouge Project, has become a national model. There are now seven cooperatively developed subwatershed water management plans in place for the Rouge River. Each local agency has prepared and submitted a Storm Water Pollution Prevention Initiative Plan (SWPPI) to the MDEQ that identifies their commitments to implement their part of each of the plans. However, the federal funds from the Rouge Project that have provided the basic monetary support for this joint effort is being phased out over the next few years. The Rouge River watershed communities are interested in accepting Wayne County's offer to use a portion of the remaining Rouge Project grant dollars to assist a new Rouge River watershed organization in transitioning the responsibility for providing the essential support services needed by the local agencies to meet their storm water permit requirements.

III. ASSEMBLY

A. Term

While the ultimate organization of the Assembly and its responsibilities will evolve over time after thoughtful review of alternatives, the signatories to this Agreement want to work together under the following terms to assure the continuation and smooth transfer of responsibility of essential services. These storm water management services, now being provided by Wayne County through the Rouge Project, should be progressively transferred to the control of the local governmental units with the legal and financial responsibility to meet state and federal storm water discharge permit requirements.

The Assembly shall be in existence on a transitional basis for an initial period of one (1) year, commencing January 1, 2003. The members may mutually agree to renew and/or extend the term of the Assembly under the provisions contained in this Agreement.

B. Composition

The members of the Assembly shall consist of a representative, or designated alternate, appointed by the appropriate governing body in each township, city, village (hereinafter "Community or Communities") and county (as defined under paragraph **III.D.2.** of this Agreement) within the Rouge River watershed that has a Certificate of Coverage (COC) under the MDEQ Watershed-Based General Storm Water Permit (WBGSWP) and that are signatory to this Agreement. Provided, however, other Communities within the Rouge River watershed may become members once they obtain an MDEQ permit for the regulation of storm water discharges that the Executive Committee, established under paragraph **III. E.** of this Agreement, determines is comparable to the WBGSWP.

Members, and designated alternates, shall serve until replaced by the appointing authority.

C. Public Participation

It shall be the intent of the Assembly to make all of its meetings open to the public. The Assembly and/or its Executive Committee shall:

- Determine the rules for public participation
- Schedule meetings at facilities that are fully accessible to the interested public, and
- Routinely provide notice of meeting times and places at publicly accessible locations

D. Voting/Assessment of Costs

The Assembly shall take all formal actions by a simple majority vote of a quorum. A quorum shall consist of one more than fifty percent (50%) of the Assembly members, or their designated alternates, eligible to vote and present at a meeting. Members eligible to vote are those appointed by an appropriate governing authority that has signed this Agreement and that has paid its assessment. Provided, however, any eligible voting member may request that formal actions be subject to a voting of shares. If a voting of shares is requested, adoption of formal actions shall require a simple majority of the voting shares of a quorum based upon the following allocation:

1. Communities with a Certificate of Coverage (COC) for Storm Water Discharges

The voting shares of each Community member shall be determined by the relative population and land area each has within the Rouge River watershed as shown in Appendix A to this Agreement. Appendix A will also be used to determine the annual costs assessed to each member Community. For the first twelve months of this Agreement the assessed costs for Communities with COC coverage are shown in Appendix A.

2. Counties with a Certificate of Coverage

The voting shares for the three counties shall be determined as follows

- Collectively the three counties shall share 12% of the total voting shares
- The shares between the counties shall be based upon the relative population and land area contained within the Rouge River watershed in each county as shown in Appendix A

For the purposes of this Agreement, counties are defined as the appointed/elected Road Commission that has a separate COC regulating storm water discharges, the elected County Drain Commissioner, the elected County Executive, or the elected County Commission. Provided, however, only one member or designated alternative shall represent each county.

Based upon the commitment of staff and service contributions of the Oakland County Drain Commissioner, the Washtenaw County Drain Commissioner and the Wayne County Department of the Environment to storm water management efforts in the Rouge River Watershed, and the commitment of Rouge Project grant dollars, the counties will not be assessed costs during the first twelve months of this agreement.

In subsequent years, the Assembly, on a year-to-year basis, will reevaluate the level of assessed cost attributable to the three counties. In any event, once the Rouge Project grant dollars are no longer available, continuing county membership will be contingent upon payment of annual assessments and/or contribution of services consistent with the level of direct benefits accruing each county as determined by the Assembly.

3. Voting and Assessments of Public Agencies Not Listed in Appendix A

The addition of Communities not currently listed in Appendix A anytime during the twelve month period beginning January 1, 2003, shall be allocated costs based upon a revised table that reflects the new expanded watershed area and population. The voting shares for any Community added shall be on the same basis as those who are listed on Appendix A. When a new Community is added, the total voting shares and total assessment contained in the budget of the Assembly shall be increased accordingly. However, the voting shares and assessment of costs for those Communities and counties listed in Appendix A shall not change during the first twelve-month period.

