

**INTERGOVERNMENTAL RETAIL WATER
SERVICE AGREEMENT BETWEEN THE
CITY OF RACINE AND
THE VILLAGE OF MT. PLEASANT**

MAY 24, 2004

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| 1. Status of the Racine Utility | 4 |
| 2. Provision of Retail Water Service | 4 |
| a. Conditions of Service | 4 |
| b. Potability and Pressure Standards | 5 |
| c. Mutual Cooperation | 6 |
| 3. Mt. Pleasant Service Area | 6 |
| a. Initial Mt. Pleasant Service Area | 6 |
| b. Area To Be Served by Sturtevant | 6 |
| c. Area To Be Transferred To Mt. Pleasant | 6 |
| d. Expansion of Mt. Pleasant Service Area Within Current Village | 7 |
| e. Expansion of Mt. Pleasant Service Area Beyond Current Village Boundaries | 8 |
| f. Expansion of Mt. Pleasant Service Area Requiring Amendment of this Agreement | 10 |
| g. Service Area Limitations on Village | 10 |
| h. Required Connections | 10 |
| 4. Regional Water Facilities | 11 |
| a. Provision of Regional Water Facilities | 11 |
| b. Ownership, Operation, Maintenance and Location | 11 |
| c. Recovery of the Costs of Regional Water Facilities | 12 |
| d. No Obligation to Provide Regional Water Facilities that Cannot be Financed | 13 |
| e. Notice of Timing | 13 |
| 5. Local Water Facilities | 14 |
| a. Provision of Local Water Facilities | 14 |
| b. Requirements Relating to the Construction, Ownership and Maintenance of and Connection to Local Water Facilities | 14 |
| 6. Billing Individual Retail Customers for Retail Water Service | 18 |

| | | |
|-----|---|----|
| 7. | Direct Charges to Individual Retail Customers | 18 |
| | a. Rates Prior to January 1, 2032 | 18 |
| | b. Delinquent Charges | 18 |
| | c. Notice of Delinquency | 19 |
| | d. Certificate of Delinquency | 19 |
| 8. | Cost Allocation of Regional Water Facilities | 20 |
| 9. | Contract Front-Foot Charges for Future Growth Mains | 20 |
| | a. Aggregate Base Amount of Charge | 21 |
| | b. Payment of Front-Foot Charges | 25 |
| | c. Effect of Frontage In Another Municipality | 30 |
| | d. Deposit in Segregated Account/Use/Accounting | 31 |
| 10. | Contract Connection Charges | 31 |
| | a. Amount of Initial Charge | 32 |
| | b. Connection Charge Methodology | 32 |
| | c. Annual Index Adjustments | 33 |
| | d. Periodic Adjustments | 33 |
| | e. Village Objection to Periodic Adjustments | 34 |
| | f. Determining Number of RECs | 36 |
| | g. Recalculation of REC Charge | 38 |
| | h. Payment | 38 |
| | i. Deposit in Segregated Account/Use/Accounting | 38 |
| | j. Phase-in of Contract Connection Charges | 39 |
| 11. | Village Reporting Requirement/Audit And Review Of Contract Charges | 39 |
| | a. Village Reporting | 39 |
| | b. Audit and Review of Contract Charges | 40 |
| 12. | Recovery Of Contract Charges By The Village | 40 |
| 13. | Water Service Connections | 41 |
| 14. | Local Ordinances | 41 |
| 15. | Compliance with State Law | 43 |
| 16. | Reserves | 43 |

| | | |
|-----|---|----|
| 17. | Coordination | 44 |
| | a. Annual Meetings | 44 |
| | b. Ad Hoc Meetings | 44 |
| 18. | Term | 45 |
| 19. | Default in Making Timely Payment | 45 |
| | a. Interest Charge | 45 |
| | b. Condition Precedent to Action or Complaint | 45 |
| 20. | Village Water Requirements | 45 |
| 21. | Disconnection | 46 |
| 22. | Reliance on PSC | 46 |
| 23. | Annual Financial Audit | 46 |
| 24. | Water Service to Other Customers | 46 |
| 25. | Implementation | 48 |
| 26. | Notices | 48 |
| | a. Written Notices | 48 |
| | b. Changing Notice Address | 49 |
| | c. Effective Date of Notice | 49 |
| | d. Emergency Notice | 49 |
| | e. Waiver of Notice | 49 |
| | f. Notice Addressees and Addresses | 49 |
| 27. | Waiver | 50 |
| 28. | Changing Escalator Index | 50 |
| 29. | Mutual Indemnification | 50 |
| 30. | Severability | 51 |
| 31. | Material Change of Circumstances | 51 |
| | a. Notice | 51 |
| | b. Initial Meeting | 52 |

| | | |
|-----|--|----|
| c. | Amendment | 52 |
| d. | Mediation | 53 |
| e. | Arbitration | 54 |
| 32. | No Challenges to the Validity or Enforceability of this Agreement | 55 |
| 33. | Interpretation | 56 |
| 34. | References | 57 |
| 35. | Section and Subsection Titles | 57 |
| 36. | Successors and Assigns | 57 |
| 37. | Complete Agreement | 57 |
| 38. | Good Faith and Fair Dealing | 58 |
| 39. | Enforcement/Remedies | 58 |
| a. | Remedies | 58 |
| b. | Notice of Breach or Dispute | 59 |
| c. | Commencement of Civil Actions or Other Proceedings | 59 |
| d. | Litigation Expenses | 60 |
| 40. | Amendment | 60 |
| 41. | No Third-Party Beneficiaries | 60 |
| 42. | Limitations on Liability | 60 |
| 43. | No Revenue Sharing | 61 |
| 44. | Effective Date | 61 |
| 45. | Approval/Authority | 61 |

APPENDIX

| | |
|-----------|--|
| Exhibit 1 | Anticipated 2030 Retail Water Service Area |
| Exhibit 2 | Racine Water Utility System Connection Fee Report |
| Exhibit 3 | Racine Water Utility/Mt. Pleasant Service Area |
| Exhibit 4 | Recommended Water System Capital Improvements and Estimated Costs |
| Exhibit 5 | Front Foot Charge |
| Exhibit 6 | Sample Water Connection Charge Computation Worksheet |
| Exhibit 7 | Ordinance |

**INTERGOVERNMENTAL RETAIL WATER SERVICE AGREEMENT
BETWEEN THE CITY OF RACINE AND
THE VILLAGE OF MT. PLEASANT**

This Intergovernmental Retail Water Service Agreement (this “Agreement”) 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 (the “Racine Utility”) (governed by the Racine Waterworks Commission,) and the Village of Mt. Pleasant, Racine County, Wisconsin, a Wisconsin municipal corporation (the “Village”), as of this ___ day of _____, 2004 (hereinafter, "Date of this Agreement"). (The City, the Racine Utility and the Village are hereinafter collectively referred to in this Agreement as the “Parties”).)

