

## MEMORANDUM OF MUTUAL UNDERSTANDING

The City of Racine (the “**City**”) and FEWI Development Corporation (“**FEWI**”) hereby enter into this Memorandum of Mutual Understanding (“**Memorandum**”), which is intended to summarize the basic understandings upon which FEWI and the City may negotiate future binding agreements. Except as expressly set forth herein, the Memorandum is intended to be, and shall be construed as, non-binding.

**A. SMART CITIES.** The world is evolving towards a digitally connected and increasingly urbanized society, and in recognition of this trend, some communities are embracing what is known as the “Smart City” movement. This Smart City movement involves the application of data analytics and technology solutions to identify and solve issues and problems experienced by communities and their residents, with the ultimate goal being to maintain sustainable, innovative, and thriving communities.

**B. SMART CITY PROJECT.** FEWI and the City, on projects of mutual agreement and benefit, each of which shall be governed by separate project agreements agreed to by the parties, desire to engage in collaborations involving the development and implementation of Smart City technologies and principles to enhance and improve the physical, social, cultural, and recreational environments impacting and connecting the City of Racine, its residents, industries, and visitors (the “Project”). In furtherance of the Project, FEWI and the City desire, through FEWI as a systems integrator/project manager, to develop strategic relationships that are essential to the success of the Project, that could include but not necessarily limited to, technology companies, universities, and other public and private entities and P3 relationships.

**C. PROJECT ACTIVITIES.** FEWI and the City intend to engage in various activities in relation to the Project, that could include, but are not necessarily limited to, the following:

1. Identifying Project goals and milestones, assessing public needs, researching regulatory issues, establishing priorities, and developing solutions;

2. Jointly developing detailed Project plans, including but not limited to, business models, timelines, costs, contributions, resource allocation, and communication;

3. Engaging with various local, state, and federal agencies to advocate for the prioritization of activities and projects that are consistent with the goals of the Project;

4. Researching and identifying land, environs, facilities, infrastructure, and jurisdictions relevant and beneficial to the Project, which will, among other things, support and/or connect residents and visitors;

5. Developing and promoting solutions and applications, intended to improve, among other things, public safety and security, buildings, mobility and transportation systems, energy systems and its related carbon footprint, public utilities, and related infrastructure;

6. Implementing potential technology solutions that could include, but are not necessarily limited to, a network of wired and wireless sensors, cameras, monitors, various electronic devices, data communications, high-speed networking, predictive analytics, cloud computing, artificial intelligence, various related software, remote monitoring, transportation technologies and development of programs to further assess last-mile applications using 5G fiber-optic networks and the creation of a large-scale Smart City operating system;

7. Developing local, state, national, and international relationships and partnerships with public and private entities to establish the City and surrounding areas as a Smart City research and development epicenter;

8. Planning and developing symposiums to attract leaders in business and government, scholars, researchers, and technology companies to congregate, present problems and solutions, discuss new technologies, share best practices, and explore new business opportunities related to Smart Cities;

9. Developing a public relations and communications plan and procedure intended to introduce the public to the Project and, as timely and appropriate, keep the public apprised of Project developments;

10. Collaboratively developing applications and documentation for contests, challenges, and grants to support various Smart City funding opportunities; and

11. Initiating pilot programs that may be related to aspects of the Smart Cities Smart Futures Competition in which the Foxconn Technology Group has committed up to \$1,000,000.00 dollars in award prizes over the next three years to encourage the students, faculty, and staff within the State of Wisconsin's universities, colleges, and technical colleges to get involved in the Smart City movement.

**D. ADDITIONAL UNDERSTANDINGS.** The parties understand that they will need to undertake further discussions related to developing a master cooperation agreement and ancillary agreements that will set forth the parties' respective duties, obligations, and roles in relation to the Project, set forth refined objectives and activities germane to the Project and establish other terms as are appropriate in relation to the Project.

In addition, the parties recognize that, at varying and appropriate times, the parties may need to designate specific relationship managers, working teams, and other points of contact for the Project and specific initiatives in relation thereto. The initial relationship managers are, respectively, as follows:

<b>FEWI:</b>	FEWI Development Corporation Attn: Alan Yeung 611 E. Wisconsin Ave. Milwaukee, WI 53202 Email: alan.yeung@fewidev.com
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**CITY:** The City of Racine  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**E. BINDING PROVISIONS.**

1. To the extent legally permissible, FEWI and the City shall hold in strict confidence all terms and conditions of this Memorandum, except that the parties may disclose documents, materials, or information to individuals that are required to know that information for the proper performance of their duties in relation to the Project; provided, however, that the disclosing party shall notify all parties to whom information is disclosed that the information must be kept confidential in accordance with the terms of this Section E. In addition, the obligation to keep information confidential is further subject to the confidentiality and non-disclosure agreement executed by FEWI and the City on or around March 14, 2019 (the “**Confidentiality Agreement**”). In the event there is a conflict between Section E(1) of this Memorandum and the terms of the Confidentiality Agreement, the Confidentiality Agreement shall control.