E. Election of Officers and Appointment of Executive Committee

The Assembly shall annually elect, from among its members, a Chair, Vice-Chair and Treasurer. The three Assembly officers shall be limited to an elected or appointed official, or an employee of a Community. Officers elected by the Assembly may serve up to three consecutive terms. The Wayne County Department of Environment will establish a date for the first meeting of the Assembly following acceptance of this Agreement by at least 20 eligible communities and/or agencies. The first meeting shall be no earlier than 60 and nor later than 120 days after the date the Agreement has been signed by at least 20 eligible communities and/or agencies. The Wayne County Department of Environment will chair the first meeting for the limited purposes of electing officers through nominations received by members, and preparing a draft agenda. Officers shall be elected by a majority of the members present. Once elected, the Chair of the Assembly shall immediately assume the chair responsibilities of the first meeting and all subsequent meetings of the Assembly until replaced by a majority vote of the members. The elected Vice Chair, or the elected Treasurer in the event the Vice Chair is unavailable, may assume the duties of the elected Chair if the elected Chair is unavailable.

The members of the Executive Committee shall have a maximum of 13 voting members consisting of

- (3) the elected Chair, Vice-Chair, Treasurer of the Assembly,
- (3) one representative or alternate from each member county, and
- (7) one representative or alternate from each of the seven Subwatershed Advisory Groups established under the Rouge River WBGSWP.

The meetings of the Executive Committee shall be chaired by one of the three elected officers. The elected Chair of the Assembly shall chair the Executive Committee, with the responsibility succeeding to the elected Vice Chair if the elected Chair is absent. If neither the elected Chair or the elected Vice Chair are present at an Executive Committee meeting, the elected Treasurer shall serve as chair for the meeting. The elected officers of the Assembly shall not have alternates serve on their behalf on the Executive Committee.

The three counties and the seven Subwatershed Advisory Groups (SWAGs) established under the WBGSWP shall annually appoint their respective representatives and alternates to the Executive Committee. Representatives and alternates serving on the Executive Committee, including those appointed by a SWAG, shall be limited to those individuals representing a Community or county that has signed this agreement and has paid its membership assessment. In an effort to assure the broadest participation by Assembly members, a SWAG appointment to the Executive Committee shall be neither a county representative nor a representative from the same Community as those represented by the three officers elected by the Assembly.

The Executive Committee will seek consensus on all issues brought before it. In the absence of consensus, the Executive Committee will adopt motions only when a quorum is present based upon an affirmative vote of at least one more than half the members present and voting. Each member will have one vote. The Executive Committee quorum required for a formal vote shall be at least one more than half of the number of members appointed. A County or a SWAG may designate an alternate to serve and vote on behalf of their appointed representative to the Executive Committee.

F. Meetings

The Assembly shall meet at least twice each year at a designated time and location established by the Executive Committee. Agendas for Assembly meetings will be distributed and circulated to all members at least two weeks in advance of all meetings. The Executive Committee will meet at least five times each year at the call of the Chair or Vice-Chair. All meetings of the Assembly, Executive Committee, standing committees or special committees established under the Assembly shall operate under the Robert's Rules of Order unless modified by a majority vote of the Assembly members. The meetings of the Assembly shall be rotated to locations throughout the Rouge River watershed allowing any member community or agency to host a meeting.

G. Assembly Duties

The Assembly shall have the following duties:

1. Budget and Assessments

After the first year of operation, review and approve of the annual budget for the Assembly and establish the allocation of annual assessments to members.

2. Standing Committees

Establish and outline a charge for three standing committees on technical issues (Technical Committee), financial management (Finance Committee), and public involvement (PI Committee). The Treasurer shall chair the Finance Committee, and an Executive Committee member shall be selected to serve as chair of the Technical and PI committees. Any member or designated alternate may serve on any standing committee.

3. Special Committee

Establish a special committee (Organization Committee) to consider and recommend a permanent Rouge River Watershed Organization. The Assembly shall appoint members to the Organization Committee that reflects a broad diversity of the Assembly membership with respect to geographic location and land area within the watershed, population, and type of public agency.

3. Other Duties

- Maintain official written record of meetings that includes attendance, issues discussed, and votes taken.
- Recommend to member Communities and counties any subsequent changes needed to this Agreement.
- Take other actions required, including delegation of responsibilities to the Chair or Executive Committee to carry out the purposes and conduct the business of the Assembly including, but not limited to, directing the activities of any committees established under this Agreement or subsequently authorized by the Assembly.
- Encourage and promote public input into decisions and recommendations of the Assembly and of all committees established by the Assembly.