WHEREAS, the City operates the Racine Utility, which currently provides retail water service to the territory of the City and to a portion of the territory of the Village, and which also currently provides either retail or wholesale water service to all or a portion of the territory of various other neighboring municipalities and/or related municipal entities.

WHEREAS, the Racine Utility caused a Water Supply System Plan For the Greater Racine Area, dated October 2002, to be prepared by Ruekert/Mielke (the “Water System Plan”); and

WHEREAS, the Water System Plan recommended, among other things, that the Racine Utility should provide retail water service to the territory of 10 municipalities (including the City and the Village) and various related municipal entities within a recommended expanded retail water service area extending from Lake Michigan on the east to a westerly boundary that is located up to approximately one mile west of Interstate Highway 94 (“I-94”), and should design

and operate its water system facilities in such a way that water can be conveyed through the territories of the various municipalities and/or related municipal entities receiving such retail water service, including the City and the Village (the “Municipal Retail Customers”) without regard to municipal boundaries, with the goal of achieving efficiencies and cost savings and increased reliability of service for the benefit of all of the Racine Utility’s Municipal Retail Customers and for the benefit of all of the users of water supplied by the Racine Utility that are located within the boundaries of such Municipal Retail Customers (“Individual Retail Customers”); and

WHEREAS, the recommended Racine retail water service area shown on Map 2 of the Water System Plan has been updated to add several areas which are in the current sewer service area (the “Recommended Racine Retail Water Service Area”) and is shown on the attached Exhibit 1, which is incorporated herein by reference; and

WHEREAS, the Water System Plan denotes the existing water facilities of the Racine Utility and its proposed Municipal Retail Customers that, along with its existing water treatment plant facilities that are needed to provide area-wide retail water service to the Recommended Racine Retail Water Service Area (the “Existing Regional Water Facilities”); and

WHEREAS, the Water System Plan also denotes recommended new Racine Utility water facilities that, along with its new water treatment facilities currently under construction, are needed prior to year 2030 to provide area-wide retail water service to the Recommended Racine Retail Water Service Area (the “Recommended Regional Water Facilities”), which facilities are also listed on Exhibit 4 to this Agreement; and

WHEREAS, the Racine Utility caused a Water Service Provision Study for the Greater Racine Area, dated December 2002, to be prepared by Ruckert/Mielke (the “Water Provision

Study”) which made a series of recommendations that provided the conceptual basis for this Agreement; and

WHEREAS, the Racine Utility caused a report entitled "Water Service Provision for the Greater Racine Area", dated December 2002, to be prepared by Ruekert/Mielke (the "Connection Fee Report"), a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference, which made a series of recommendations for determining the amount of contract connection charges to be paid by each Municipal Retail Customer with respect to each connection made within its contract service area to the water system facilities owned, operated and maintained by the Racine Utility (the "Racine Water System"); and

WHEREAS, this Agreement creates a methodology for sharing the carrying costs of providing water mains to serve future growth and development; and

WHEREAS, the Parties intend the City and the Racine Utility to pursue and implement the recommendations of the Water System Plan, the Water Provision Study and the Connection Fee Report through negotiation and agreement with the various proposed outlying Municipal Retail Customers; and

WHEREAS, the Parties wish to enter into an agreement providing for present and future retail water service to the territory of the Village, with the intention that the City and the Racine Utility can successfully implement the recommendations of the Water System Plan and of the Water Provision Study but with the understanding that the City and the Racine Utility reserve the right to provide wholesale water service or expanded wholesale water service to municipalities or other municipal entities that desire such service ("Municipal Wholesale Customers") pursuant to separate wholesale water service agreements that will not in any way require Municipal Retail Customers or Individual Retail Customers to subsidize such wholesale water service.

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), 66.0301, 66.0809, 66.0813, 196.58 of the Wisconsin Statutes (2001-02) and other applicable provisions of such statutes, the Parties hereby agree as follows:

1. **Status of the Racine Utility.** The Racine Utility shall be a signatory to this Agreement but not an independent Party. The Racine Utility shall be deemed to be an instrumentality of the City, to which obligations of the City are delegated by this Agreement, and whose authority to act for the City in such matters is defined by this Agreement and by the applicable provisions of the City's Utility Ordinance and of the Wisconsin Statutes. Any reference to "the Parties" in this Agreement shall include (and any reference to "any Party" or to "a Party" may include) the Racine Utility in its limited role as an instrumentality of the City and a municipal public utility. The City shall be responsible for the actions, and omissions and failures to act of the Racine Utility and the Racine Waterworks Commission pursuant to this Agreement.

2. **Provision of Retail Water Service.**

a. Conditions of Service. The City, through the Racine Utility, shall continue to provide retail water service to Individual Retail Customers in those portions of the Village served by the Racine Utility as of the Date of this Agreement. The Racine Utility and City shall provide future retail water service to additional users of water in the Village as Individual Retail Customers whenever the following conditions are met:

- (1) that such water users are located within the "Mt. Pleasant Service Area" defined in Section 3, below; and

(2) that such water users are connected to the Racine Water System in accordance with the terms and conditions of this Agreement; and

(3) that to the extent such water users are located outside of the Lake Michigan drainage basin, their wastewater is treated by the Racine wastewater treatment plant and all other applicable legal requirements are duly satisfied; and

(4) that to the extent the anticipated average daily water usage of any proposed or existing Individual Retail Customer exceeds 9,000 gallons per day per acre, special arrangements and requirements deemed necessary by the Racine Utility after reviewing the potential impact of such water usage on the Racine Water System and on the Racine Utility's ability to satisfy its obligations under this Agreement are first duly made and satisfied.

The City and the Racine Utility shall have no obligation to provide water service to any territory of the Village outside of the Mt. Pleasant Service Area, as such service area may be expanded from time to time in accordance with Section 3 of this Agreement, or to provide water service to any water user located within the Village but outside of such service area, or to provide water service to any water user located in the Village prior to satisfaction of all applicable conditions of Section 3.

b. Potability and Pressure Standards. The water provided by the City and the Racine Utility to Individual Retail Customers within the Village pursuant to this Agreement shall satisfy all applicable regulations for safe drinking water, shall be of the same purity and quality as water provided to Individual Retail Customers in the City, and shall be at a pressure sufficient to satisfy all applicable pressure requirements of the Wisconsin Department of Natural Resources (the "DNR") and of the Wisconsin Public Service Commission (the "PSC").

c. Mutual Cooperation. The Parties shall reasonably cooperate to facilitate the provision of retail water service by the City and the Racine Utility to existing and potential Individual Retail Customers located within the Village. The Village shall reasonably cooperate with the City and the Racine Utility to facilitate the siting of and meeting the engineering requirements for Regional Water Facilities needed by the City and the Racine Utility to provide retail water service to other Municipal Retail Customers of the Racine Utility.