2. Neither FEWI nor the City shall issue any press releases, public statements, and/or public announcements concerning the terms or existence of this Memorandum without first obtaining the written consent of the other party, except as may be required by law. When disclosure is required by law, such requirement shall be disclosed by the party obligated by such law prior to its signing of this Memorandum and/or disclosure.

3. This Memorandum and any claims arising out of or relating hereto shall be deemed to be made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Wisconsin without regard to the conflicts of law provisions thereof to the extent that such principles would direct a matter to another jurisdiction. FEWI and the City each hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action or proceeding based on, or with respect to, this Memorandum or any of the transactions contemplated hereby or relating or incidental hereto.

4. The binding provisions of this Memorandum may not be amended except by a written document signed by each party’s authorized representative, nor may any rights or remedies hereunder be waived unless such waiver is in writing and signed by the party waiving such rights or remedies.

5. This Memorandum may be executed in one or more counterparts, and all such counterparts taken together will constitute one and the same document. The individuals executing this Memorandum on behalf of FEWI and the City, respectively, are duly authorized to do so.

**F. NON-BINDING PROVISIONS.** This Memorandum is intended to serve as a basis for discussions and preparation of future agreements related to the Project, but neither party is obligated to execute or enter into any such future agreements or Project related activities. This

Memorandum is non-binding and all legal rights or obligations of FEWI and the City in relation to the Project shall come into existence when, and only when, a future, definitive agreement is executed and delivered. Notwithstanding, the terms set forth in Section E of this Memorandum shall be legally binding and enforceable by FEWI and/or the City.

*[Signature Pages Follow]*

Signed by the City of Racine this \_\_\_\_\_ day of March, 2019

**CITY OF RACINE**

By: Corey Mason  
Corey Mason, Mayor

**ATTEST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

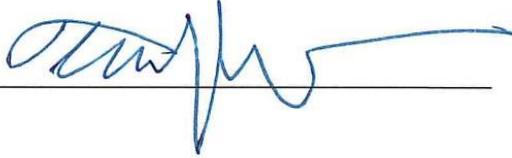
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed by FEWI Development Corporation this \_\_\_\_\_ day of March, 2019.

**FEWI DEVELOPMENT CORPORATION**

By:  \_\_\_\_\_

Dr. Louis Woo, Special Assistant to the Chairman

## **MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Mutual Confidentiality and Non-Disclosure Agreement (“Agreement”) is effective as of the 14<sup>th</sup> day of March, 2019 (“Effective Date”), between and among FEWI Development Corporation, a company duly incorporated under the laws of Wisconsin (together with its affiliates, “FEWI”), and the City of Racine, a Wisconsin municipal corporation (“City”).

**WHEREAS**, the parties hereto desire to exchange information regarding and related to potential business relationships and joint efforts centered around the research, development, and implementation of certain smart city technology initiatives focusing on mobility, safety, security, energy, and development (“Potential Relationship”); and

**WHEREAS**, in order to ascertain whether the Potential Relationship is feasible and/or desirable as to each or either of the respective parties, either party may disclose (“Discloser”) to the other party (“Recipient”) information that Discloser desires to remain confidential; and

**WHEREAS**, each party, in pursuit of the Potential Relationship, anticipates needing to disclose to the other party certain confidential and/or proprietary information, including but not limited to, business plans, products, services, relationships, financial information, pricing, technical architecture, operational methods, customer information, formulas, patterns, programs, processes, charts, figures, software, reports, methods, strategies, plans, concepts, devices, tools, product prices, demand forecasts, specifications, drawings, designs, models, prototypes, samples, analysis codes, inventions, patents and patent applications, licensing information, technology, quality controls, testing, procurements, factories, layouts, equipment, operations, production, distribution, financial standing, research and development, personnel, legal affairs, investments, customers, images, photographs, photomaps, point clouds, and all renderings, visualizations and animations related thereto, and all metadata relating to any of the foregoing. This includes, by way of inclusion and not limitation of the foregoing, any information delivered prior to the execution of this Agreement related to the Potential Relationship, any oral, written or computer-based information, any knowledge gained through observation of the facilities and/or the books and records of the Discloser, and such other information customarily regarded as proprietary or confidential (collectively, “Confidential Information”); and

**WHEREAS**, City and FEWI desire to formalize the duties for maintaining the confidentiality and ownership of the Confidential Information.

