

**AMENDMENT 2 TO
INTERGOVERNMENTAL RETAIL WATER SERVICE AGREEMENT
BETWEEN
THE CITY OF RACINE, THE RACINE WATER UTILITY
AND
THE VILLAGE OF MT. PLEASANT**

**SEGMENT 2
(INTERNATIONAL DRIVE AND BRAUN ROAD)**

This Amendment to the Intergovernmental Retail Water Service Agreement (this “Amendment 2”) is entered into by and between the City of Racine, Racine County, Wisconsin, a Wisconsin municipal corporation (the “City”), through the Racine Water Utility, a department of the City and a municipal public utility governed by the Racine Waterworks Commission (the “Racine Utility”), and the Village of Mt. Pleasant, Racine County, Wisconsin, a Wisconsin municipal corporation (the “Village”) (collectively the “Parties”), as of this _____ day of, _____, 2018.

WHEREAS, the Parties entered into an Intergovernmental Retail Water Service Agreement dated May 24, 2004 (the “2004 Retail Water Agreement”) establishing terms and conditions for the provision of retail water service to the Village; and

WHEREAS, on December 1, 2017, the Village entered into a Development Agreement (the “Foxconn Development Agreement”) with SIO International Wisconsin, Inc., a Wisconsin corporation, FEWI Development Corporation, a Wisconsin corporation, and AFE, Inc., a Wisconsin corporation (collectively, “Foxconn”) wherein the Village agreed to assist in the establishment and operation of facilities on approximately 3,000 acres involving the private investment of approximately \$10 billion to construct and equip the facilities (the “Foxconn Project”); and

WHEREAS, the Village is obligated, under the terms of the Foxconn Development Agreement, to provide and pay for certain municipal services and facilities required to support and serve the needs of Foxconn Development, including construction of facilities needed to provide municipal water service; and

WHEREAS, the Wisconsin Department of Natural Resources has granted the necessary water diversion approvals under the Great Lakes Compact; and

WHEREAS, the 2004 Retail Water Agreement provides that City, through the Racine Utility, is responsible for designing, constructing, installing or otherwise providing all water facilities which, in the reasonable judgment of the Racine Utility, are necessary or desirable to provide retail water service to the Village, which will also serve the needs of Foxconn Development; and

WHEREAS, the 2004 Retail Water Agreement provides for a methodology relating to cost sharing by and between the City and Village for expansion of the Regional water facilities within the Village, such methodology providing that the Racine Utility would ordinarily be responsible to finance that portion of the costs of expansion that are deemed to be “Deficiency Costs” and “Oversizing Costs”; and

WHEREAS, the 2004 Retail Water Agreement further provides that the City, in certain circumstances, has no obligation to provide Regional Water Facilities, to wit:

Notwithstanding this Section 4 or any other provisions of this Agreement, the City and the Racine Utility shall not be required to provide any Regional Water Facilities pursuant to this Agreement if and to the extent that the City and the Racine Utility are legally prohibited from financing the provision of such facilities. If, however, the Village can and is willing to finance such facilities, the Parties shall use their best efforts to amend this Agreement in a mutually satisfactory manner to accomplish the provision of such facilities; and

WHEREAS, the Parties acknowledge that the City and the Racine Utility would not, for many years, undertake projects to address existing deficiencies in the System that, due to the size

and scope of the Foxconn Project, must be designed and constructed at this time, in order to facilitate provision of water service for the Foxconn Project; and

WHEREAS, the Parties have entered into Amendment I to the 2004 Retail Water Agreement regarding CTH H and the I-94 East Frontage Road as of January 22, 2018; and

WHEREAS, the Village can, and is willing to, finance a portion of the project costs associated with provision of water service for the Foxconn Project without contribution or reimbursement from the City, and to the project improvements to the Racine Utility as a Contribution In Aid of Construction (CIAC) in accordance with PSC regulations and as set forth in this Amendment 2; and

WHEREAS, this Amendment 2 is intended to meet the requirement of the 2004 Retail Water Agreement that the Parties use their best efforts to amend the 2004 Retail Water Agreement in a mutually satisfactory manner to accomplish the provision of such facilities.

NOW, THEREFORE, in consideration of the mutual provisions of this Amendment 2 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and pursuant to the provisions of the 2004 Retail Water Agreement, the Parties hereby agree as follows:

A. TID 5 SERVICE AREA. The Village has created Tax Incremental District No. 5 (“TID 5”) – An approximately 3,000-acre industrial TID that has been created to pay the costs of public infrastructure, land acquisition and other expenses needed to facilitate the construction and operation of the Foxconn Project, an approximately 20 million sq. ft. manufacturing facility as well as additional industrial development of supply chain vendors and other businesses within TID 5 (the “TID 5 Service Area”).