3. **Mt. Pleasant Service Area.**

a. Initial Mt. Pleasant Service Area. The geographical area within which the City and the Racine Utility shall provide retail water service to the territory of the Village and to Individual Retail Customers within such territory pursuant to this Agreement shall be the area shown on the map entitled “Racine Water Utility/Mt. Pleasant Service Area” which is attached hereto as Exhibit 3 and incorporated herein by reference (the “Mt. Pleasant Service Area”), as such area may be expanded from time to time pursuant to this Section 3. The initial Mt. Pleasant Service Area, as shown on Exhibit 3, corresponds to that portion of the Recommended Racine Retail Water Service Area, shown on Exhibit 1, which is within the boundaries of the Village as of the Date of this Agreement.

b. Area To Be Served by Sturtevant. The Village of Mt. Pleasant may continue to allow the Village of Sturtevant to provide municipal water service to a small area of the Village of Mt. Pleasant, consisting of not more than eight residential lots located adjacent to the westerly edge of the Village of Sturtevant and shown on Exhibit 3.

c. Area To Be Transferred To Mt. Pleasant. The approximately 100-acre territory shown on Exhibit 3, which is scheduled to be transferred in the future by cooperative plan from the Village of Sturtevant to the Village of Mt. Pleasant, may be treated by the Parties

as territory within the Village before such transfer is effected and may be provided municipal retail water service by the Racine Utility pursuant to this Subsection 3.c; provided however, that such water service is the subject of a Section 66.0301 agreement between the Village of Sturtevant, the Village of Mt. Pleasant, and the City which contains provisions for service charges, rates and obligations which are consistent with the terms of this Agreement.

d. Expansion of Mt. Pleasant Service Area Within Current Village Boundaries. Any territory within the Village of Mt. Pleasant as of the Date of this Agreement that is outside of the Recommended Racine Retail Water Service Area may be included within the Mt. Pleasant Service Area, without amendment of this Agreement, in accordance with the following procedure.

(1) Notice Requesting Expansion. The Village shall give the Racine Utility written notice and a scale map of any such territory which it desires to be included in the Mt. Pleasant Service Area. Such notice shall explain the reason for the request and include a detailed description of any proposed development within such territory and shall be deemed to be a request by the Village for the Racine Utility to provide any “Future Growth Main(s)” needed to serve such area.

(2) Determination of Aggregate Front-Foot Charge for Mains Needed. The Racine Utility shall advise the Village by written notice, within 120 days after the effective date of the Village's notice, of what Future Growth Main(s) will be required to serve such area, the estimated cost thereof, and the estimated maximum amount (without any accrued interest) of the aggregate contract front foot charge that will be due in connection with such proposed Future Growth Main(s) pursuant to Section 9 of this Agreement.

(3) Granting Request/Effect. If the Village does not withdraw its request to expand the Mt. Pleasant Service Area by written notice to the Racine Utility within 60 days after the effective date of the Racine Utility's notice, the Village's request shall be promptly granted by resolutions adopted by the Racine Waterworks Commission and by the City's Common Council, which shall trigger the Village's obligation to pay contract front foot charge(s) with respect to the Future Growth Main(s) referred to in the Racine Utility's notice in accordance with Subsection 9.b(1)(iv) of this Agreement and shall trigger the Racine Utility's obligation to provide such main(s). Such resolutions shall expressly state the intention of such bodies to expand the Recommended Racine Retail Water Service Area for purposes of this Agreement.

(4) Notice of Expansion. The Racine Utility shall give prompt written notice to the Village and the City of the resulting expansion of the Mt. Pleasant Service Area. Such notice shall show the boundaries of the expanded Mt. Pleasant Service Area and shall automatically become an exhibit to this Agreement.

e. Expansion of Mt. Pleasant Service Area Beyond Current Village Boundaries.

(1) Conditions/Procedure. The Parties anticipate that the Village may acquire additional territory in the future. The Village shall give the Racine Utility written notice and a scale map of any such territorial acquisition which it desires to be included within the Mt. Pleasant Service Area, and shall include with such notice proof that the following conditions have been satisfied. Any such additional territory acquired by the Village may be included within the Mt. Pleasant Service Area, without amendment of this

Agreement, in accordance with the procedure set out below and after satisfaction of each of the following conditions:

- (i) that Subsection 3. f, below, is not applicable; and
- (ii) that such acquired territory is located within the Recommended Racine Retail Water Service Area shown on Exhibit 1 (or as subsequently expanded by resolutions of the Racine Waterworks Commission and the City's Common Council which expressly state the intention of such bodies to expand the Recommended Racine Retail Water Service Area for purposes of this Agreement); and
- (iii) that such acquired territory was acquired by the Village from a Municipal Retail Customer of the Racine Utility; and
- (iv) that the time for any legal challenge to the validity of such territorial acquisition has expired without such a challenge being initiated, or that any such challenge which has been initiated has been finally defeated without any remaining right or possibility of appeal.

Upon receipt of acceptable proof that the foregoing conditions have been satisfied, the Racine Utility shall notify the Village in writing of its determination that the conditions have been satisfied. The provisions of Subsection 9.b(1) shall thereupon be applicable.

(2) Alternate Conditions/Procedure. Alternatively, in the event that the conditions set out in Subsection 3.e(1), above, are satisfied except that such additional acquired territory is not within the Recommended Racine Retail Water Service Area and/or was not acquired from a Municipal Retail Customer of the Racine Utility, the additional acquired territory may be included within the Mt. Pleasant Service Area, notwithstanding such unsatisfied condition(s), in accordance with the provisions of

Subsection 3.d, above, as though such territory were “territory within the Village of Mt. Pleasant as of the Date of this Agreement that is outside of the Recommended Retail Water Service Area”.

f. Expansion of Mt. Pleasant Service Area Requiring Amendment of this Agreement. Any proposed expansion of the Mt. Pleasant Service Area beyond the westerly boundaries of the Recommended Racine Retail Water Service Area, as shown on Exhibit 1 (those boundaries located within the territory of the Towns of Yorkville and Raymond as of the Date of this Agreement, or beyond the southern boundary of the City of Oak Creek as of the Date of this Agreement, or beyond the southern boundary of the Recommended Retail Service Area as shown on Exhibit 1 (further into the territory of what is the Town of Somers as of the Date of this Agreement)), shall require an amendment of this Agreement. Any such amendment should provide for the “Regional Water Facilities” (see Section 4 of this Agreement) that will be needed to serve such expanded area.

g. Service Area Limitations on Village. Except in accordance with express provisions of this Agreement, the Village shall not provide or permit municipal water service to any territory outside of the Mt. Pleasant Service Area and shall not permit any other municipality or person to provide water service within the Mt. Pleasant Service Area, except as may be provided under a section 66.0301 agreement between the Racine Water Utility, the Village of Mt. Pleasant and the Town of Somers relating to the vicinity of Meachem Road and CTH KR.

h. Required Connections. The prohibition stated in Subsection 3.g, above, shall not be deemed to prohibit the Village from approving low-capacity wells for on-site consumption or use; provided, however, that the Village shall require new subdivisions and new commercial and industrial development within the Mt. Pleasant Service Area to be connected to

the Racine Water System. Additionally, if a water main of the Racine Water System is in a street that abuts a lot or parcel of land, any new residence on such lot or parcel shall connect to the Racine Water System.