**NOW, THEREFORE**, in consideration of the following promises made by one party unto the other, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto desiring to be legally bound hereby, the parties agree as follows:

1. Nondisclosure. Recipient agrees to keep the Discloser’s Confidential Information in confidence and not to disclose it to any other third party except as provided herein and/or where such information is required to be disclosed under public records laws applicable to the governmental entities under Wis. Stat. Sections 19.21 to 19.39 (“Public Records Law”). Failure to mark any of the Confidential Information as “confidential” or “proprietary” shall not affect its status as Confidential Information under the terms of this Agreement. The Recipient shall use the same degree of care in protecting and safe guarding the Confidential Information as Recipient uses for its own confidential information, and in no event less than a reasonable degree of care. Recipient shall be permitted to disclose Confidential Information to its

directors, employees, agents, and advisors, and those of its parent, subsidiary or affiliate companies, that are absolutely necessary for the purpose of assessing the Potential Relationship, provided that such are under the direct control and authority of Recipient and are bound by confidentiality obligations of no less strict effect than those set forth herein. Recipient shall be responsible for the compliance of its directors, employees, agents, and advisors, and those of its parent, subsidiary or affiliate companies, with the provisions of this Agreement.

2. Ownership of Confidential Information. The Confidential Information shall remain the exclusive property of the Discloser. Recipient agrees that Confidential Information disclosed hereunder is being received subject to the ownership rights of the Discloser including, but not limited to, all relevant intellectual and/or proprietary property rights of the Discloser, including the relevant laws governing patents, trademarks, copyrights, trade secrets and unfair competition, and the Public Records Law as they may apply. No rights or licenses to Confidential Information, including but not limited to, know-how, patents, trade secrets, copyrights and trademarks, are implied or granted under this Agreement.

3. Return of Certain Confidential Information. Upon written request of the Discloser, Recipient shall, at its own expense, promptly destroy or return to the Discloser all originals and copies of the Confidential Information in its possession to the extent not contrary to applicable law. Further, upon written request of Discloser, Recipient shall certify destruction, and/or the return of all Confidential Information, and will not retain any copies or extracts of such Confidential Information except as may be required by applicable law. The return or destruction of such material shall not relieve the confidentiality obligations hereunder. Further, notwithstanding anything herein to the contrary, one copy of all of the Confidential Information may be retained by legal counsel for the Recipient for evidentiary purposes; provided, however, any Confidential Information retained by Recipient as described in this sentence shall remain subject to this Agreement for so long as such Confidential Information is retained.

4. Use of Confidential Information. The Confidential Information shall not be copied or used by Recipient for any purpose other than consideration of the Potential Relationship, and any potential on-going business relationship between the parties, except as may be otherwise required by the applicable law. Any such copies made by Recipient within the terms and conditions of this Agreement shall have all proprietary legends and notices on the originals reproduced on such copies. Each copy will be controlled by Recipient as an original in accordance with the terms of this Agreement.

5. Exceptions to Confidentiality Obligations. Confidential Information shall not include any information that: (i) was publicly available at the time of disclosure; (ii) became available without breach of this Agreement by Recipient; (iii) was in Recipient's possession prior to disclosure, as evidenced by Recipient's written records, and was not the subject of an earlier confidential relationship with Discloser; (iv) was rightfully acquired by Recipient from a third party who was lawfully in possession of the information and was under no obligation of confidentiality with Discloser; or (v) is required to be disclosed by Recipient in accordance with law, statute, regulation or court order, and as otherwise provided herein.

Recipient shall promptly notify Discloser upon discovery of any unauthorized use or disclosure of Confidential Information, take reasonable steps to regain possession of Confidential Information, and prevent further unauthorized actions or other breach of this Agreement. If Recipient is required to disclose Confidential Information pursuant to applicable law, statute, regulation, or court order, Recipient shall provide discloser with written notice, to the extent not otherwise prohibited by law, sufficient in time and context to allow Discloser to seek a protective order or other appropriate remedy and shall, to the extent practicable, consult with Discloser in an attempt to agree on the form, content, and timing of such

disclosure. Furthermore, Recipient shall limit such disclosure to only those portions of the Confidential Information as is required, in the opinion of its counsel, to comply with such legal requirement, and shall use commercially reasonable efforts to obtain confidential treatment for any of the Confidential Information disclosed. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement.

