

**LAKE MICHIGAN DIVERSION APPLICATION AGREEMENT
BETWEEN
THE CITY OF RACINE, RACINE WATERWORKS COMMISSION, RACINE WATER
UTILITY AND TOWN OF YORKVILLE**

This Lake Michigan Diversion Application Agreement (the “Agreement”) is entered into as of the ____ day of _____, 2017, by and between the City of Racine, Wisconsin, a Wisconsin municipal corporation (the “City”) through the Racine Water Utility, a department of the City and a municipal public utility (the “Racine Utility”), governed by the Racine Waterworks Commission, and the Town of Yorkville, Wisconsin, a Wisconsin municipal corporation (the “Town”). The City, Racine Water Works Commission, Racine Utility and the Town are collectively referred to in this Agreement as the “Parties”. The City, Racine Water Works Commission and Racine Utility are collectively referred to in this Agreement as “Racine”.

RECITALS

A. The purpose of this Agreement is to set forth the terms of financial responsibility of the Town to the City for all costs and expenses in any way related to the preparation of an application to the Wisconsin Department of Natural Resources (the “DNR”) and to attempt to secure any and all other approvals necessary for the Town to obtain Great Lakes water under the provisions of the Great Lakes Compact and subsequent amendments and procedures adopted by the Wisconsin state legislature with regard to a diversion request by a straddling community. Any and all costs incurred by the City in any way associated with the application shall be reimbursed to Racine in accord with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual provisions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and pursuant to Sections 61.34(1) and (2), 62.11(5) and 66.0301 of the Wisconsin Statutes and other applicable provisions of such statutes, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated herein as part of the Agreement of the Parties.
2. **Estimate of Costs.** The Original estimate of costs for all anticipated costs to be paid by the Town for work to be performed under this Agreement is \$30,000.
3. **Obligations of Yorkville.** Yorkville agrees to:

- (a) Pay invoices promptly to the Racine Water Utility within thirty (30) days receipt of any invoice of the costs and expenses incurred in the application process of this Lake Michigan Diversion request.
- (b) Upon approval by the DNR of the diversion application, prior to and as a condition of receiving water service from the City, the Town shall take all necessary actions to become a retail customer of the Racine Water Utility.
- (c) Upon approval by the DNR of the diversion application, prior to and as a condition of receiving water service from the City, the Town shall execute the entering the 2002 Racine Area Intergovernmental Sanitary Sewer Service, Revenue Sharing, Cooperation and Settlement Agreement.

3. Obligations of Racine. Racine agrees to:

- (a) Engage the engineering firm of Ruekert & Mielke to prepare the necessary documents, exhibits, reports, investigations, applications and environmental analysis and work necessary to prepare, file, process and support a Lake Michigan Diversion request application on behalf of the Town, in general conformity with the "LAKE MICHIGAN DIVERSION APPLICATION AGREEMENT" attached hereto as Attachment A.
- (b) Engage outside legal counsel to assist in preparation, filing and providing of any necessary legal support to secure the approvals from the State of Wisconsin and to assist in incorporating any provisions of legislative amendments related to a large electronic firm relocating to the region.
- (c) Invoice the Town in a timely manner for the services rendered by consultants and attorneys in support of this application.
- (d) Use reasonable efforts to minimize costs associated with securing the necessary approvals.
- (e) Notify the Town of any excessive cost increases in the application process over and above 20% of the original estimate of costs provided at the time of the agreement signing.

4. Sewer Agreement Contingency. The Town's obligations under Paragraphs 3 (b) and (c) herein are contingent upon the Town negotiating an agreement with the Village of

Mt. Pleasant, under terms reasonably acceptable to the Town, for the transport and disposal of sewerage through Mt. Pleasant's sanitary sewer system and acquiring treatment capacity from Mount Pleasant or some other Sewer Service Recipient party of the agreement. In the event the Town is unable to negotiate an acceptable agreement, the Town shall notify the City of its intent to terminate this agreement in writing, whereupon the City shall take no further action relative to the diversion application. The Town shall be responsible for all costs incurred by the City related to the application process and termination thereof.

5. No Guaranties. Town recognizes and understands that the Lake Michigan Diversion request is subject to agency and administrative reviews and that the City cannot guaranty that the diversion request will be granted. The City shall not be obligated to challenge any negative determination.

6. Notices. All notices, requests, demands, consents and approvals required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party receiving notice by personal delivery, or mailed to the party by certified mail, return receipt requested. Addresses for delivery are as follows:

To Racine:	To Yorkville:
Racine Water Utility	Town Clerk
Attn: Mr. Keith Haas	Town of Yorkville
800 Center Street, Room 227	925 15th Ave,
Racine, Wisconsin 53403	Yorkville, Wisconsin 53406

THIS AGREEMENT EFFECTIVE THE DATE FIRST SET FORTH ABOVE.

CITY OF RACINE

By: _____
Cory Mason, Mayor

Approved as to form:

Scott Letteney, City Attorney

Attest: _____
Janice Johnson-Martin, City Clerk

RACINE WATER UTILITY by the RACINE
WATERWORKS COMMISSION

By: _____
Kathy DeMatthew, President

Attest: _____
Keith Haas, General Manager

TOWN OF YORKVILLE

By: _____
Peter Hansen, Chair

Attest: _____
Michael McKinney, Clerk