4. **Regional Water Facilities.**

a. Provision of Regional Water Facilities. The City, through the Racine Utility, shall be 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 area-wide retail water service to the Village and the Racine Utility's other Municipal Retail Customers ("Regional Water Facilities"). The Regional Water Facilities include, without limitation, water treatment facilities, water pumping facilities, water storage facilities, as well as all water mains in excess of 12 inches in diameter and all water mains of 12 inches in diameter when a portion of the capacity of such main is required for distribution outside the Village or any other Municipal Retail Customer where such main is located or for enhancement of the Racine Water System, e.g., for looping or for feeding storage, and all related appurtenances and equipment, and shall include all of the Recommended Regional Water Facilities listed on Exhibit 4. The Racine Utility shall be responsible for providing and paying in the first instance for all such Regional Water Facilities on an as-needed basis, as reasonably determined by the Racine Waterworks Commission. In the event the Village believes that a Regional Water Main to serve the Village will be needed sooner than the Racine Utility proposes to construct it, the Village can expedite the construction of such main in accordance with Subsection 9.b(1) of this Agreement.

b. Ownership, Operation, Maintenance and Location.

(1) The Racine Utility shall own, operate, maintain and replace as necessary all Regional Water Facilities, and the City shall hold title to all related sites, easements or other interests in land. To the extent practicable, such Regional Water Facilities shall be located in public rights-of-way, and the construction and installation of such facilities shall satisfy applicable requirements (including location and permit requirements) for constructing or installing public improvements in such rights-of-way. The Village hereby grants to the City and the Racine Utility the right and authority to place, construct and install Regional Water Mains and other appurtenances and equipment that are reasonably necessary for retail water service under this Agreement in Village-owned public rights-of-way.

(2) Any disturbed pavement in Village streets shall be promptly restored to its preexisting condition or in accordance with any applicable Village standards, whichever is more favorable to the Village.

(3) The construction or installation of above-ground Regional Water Facilities shall be subject to applicable Village zoning and site plan approval requirements, which approvals shall not be unreasonably withheld or conditioned.

c. Recovery of the Costs of Regional Water Facilities.

(1) Future Growth Costs. The Racine Utility shall recover from Municipal Retail Customers a fair and reasonable share of the costs of providing the Recommended Regional Water Facilities and any additional future Regional Water Facilities that are designed (or the cost of that portion of the capacity thereof that is designed) to serve future growth and development, including any related debt service costs (“Future Growth Costs”) through:

(i) contract connection charges, under Section 10 of this Agreement;
and

(ii) contract front-foot charges, under Section 9 of this Agreement.

The Racine Utility may also recover Future Growth Costs through such water rates to the extent that revenue from contract connection charges and contract front-foot charges is not available to pay such costs.

(2) Deficiency Costs. The Racine Utility may recover the costs of Regional Water Facilities that are designed (or the cost of that portion of the capacity of such facilities that is designed) to remedy existing deficiencies in the Racine Water System, including any related debt service costs (“Deficiency Costs”) through water rates (under Section 7 of this Agreement).

d. No Obligation to Provide Regional Water Facilities that Cannot Be Financed. 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.

e. Notice of Timing. The Racine Utility shall give the Village written notice, as early as is practicable, and from time to time as planning changes, at least 180 days before the commencement of construction, of the time frame during which particular Regional Water Facilities projects will be constructed or installed within the Village, and of the probable starting date of any such construction or installation project, so as to facilitate coordinated planning,

provided that such written notice shall not be required for the following projects: State Trunk Highway ("STH") 20 water main, STH 20 booster pump station and Spring Street water main east of STH 31.

5. **Local Water Facilities.**

a. Provision of Local Water Facilities. The Village, or a developer with the Village's approval, shall be responsible for designing, constructing, installing or otherwise providing all municipal water facilities used in connection with the distribution of water supplied by the Racine Utility that are not Regional Water Facilities pursuant to Section 4 of this Agreement and that are designed to provide for local water distribution "Local Distribution Mains" and all related appurtenances and equipment, including, without limitation, fire hydrants, valves and water services (collectively, "Local Water Facilities") in the Mt. Pleasant Service Area.

b. Requirements Relating to the Construction, Ownership and Maintenance of and Connection to Local Water Facilities.

(1) Size. All Local Distribution Mains to serve single-family or duplex residential land uses, or rural land uses that are not commercial, industrial or institutional in nature, shall be a minimum of 8 inches in diameter. All Local Distribution Mains to serve commercial, industrial, institutional or multi-family residential land uses or other non-residential or non-rural land uses shall be a minimum of 12 inches in diameter. The type of land uses to be served by a proposed Local Distribution Main shall be determined by reference to the best available information regarding the anticipated land uses of the land to be served by such main. New Local Distribution Mains shall not ever be smaller than eight inches in diameter. The size and location of all Local

Distribution Mains and other Local Water Facilities, and all plans and specifications for such mains and other facilities, must be approved in writing by the Racine Utility prior to the commencement of construction or installation of such mains or other facilities.

(2) Review Procedures. The Racine Utility shall complete its review of plans and specifications for Local Water Facilities within 45 days after receiving them. All Local Water Facilities shall be constructed and installed in accordance with plans and specifications prepared and sealed by a Wisconsin registered professional engineer and shall satisfy all standards of the City and the Racine Utility for water mains and other water facilities to be constructed or installed in the City. The contractor retained by the Village or the developer to work on Local Water Facilities shall make advance arrangements with the Racine Utility for construction review of the construction or installation of all Local Water Facilities. The Racine Utility shall provide construction review of the construction or installation of all Local Water Facilities, and it may retain construction review personnel for this purpose, the cost of which shall be reimbursed to the Racine Utility by the Village or the developer within 30 days after receipt of an invoice for such services. Only contractors and subcontractors that are pre-approved to construct and install water facilities in the City shall be permitted to construct and install Local Water Facilities. The names of all contractors and subcontractors that will be used in connection with a Local Water Facilities project, and a description of their respective roles in such project, must be submitted to and approved by the Racine Utility before construction or installation commences on any such project.