H. Executive Committee Duties

The Executive Committee shall have the following duties:

1. Budget

With the advice of the standing committees, supervise the expenditure of Assembly monies consistent with the approved annual budget.

2. Coordinate Transition

Coordinate with Wayne County the transition of responsibility for the storm water management support programs of the Rouge Project to the Assembly.

3. Supervise Staff and Arrange Support Services

Arrange for the services of at least one staff person responsible to the Assembly members to facilitate meetings, prepare agendas, and negotiate and advocate on behalf of the Assembly. Supervise and provide direction to staff of the Assembly, make provision for necessary management support services for operation of the Assembly.

4. Provide Forum for Discussion

Provide a forum for discussion and, if appropriate, resolution of issues related to the implementation of this Agreement brought to its attention by any member of the Assembly.

5. Other Duties

- Assist the standing committees and special committee of the Assembly in meeting their respective responsibilities.
- Maintain a brief written record of each Executive Committee meeting including, as a minimum, attendance, list of issues, and a record of decisions.
- Take other actions that are consistent with the provisions of this Agreement and direction provided by the Assembly.

IV. RESOLUTION

The Communities and counties entering into this Agreement shall do so by the passage of a formal resolution, or exercise of existing authority that includes the ability to commit to the payment of the assessment for support of the Assembly as identified in Appendix A for the first 12 months of operation (i.e., January 1, 2003, through December 31, 2003). In subsequent years, Communities and counties shall indicate their acceptance to continue this Agreement, should it remain unchanged, through the payment of the annual assessment in support of annual budgets approved by the Assembly.

Modifications to this Agreement as may be recommended by formal action of the Assembly shall be subject to acceptance of the appropriate governing authority of each Community or county.

Services provided through the Assembly and grant funds provided by the Rouge Project for storm water management shall be, to the extent practical, limited to Community and county members that have signed and met their respective financial obligations under this Agreement.

V. FIDUCIARY SERVICES

For the first twelve months of this Agreement, the Wayne County Department of Environment has agreed to provide fiduciary services for the collection and expenditure of Community assessments paid under the terms of this Agreement. It is understood that the Community assessments paid under the terms of this Agreement will be used only for the services identified in the 2003 Assembly Budget attached as Appendix B to this Agreement. It is further understood that the assessments paid may be used to provide the required local match for federal grant dollars used to support the budget contained in Appendix B.

Wayne County has agreed to provide the Executive Committee full and complete access to records concerning the use of the funds collected from the members so that all expenditures of monies collected through assessments to members can be audited through a process determined to be appropriate by the Finance Committee. Wayne County has further agreed to provide a financial accounting of all funds collected and expended to the Assembly at the end of the first twelve months and obtain Executive Committee concurrence before expenditure of any of the Community assessments collected. It is understood that the existing provider arrangements for many if not all of the services identified in Appendix B may be most efficiently and cost effectively managed in the transition period through the existing Rouge Project contracts administered by Wayne County, or by Wayne County staff currently assigned these responsibilities. Before August 1, 2003, the Assembly will determine how fiduciary responsibilities will be managed beginning on January 1, 2004.

VI. APPENDICES TO AGREEMENT

The following appendices are attached and are made a part of this Agreement

Appendix A. Allocation of Costs and Voting Shares that includes a list of Communities and counties with WBGSWP COCs, their respective land area and 2000-census population within the Rouge River watershed, their proportional allocation of costs based upon equal weight of land area and population within the watershed, and their voting shares.

Appendix B. 2003 Budget for the Rouge River Watershed Local Management

Assembly that includes a list of storm water management services and costs, and source of funding for the period from January 1, 2003 through December 31, 2003.

Appendix C. Organization Chart of the Rouge River Watershed Local Management Assembly that highlights the structure of the Assembly, its relationship to entities identified in the Agreement

Appendix D. Signatures of Those Communities and Counties Endorsing and Accepting This Agreement

APPENDIX D

Signatures of Those Communities and Counties Endorsing and Accepting This Agreement

The following Communities and counties endorse the purposes and accept the provisions of this Agreement. By our signature we are prepared to appoint appropriate representatives and pay the amount specified in Appendix A as our 2003 assessment to provide the support for the budget identified in Appendix B.

(Signature)

(Typed Name and Title)

On behalf of the City of Allen Park

Through

(Signature)

(Typed Name and Title)

On behalf of Ypsilanti Township