B. TID 5 SERVICE AREA DESIGN. The Village has submitted a written request to the Racine Utility for the design and construction of Future Growth Mains to the TID 5 Service Area. The Racine Utility has, based upon the water service demands and the desired timing, size, number and location of the Regional Water Facilities requested by the Village, prepared a general system design detailing the future growth water mains and required additions to the existing utility infrastructure including upgrading booster pumping stations, constructing new booster stations, additional elevated tank storage and other improvements necessary to serve the TID 5 Service Area (the “TID 5 Project”). The TID 5 Service Area Design Plan is currently being completed and the Parties shall continue to cooperate in all efforts to complete the plan and to enter into a comprehensive amendment to the 2004 Retail Water Agreement to address the costs of construction of the TID 5 Project.

In the meantime, based upon the road construction schedule of the Department of Transportation (“WDOT”), which has assumed responsibility for certain road improvements within the TID 5 Service Area, certain water utility infrastructure must be substantially completed in those areas depicted on Exhibit A (the “Segment 2 Project”) prior to _December 1, 2018_____, 2018 to provide water to a limited area. To meet this schedule, the Racine Utility has authorized the award of the bids for construction of the Segment 2 Project, subject to agreement by the Village to pay all costs associated with the design, construction and contract administration including inspection costs of the Segment 2 Project. The Segment 2 Project involves the International Drive segment and the Braun Road segment. The International Drive segment is delineated on Exhibit A as Project 1.21, Improvement Numbers 41.1, 41.2, 41.3. The Braun Road segment is delineated on Exhibit A as Project Number 1.3, Improvement Numbers 100.7, 101.0, 23.7, 102.1, 23.6, 23.9, 23.10.

C. PROJECT COSTS OF SEGMENT 2 PROJECT. The Segment 2 Project Contracts set forth the costs of the Segment 2 Project (the “Project Costs”). It is understood by and between the Parties that the Project Costs may be amended from time to time in the future by Village approved change order which shall not be unreasonably withheld or delayed. The Village shall be responsible for payment of all associated Front Foot Charges and Allocated Future Growth costs.

D. PROJECT COSTS. Except as otherwise provided in this Amendment, all Village approved costs for the planning, design and construction of the Segment 2 Project shall be billed to and paid by the Village in a timely manner. The Village certifies that provisions have been made to finance the Segment 2 Project. Project Costs shall include reasonable costs of the City in relation to the Segment 2 Project, including: professional costs directly associated with the project design; bidding and contract award costs incurred by the City; construction management and inspection costs; preparation of easement descriptions; appraisals; easement acquisition; land acquisition; negotiation expenses, and; legal fees directly associated with the Segment 2 Project. During construction of the Segment 2 Project, the Village shall be billed within 10 days of City staff approval of each invoice and the Village shall reimburse the City within 20 days of receipt of the City's invoice. The City shall provide the Village an itemized breakdown of all costs billed to the Village. Each party shall act to minimize the financial costs and risks of the other.

E. LIMITED AMENDMENT. Except as provided herein, all other terms, conditions, and provisions of the 2004 Retail Water Agreement and Amendment I thereto shall remain in full force and effect.

F. EFFECT OF AMENDMENT. The City and Village recognize that this Amendment is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and are not precedent for any future agreement between the City and other entities.

G. SEVERABILITY. If any clause, provision, or section of this Amendment or the 2004 Retail Water Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.

H. BINDING AGREEMENT. This Amendment is binding upon the parties hereto and their respective successors and assigns

I. EFFECTIVE DATE. The effective date of this Amendment shall be the date upon which it is executed by the last of the parties to this Amendment.

J. COUNTERPARTS. This Amendment may be executed in one or more counterparts which, when taken together, shall constitute one and the same document.

SIGNATURE PAGE TO FOLLOW

Signed by the City of Racine this _____ day of _____, 2018.

CITY OF RACINE

By: _____
Cory Mason, Mayor

ATTEST:

By: _____
Tara Coolidge, Acting City Clerk

APPROVED AS TO FORM:

By: _____
Scott Letteney, City Attorney

By: _____
David Brown, City Finance Director

Signed by the City of Racine Water Utility this _____ day of _____, 2018.

RACINE WATER UTILITY

By: _____
Kathleen DeMatthew, Commission President

ATTEST:

By: _____
Keith Haas, General Manager

Signed by the Village of Mt. Pleasant this _____ day of _____, 2018.

VILLAGE OF MT. PLEASANT

By: _____
Dave DeGroot, President

ATTEST:

By: _____
Stephanie Kohlhagen, Clerk