(3) Permits and Approvals. The Village or a developer shall be responsible for paying all reasonable costs and fees incurred in connection with the

provision of Local Water Facilities, including, without limitation, site or easement acquisition, permitting, engineering, construction, legal services and reasonable project review and construction review by the Racine Utility. The Village or a developer shall obtain all permits or approvals required for the construction or installation of any Local Water Facilities and all easements or other interests in real property required to construct, install, maintain, repair and replace any such facilities, and shall be responsible for paying all related costs. All such easements, permits and approvals shall be subject to review and approval as to form and content by the Racine Utility in conjunction with the Racine Utility's review of plans and specifications for any Local Water Facilities project.

(4) Dedicating Local Water Facilities. After completion and testing of each Local Water Facilities project, and review and approval by the Racine Utility (including preparation and approval of as-built plans for the project), the Village or developer shall give, grant, dedicate and transfer ownership of the Local Water Facilities to the Racine Utility and shall assign to the Racine Utility any related permits and approvals, all free of cost to the Racine Utility or the City and free and clear of any liens or encumbrances that are not accepted in writing by the Racine Utility. The Village or developer shall assign to the City any related easements or other interests in real property that are required to operate, maintain, repair or replace such facilities, all free of cost to the City and the Racine Utility and free and clear of any encumbrances that are not accepted in writing by the Racine Utility.

(5) Maintenance, Repair and Warranty. Upon written notice from the Racine Utility to the Village of its acceptance of such Local Water Facilities, the Racine Utility shall own and be responsible for the repair and maintenance of such Local Water

Facilities, except when repair or maintenance is required because of acts, omissions or failures to act of the Village, the developer or its or their employees, agents or contractors, or their subcontractors. All local Water Facilities dedicated and transferred to the Racine Utility shall be warranted by the Village and the Village's contractor or by the developer and the developer's contractor to be free of defects for a period of one year from and after the Racine Utility's acceptance in writing of the dedication and transfer of such facilities. To secure performance of any such warranty from a developer and the developer's contractor, the developer or the developer's contractor shall provide to the Racine Utility a letter of credit or other form of security satisfactory to the Racine Utility, in an amount of 10 percent of the total project cost, the form of which must be approved by the Racine Utility.

(6) No Service Until Transfer of Facilities to Racine Utility. No service to a connecting property from any Local Water Facilities shall be permitted by the Village until after the dedication and transfer of such facilities to the Racine Utility has been accepted in writing by the Racine Utility, such facilities have become part of the Racine Water System, a water meter has been installed by the Racine Utility for each such connection and an occupancy permit has been issued by the Village.

(7) Developer Agreements. The requirements of this Subsection 5.b shall be provided for in a written agreement binding upon the Village and the Village's contractor, or upon the developer and the developer's contractor, which shall be enforceable by the City or the Racine Utility and which must be approved by the Racine Utility prior to commencement of construction or installation of the Local Water Facilities. The Village shall not permit work to commence on any Local Water Facilities

project until such time as there has been full compliance with all of the requirements of this Subsection 5.b. All Local Water Facilities acquired by the Racine Utility from the Village or from other Municipal Retail Customers shall be owned, operated, maintained and replaced as necessary by the Racine Utility.

6. **Billing Individual Retail Customers for Retail Water Service.** The Racine Utility shall be solely responsible for the billing of all charges and fees to Individual Retail Customers and for the collection of all charges and fees from Individual Retail Customers except as provided in Section 7(b) of this Agreement with respect to the collection of delinquent charges and fees. Billing shall be on a monthly or quarterly basis, as determined by the Racine Waterworks Commission, based on water consumption during the preceding quarter or month, as applicable. Individual Retail Customers shall pay their water bills directly to the Racine Utility.

7. **Direct Charges to Individual Retail Customers.**

a. Rates. Prior to January 1, 2032, Individual Retail Customers of the Racine Utility in the Mt. Pleasant Service Area shall be charged by the Racine Utility for retail water service in accordance with rates and rules approved by the PSC, and the Racine Utility shall charge such retail customers the same water rate (excluding fire protection charges) as is approved by the PSC from time to time for retail customers in the City plus a 25% surcharge. On and after January 1, 2032, Individual Retail Customers of the Racine Utility in the Mt. Pleasant Service Area shall be charged by the Racine Utility for retail water service in accordance with rates and rules approved by the PSC.

b. Delinquent Charges. The Village shall fully cooperate to the extent legally possible with the City and the Racine Utility in collecting delinquent water charges from Individual Retail Customers in the Mt. Pleasant Service Area. For the purpose of collecting

delinquent charges, the provisions of Subsection 66.0809(3) of the Wisconsin Statutes (2001-02) shall be applicable, as though the Racine Utility were a water utility operated by the Village, but the Racine Utility shall undertake certain tasks delegated by the statute to the Village Treasurer in accordance with this Section 7(b).

c. Notice of Delinquency. The Racine Utility shall give written notice not later than October 15 of each year to the owner or occupant of each lot or parcel of real estate in the Village to which the Racine Utility has furnished retail water service prior to October 1 of that year for which payment is owing and in arrears at the time of giving the notice. The notice shall state the amount in arrears, including any penalty assessed pursuant to the rules of the Racine Utility; and that unless such amount is paid by November 1 a penalty of 10% of such amount will be added; and that unless the amount in arrears and any added penalty are paid by November 15, the amount in arrears and any added penalty will be levied as a tax against the lot or parcel of real estate to which retail water service was furnished and for which payment is delinquent.

d. Certificate of Delinquency. On November 16, or as soon thereafter as practicable, the Racine Utility shall certify and file with the Village Clerk a list of all lots or parcels of real estate (giving the legal description of each) for which notice of arrears and any added penalty was given and with respect to which an amount in arrears and/or any added penalty remain unpaid, stating the total amount of arrears and any added penalty. The Village shall cause the Village Clerk to insert the total delinquent amount including any added penalty as a tax against the lot or parcel of real estate. The Village shall thereafter take reasonable actions to collect the delinquent amounts, including penalties. Upon collection of any delinquent amounts, including penalties, the Village shall promptly pay such amounts to the Racine Utility.

