

**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 the issuance of a final approval decision by the DNR of the diversion application (the “DNR Decision”), prior to and as a condition of receiving water service from the City, the Town shall take all reasonable actions to become a retail customer of the Racine Water Utility.
- (c) Upon the issuance of the DNR Decision, prior to and as a condition of receiving water service from the City, the Town shall execute an intergovernmental agreement for provision of sewer service under terms mutually agreeable to the City and Town, which, at a minimum, shall include all of the provisions of the Racine Area Sanitary Sewer Service, Revenue Sharing, Cooperation and Settlement Agreement (the “2002 Sewer Agreement”).
- (d) Pay reasonable charges/capital costs to the Racine Water Utility (the “Costs”) which payment of Costs is contingent upon the Town’s exercise of its right to take water service after the issuance of the DNR Decision.

4. Obligations of Racine. Racine agrees to:

- (a) Engage the engineering firm of Ruckert & 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 (the “Application Work”).
- (c) Invoice the Town in a timely manner for the services rendered by consultants and attorneys in support of this application and for the portion of the services that directly benefit the Town.

- (d) Use reasonable efforts to minimize costs associated with securing the necessary approvals.
- (e) Use reasonable efforts to coordinate with and incorporate comments/recommendations of the Town regarding the Application Work.
- (f) 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.

5. Sewer Agreement and Referendum Contingencies. The Town's obligations under Paragraphs 3 (b), (c) and (d) herein, subject only to the responsibility for payment of costs through the Termination Notice under the provisions of Paragraph 5 (d), are contingent upon the following:

- (a) 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.
- (b) Costs proposed to be assessed against the Town for participation in the 2002 Sewer agreement which the Town determines to be reasonable.
- (c) The passage of the referendum for the Town to incorporate into a Village (the "Successful Vote") including no legal challenges filed to the Successful Vote during the applicable time period for such challenges (the "Referendum Contingency").
- (d) In the event the Town is unable to negotiate an acceptable agreement with the Village, determines that Town's assessed costs under the 2002 Sewer Agreement are unreasonable, or in the event of the failure of the Referendum Contingency, the Town shall notify the City of its intent to terminate this agreement in writing (the "Termination Notice"), whereupon the City shall take no further action relative to the diversion application on behalf of the Town provided, however, that the Town shall be responsible for all costs incurred by the City that would have directly benefitted the Town on this application process in the absence of said termination and were incurred prior to the Termination Notice.

6. 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.

7. 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

Attest: _____
Janice Johnson-Martin, City Clerk

Approved as to form:

Scott Letteney, City Attorney

David Brown, Finance Director

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