6. No Warranty or Representation. The Discloser shall have no liability as a result of the use of, or reliance on, any information delivered to Recipient pursuant to this Agreement. CONFIDENTIAL INFORMATION IS PROVIDED TO RECIPIENT "AS IS" WITHOUT WARRANTIES OF ANY KIND. BOTH PARTIES DISCLAIM ANY AND ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

7. Non-Binding Nature of Discussions. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any other contract, agreement, or undertaking with any third party. Nothing in this Agreement or any disclosure made pursuant to its terms shall be construed as granting or conferring upon the Recipient any rights by license or otherwise, expressly, impliedly or otherwise, for any invention, discovery, patent, mark, or improvement made, conceived, or required to or after the date of this Agreement. This Agreement is not intended to, and does not, obligate either party, or any other party, to enter into further agreements or to proceed with any potential relationship or transaction or to purchase any products or services from the other party or to require either party to disclose any particular information to the other party. Nothing in this Agreement shall imply any partnership or joint venture between the parties or be construed as making either party the agent of the other party. Unless and until a definitive agreement with respect to the Potential Relationship has been executed and delivered between the parties, neither party will be under any legal obligation of any kind with respect to such a relationship by virtue of this or any written or oral expression with respect to such a relationship by any Party's respective representatives except, in the case of this Agreement, for the matters specifically agreed to herein. Prior to the execution of this Agreement and prior to any of the discussions described herein, the parties may have discussed, developed, and/or implemented other business relationships similar to the Potential Relationship, and this Agreement shall not restrict either party from continuing to discuss, develop, and/or implement arrangements similar to the Potential Relationship with other parties, provided that neither party may disclose any of the Confidential Information received under this Agreement.

8. No Assignment. No party may assign any of its rights or delegate any of its obligations under this Agreement, except with the prior written consent of the other party.

9. No Exclusivity. This Agreement confers no exclusive rights or options for disclosure of Confidential Information or consummation of any possible transaction.

10. Refusal of Information. Recipient reserves the right to refuse the receipt of information from the Discloser.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. The parties hereby agree that any dispute that may arise between or among them arising out of or in connection with this Agreement shall be adjudicated before a court located in Racine County, Wisconsin, or the United States District Court for the Eastern District of Wisconsin, and they hereby submit to the exclusive jurisdiction of the federal and state courts of the State of Wisconsin

with respect to any action or legal proceeding commenced by any party, and irrevocably waive any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this Agreement.

12. Remedies. In addition to all other rights and remedies available to the parties, the parties shall have the right to obtain specific performance, including injunctive relief, of each other's obligations hereunder.

13. No Waiver of Rights. Failure or delay of the Discloser to demand compliance or performance of any term of this Agreement, or to exercise any right, power or privilege under this Agreement, shall not constitute a waiver of the Discloser's rights hereunder.

14. Integration. This Agreement supersedes all previous oral and written agreements, if any, among the parties regarding confidentiality of information disclosed in connection with the Potential Relationship.

15. Severability. If any part of this Agreement shall be held invalid and/or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect.

16. Term. This Agreement shall be effective as of the Effective Date and shall be in force until the earlier to occur of: (i) either Party terminating this Agreement by giving the other Party thirty (30) days' written notice to that effect; or (ii) four (4) years having elapsed from the date of execution of this Agreement. Recipient's obligations to maintain confidentiality and restrict the use of Confidential Information shall be in force as of the Effective Date and shall survive for a period of three (3) years after the termination of this Agreement. Recipient's obligations to maintain confidentiality and restrict the use of any Confidential Information that constitutes a trade secret shall be in force as of the Effective Date and shall survive until such Confidential Information is no longer a trade secret.

17. Amendment. This Agreement may only be amended by a written agreement signed by FEWI and the City.

18. Counterparts. This Agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format or facsimile shall be effective.

19. Public Statements. Neither party may announce or issue public releases of any kind regarding the Potential Relationship or the execution of this Agreement, without the prior written consent of the other party.

20. Headings. The headings in this Agreement are inserted for convenience only and shall not be deemed to constitute part of terms of this Agreement or to affect the construction of any provisions hereof.

21. Incorporation of Recitals. The Recitals set forth above are incorporated into this Agreement as if fully restated here.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

**FEWI DEVELOPMENT CORPORATION**

By: \_\_\_\_\_

Name: Alan S. Yeung, Ph.D.

Title: Director, U.S. Strategic Initiatives

**THE CITY OF RACINE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form this \_\_\_\_\_, day of March, 2019.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney for the City of Racine