8. **Cost Allocation of Regional Water Facilities.** The Racine Utility shall allocate the total capacity of each Regional Water Facilities project between capacity needed to serve future growth and development and capacity needed to remedy existing deficiencies in the Racine Water System. The Racine Utility shall then allocate the actual cost of each Regional Water Facilities project to future growth (the “Future Growth Cost”) or to deficiency (the “Deficiency Cost”) based upon the fraction of the total project capacity that is allocated to future growth and to deficiency, respectively. For purposes of illustration, the allocation of the estimated costs of the Recommended Regional Water Facilities is set out in the attached Exhibit 4, which is incorporated herein by reference. For future Regional Water Facilities not planned for in the Water System Plan, the Racine Utility shall allocate costs between Future Growth Costs and Deficiency Costs by applying, by analogy, the principles of the impact fee standards in Subsection 66.0617(6) of the Wisconsin Statutes (2001-02), as though the Racine Utility were a municipality and the Village and the Racine Utility’s other Municipal Retail Customers were developers within such municipality.

9. **Contract Front-Foot Charges for Future Growth Mains.** With respect to each Regional Water Main constructed and installed by the Racine Utility within the Village that will directly and substantially serve future growth and development in the Mt. Pleasant Service Area (“Future Growth Mains”), the Village shall pay contract front-foot charges to the Racine Utility in accordance with this Section 9. Notwithstanding the foregoing sentence, no contract front-foot charge shall be imposed by the Racine Utility for any segment of a new water main constructed in the same location -- i.e., in or adjacent to the same right-of-way or easement (the “Same Location”) -- as a preexisting Racine Utility water main providing direct service to customers (a “Service Main”). Other Municipal Retail Customers of the Racine Utility shall be

required to pay contract front-foot charges with respect to Future Growth Mains constructed within their boundaries on essentially the same basis as the Village; provided, however, that this requirement shall not apply to the City (because of the exemption for mains constructed in the Same Location as a preexisting Racine Utility Service Main) or to the Village of Elmwood Park, the Village of North Bay or the Town of Somers if they fail to enter into a retail water service agreement similar to this Agreement. The purpose of the contract front-foot charge is to allow the Racine Utility to recover a portion of the cost of each Future Growth Main, representing the cost of the equivalent minimum-sized water main required to serve the anticipated types of development on lots and parcels abutting the route of such Future Growth Mains in a manner that allows Village to decide when such mains will be constructed.

a. Aggregate Base Amount of Charge. Computation of the aggregate amount of the contract front-foot charge payable by the Village for any Future Growth Main shall be made in accordance with the following:

(1) Minimum-Sized Main To Serve Anticipated Development. The minimum-sized Future Growth Main to serve single-family or duplex residential land uses or rural land uses that are not commercial, industrial or institutional in nature shall be an 8-inch main. The minimum-sized Future Growth Main to serve commercial, industrial, institutional or multi-family residential uses, or other non-residential or non-rural land uses, shall be a 12-inch main. For Village-initiated Future Growth Mains (see Subsection 9.b(1), below), the anticipated land uses of lots and parcels abutting the route of such mains, for purposes of computing the aggregate contract front-foot charge, shall be the uses which are proposed in the adopted land use plan of the municipality in which the lot or parcel is located as the eventual future use for such land (e.g., the anticipated land use of an area

designated as “agricultural long term business park” shall be deemed to be commercial). For Racine Utility-initiated Future Growth Mains (see Subsection 9.b(2), below), the anticipated land uses of abutting lots and parcels shall be deemed to be commercial, industrial, institutional or multi-family residential for purposes of computing the maximum aggregate contract front-foot charge. The aggregate contract front-foot charge for Racine Utility-initiated Future Growth Mains shall assume that a 12-inch minimum-sized main is required so as to allow the Village to plan for recovery of the worst-case cost. If the Village eventually pays a lesser total amount than the maximum aggregate contract front-foot charge, because some of the abutting lots or parcels require only an 8-inch main to serve single-family or duplex residential or rural development, the Village shall not be responsible for paying the differential.

(2) Equivalent Cost Ratio. As used in this Agreement, the “Equivalent Cost Ratio” for an 8-inch or 12-inch minimum-sized main shall be defined as the typical cost of such an 8-inch or 12-inch main divided by the typical cost of a main of the diameter of the proposed larger Future Growth Main. The Equivalent Cost Ratio for an 8-inch water main relative to each of the Future Growth Main sizes set out below shall be as follows:

| <u>Future Growth Main Size</u> | <u>Equivalent Cost Ratio For 8-Inch Main</u> |
|------------------------------------|--|
| 12” | 84.6% |
| 16” | 74.5% |
| 20” | 55.4% |
| 24” | 38.5%. |

The Equivalent Cost Ratio for a 12-inch water main relative to each of the Future Growth Main sizes set out below shall be as follows:

| <u>Future Growth Main Size</u> | <u>Equivalent Cost Ratio For 12-Inch Main</u> |
|------------------------------------|---|
|------------------------------------|---|

| | |
|-----|--------|
| 16” | 88.0% |
| 20” | 65.5% |
| 24” | 45.6%. |

(3) Frontage. For each Future Growth Main, the “Frontage” subject to an 8-inch minimum-sized main requirement and the “Frontage” subject to a 12-inch minimum-sized main requirement shall be computed by the Racine Utility at the time a determination is made to proceed with design and construction of a Future Growth Main, either as a Racine Utility-initiated main or as a Village-initiated main. As used in this Agreement, “Frontage” shall be defined as the distance that a lot or parcel of land abuts either side (or both sides, if applicable) of a Future Growth Main or abuts the street, highway or other right-of-way in which or adjacent to which the Future Growth Main is constructed and installed, excluding land already served by the Racine Utility, and land that is generally undevelopable because of wetlands, floodplains, steep slopes, exclusive agricultural zoning, public rights of way, or because of any other circumstances. As used in this Agreement, “Total Frontage” shall be defined as the sum of all such Frontage on a Future Growth Main. Total Frontage shall include all Frontage from the beginning to the end of the Future Growth Main, including Frontage of lots or parcels within municipal entities other than the Village, but all land within the City shall be deemed to be land that is already served by the Racine Utility.

(4) Computation Methodology. The aggregate contract front-foot charge to the Village for a Future Growth Main shall be computed in accordance with this Subsection 9.a(4). A sample computation is set out in the attached Exhibit 5, which is incorporated herein by reference.

(i) Step One. The total project cost of the Future Growth Main shall be multiplied by the applicable 8-inch Equivalent Cost Ratio. The total project cost of the Future Growth Main for this purpose shall not include the cost of any segment of such main constructed in the Same Location as a preexisting Racine Utility Service Main. The resulting product shall then be multiplied by the Frontage on such new main within each municipality that is subject to the minimum 8-inch main requirement, computed in accordance with Subsection 9.a(3), above. The resulting product for each municipality having such Frontage shall then be divided by the Total Frontage on such main to compute the 8-inch equivalent front-foot charge allocated to that municipality.

(ii) Step Two. Next, the total project cost of the Future Growth Main (not including the cost of any segment of new main constructed in the Same Location as a preexisting Racine Utility Service Main) shall be multiplied by the applicable 12-inch Equivalent Cost Ratio. The resulting product shall then be multiplied by the Frontage on such new main within each municipality that is subject to the minimum 12-inch main requirement, computed in accordance with Subsection 9.a(3), above. Pursuant to Subsection 9.a(1), above, all Frontage on a Racine Utility-initiated Future Growth Main shall be deemed to be subject to the minimum 12-inch main requirement.

(iii) Step Three. The resulting product for each municipality having such Frontage shall then be divided by the Total Frontage on such main to compute the 12-inch equivalent front-foot charge allocated to that municipality.

(5) Frontage Only in Village. For a Future Growth Main having Frontage only in the Village, the sum of the 8-inch equivalent charge plus the 12-inch equivalent charge shall be the aggregate contract front-foot charge to the Village.

(6) Main Initiated By Village, Frontage in Two or More Municipalities. For a Village-initiated Future Growth Main having Frontage in the Village and in at least one other municipality, the aggregate front-foot charge to the Village shall be the sum of the front-foot charges allocated to each of the municipalities in which the main is to be constructed, and the Village shall have a right of recovery as and to the extent provided in Subsection 9.c, below.

(7) Main Initiated by Racine Utility or Another Municipal Retail Customer, Frontage in Two or More Municipalities. For a Future Growth Main initiated by the Racine Utility or by another Municipal Retail Customer, having Frontage in the Village and in at least one other municipality, the aggregate front-foot charge to the Village shall be the sum of the 8-inch and 12-inch equivalent charges allocated to the Village with respect to lots or parcels having Frontage within the Village.

b. Payment of Front-Foot Charges. The Village shall pay contract front-foot charges to the Racine Utility as follows:

(1) Village-Initiated Main.

(i) Request For Future Growth Main. Except as otherwise provided in Section 3 of this Agreement, upon written request by the Village to the Racine Utility for the design and construction of a Future Growth Main to serve the Village, the Racine Utility shall advise the Village by written notice, within 30 days after receiving such a request, of the estimated cost of the Future

Growth Main, the aggregate contract front-foot charge that will be due with respect to the proposed Future Growth Main pursuant to Subsection 9.a(4), above, and any right of recovery that the Village may have pursuant to Subsection 9.c, below.

(ii) Triggering Resolution. If the Village does not withdraw its request by written notice within 60 days after the effective date of the Racine Utility's notice (or if the Village affirmatively accepts such charge by written notice to the Racine Utility during such 60-day period), the Village's request shall be granted by resolution adopted by the Racine Waterworks Commission. The adoption of such resolution shall trigger the Village's obligation to pay the aggregate front-foot charge for such Future Growth Main in accordance with Subsection 9.b(1)(ii), below.

(iii) Notice of Granting Request. The Racine Utility shall promptly notify the Village in writing of the granting of the Village's request.

(iv) Computation of Front-Foot Charge. As project costs for such Future Growth Main are incurred by the Racine Utility, it shall give written notice to the Village of such incurred costs and the proportionate share thereof to be paid by the Village. The Village's proportionate share shall be determined by multiplying the amount of the incurred costs by the quotient of the aggregate contract front-foot charge to the Village divided by the total project cost of the Future Growth Main.

(v) Payment. Payment of such amount by the Village shall be due within 30 days after the effective date of the Racine Utility's notice of the amount to be paid.

(2) Racine Utility-Initiated Main.

(i) Determination To Proceed. The Racine Utility shall provide written notice to the Village of its determination to proceed with design and construction of a Future Growth Main (or initiation by a Municipal Retail Customer other than the Village of a Future Growth Main on which lots or parcels within the Village have Frontage).

(ii) Triggering Event. The first subsequent "Triggering Event" relating to a lot or parcel in the Village having Frontage on such main (as determined pursuant to Subsection 9.a(3), above), shall result in the obligation of the Village to pay contract front-foot charges in accordance with this Subsection 9.b(2). As used in this Agreement, "Triggering Event" is the granting of any permit or approval by the Village or by any agency or agent of the Village for, or receipt of notice from a Transfer Return or other official document, or written notice from the Racine Utility pursuant to this Agreement, of any of the following.

- A conveyance of any lot or parcel; or
- A division of any lot or parcel by means of subdivision, certified survey map, other platting, conveyance or by any other means; or

- Any development activity of any kind on such lot or parcel for or relating to residential, commercial, industrial, institutional or any other non-residential or non-rural purposes, excepting modifications to existing single family homes or construction of related accessory structures; or
- The connection of any lot or parcel to the Racine Water System.

The Village shall give the Racine Utility written notice of any such Triggering Event (including a copy of any document constituting or describing the events or circumstances involved in the Triggering Event or a statement of the particulars of such Triggering Event) in accordance with Subsection 11.a of this Agreement.

(iii) Computation of Front-Foot Charge. The contract front-foot charge to be paid by the Village with respect to the particular lot or parcel involved in the Triggering Event shall be computed by multiplying the total project cost of the Future Growth Main (not including the cost of any segment of such main constructed in the Same Location as a preexisting Racine Utility Service Main) by the applicable Equivalent Cost Ratio, and by then multiplying the resulting product by the Frontage of such lot or parcel, and by then dividing the resulting product by the Total Frontage of the Future Growth Main. The computed contract front-foot charge shall be adjusted to include accrued interest from and including January 1 of the year in which the construction of the main was commenced to and including the date of the Triggering Event. The interest

rate to be applied to the computed contract front-foot charge shall be either the actual interest rate incurred by the Racine Utility to finance construction of the Future Growth Main, or if the main was not debt-financed, the interest rate for the most recent unsubsidized long-term debt issued by the Racine Utility.

(iv) Equivalent Cost Ratio. The Equivalent Cost Ratio to be used in computing the contract front-foot charge shall be determined by the best available information regarding the anticipated land use(s) of the lot or parcel involved in the Triggering Event at the time of the Triggering Event. In the event that two or more different land uses are anticipated for a single lot or parcel, the 12-inch Equivalent Cost Ratio shall be used for the entire Frontage of such lot or parcel if such Equivalent Cost Ratio is required for any of such land uses.

(v) Small Parcel Exception. If a parcel of land, not to exceed two acres, is divided for residential purposes from a large parcel of land that is zoned Agricultural, and if no part of the large parcel abuts State Trunk Highway 20, and if the remainder of the large parcel after the division is at least 35 acres, then the front foot charge applicable to the remainder of such large parcel shall be deferred until the occurrence of a Triggering Event that does not meet the requirements of the exception created in this sentence.

(vi) Payment. Payment to the Racine Utility of any such contract front-foot charge and any related accrued interest shall be due from the Village within 30 days after the Triggering Event.

(3) Web Site. To facilitate computation and payment of such contract front-foot charges by the Village, the Racine Utility shall establish and maintain an

internet web site or equivalent communication source, containing information it has available for use in computing such contract front-foot charges. The Village may rely upon accuracy of such information.

c. Effect of Frontage In Another Municipality. In the event of a Village-initiated Future Growth Main, that portion of the front-foot charge associated with lots or parcels having Frontage on such main that are within a municipality other than the Village shall be paid by the Village to the Racine Utility. The Racine Utility shall collect front-foot charges from a Municipal Retail Customer other than the Village if such Municipal Retail Customer has entered into a retail water service agreement with terms that are substantially similar to this Agreement. Upon the occurrence of a Triggering Event relating to any lot or parcel within that municipality having Frontage on a Village-initiated Future Growth Main, the Village shall have a right of recovery with respect to any contract front-foot charge collected by the Racine Utility for a lot or parcel within another Municipal Retail Customer for which the Village previously paid the contract front-foot charge. Accrued interest on any such front-foot charge to be recovered by the Village shall be limited to interest accrued after the effective date of the agreement obligating such other Municipal Retail Customer to pay contract front-foot charges if such date is after the date from which interest would otherwise accrue. Similarly, if a Municipal Retail Customer other than the Village, which has entered into a retail water service agreement similar to this Agreement, initiates a Future Growth Main on which lots or parcels within the Village have Frontage, the Village shall be obligated to pay front-foot charges with respect to such lots or parcels as though the main were a Racine Utility-initiated main, and such other Municipal Retail Customer shall have a right of recovery with respect to such payments. In the event of a Future Growth Main initiated by the Racine Utility or by another Municipal Retail Customer, which

main is not constructed and installed within the Village, the Village shall be responsible for paying a front-foot charge with respect to any lots or parcels having Frontage on such main only if such lots or parcels are within territory that is subsequently acquired by the Village prior to the occurrence of a Triggering Event.

d. Deposit in Segregated Account/Use/Accounting. Any payments of contract front-foot charges made by the Village to the Racine Utility pursuant to this Section 9 shall be deposited by the Racine Utility in an interest-bearing segregated account and shall be used by the Racine Utility only to pay Future Growth Costs. The funds in such account shall be accounted for separately in the annual financial audit performed pursuant to Section 23 of this Agreement. The Racine Utility shall only be required to maintain a single segregated account in which to deposit payments of contract front-foot charges made by any of its Municipal Retail Customers.

10. **Contract Connection Charges.** Except as provided in Subsection 10g, below, the Village shall pay a contract connection charge to the Racine Utility for each new water service connection made by Individual Retail Customers to the Racine Water System within the Mt. Pleasant Service Area, and for each building expansion or change of use resulting in additional water demand at an existing connection. The Village intends to collect charges from the property owners, but the Village's obligation to pay contract connection charges to the Racine Utility shall not be contingent on the Village's collection of money from property owners. Other Municipal Retail Customers of the Racine Utility, including the City, shall be required to pay contract connection charges on essentially the same basis as the Village; provided, however, that this requirement shall not apply to the Village of Elmwood Park, the Village of North Bay or the Town of Somers if they fail to enter into a retail water service agreement substantially similar to

this Agreement. The purpose of the contract connection charge is to allow the Racine Utility to recover the Future Growth Cost of Regional Water Facilities.

a. Amount of Initial Charge. The amount of the connection charge initially shall be \$2,913 per residential equivalent connection (“REC”), as determined in the Connection Fee Report. As used in this Agreement, a REC is a measure of annual water usage expressed in terms of the amount of water used by a typical single-family residence, which shall be initially set at 72,000 gallons per year for purposes of this Agreement, in accordance with the Connection Fee Report.

b. Connection Charge Methodology. The basic methodology of the Connection Charge Report, in concluding that the initial connection charge should be \$2,913 per REC, was to begin with a 10-year capital improvement plan for the Regional Water Facilities that the Racine Utility anticipated would be constructed and installed during the period 2002-2012, to estimate the Future Growth Cost of such facilities, to reduce such cost by the portion of the total Future Growth Main Costs anticipated to be recovered through front-foot charges and to determine the amount of the connection charge per REC that would reasonably permit the Racine Utility to recover such remaining cost within the 20-year period 2002-2022, taking into account the:

(1) anticipated timing of the construction of the various facilities, and

(2) the number and timing of the RECs that are anticipated to connect to the Racine Water System during such 20-year period, and

(3) the anticipated cost of financing the Future Growth Cost of the facilities to be constructed.

c. Annual Index Adjustments. Except as otherwise specifically provided in this Agreement, the amount of the connection charge shall be adjusted annually as of February 1 of each year by the percentage change in the annual average (20-city prices) Construction Cost Index published by the Engineering News Record. The Racine Utility shall promptly notify the Village and the City in writing of any such annual adjustment to the connection charge per REC.

d. Periodic Adjustments. As the Parties anticipate that the factors and assumptions used in computing the initial amount of the contract connection charge will change over time, the amount of the connection charge shall be reviewed by the Racine Utility every three years at a minimum and may be adjusted by the Racine Waterworks Commission at such times, subject to Subsection 10.e, below, to ensure that the amount of the connection charge per REC will reasonably permit the Racine Utility to recover its Future Growth Costs within the specified 20-year period but without substantial overages.

(1) Recomputing Connection Charge. The amount of the connection charge shall be recomputed by the Racine Waterworks Commission from time to time to account for the construction of additional Regional Water Facilities, changes in the timing, size, number, or location of the Regional Water Facilities to be constructed, variances between the actual and estimated costs to construct such facilities, variances between the actual and projected interest rates and financing costs, variances between the actual and projected rate of new connections to the Racine Water System and other factors that affect the computation of the connection charge per REC.

(2) Adjustment of REC. The Racine Waterworks Commission, following consultation with the Parties, may adjust the number of gallons per year constituting a single REC, as appropriate in light of ongoing experience, but only in conjunction with an adjustment in the amount of the connection charge per REC.

(3) Commission action. Each time the connection charge is reviewed, the Racine Waterworks Commission may decide to freeze the charge at its then-current amount until the next review, continue to increase the charge annually by the percentage change in the annual average Construction Cost Index, or increase the charge by an amount necessary to adequately recover the Future Growth Costs within the specified 20-year period. The amount of any adjusted connection charge shall be computed by a methodology substantially similar to the methodology used in the Connection Fee Report, using a rolling 10-year capital improvement plan and a recovery period that extends 10 years beyond the 10-year capital improvement plan, and shall conform to the principles of the impact fee standards set out in Subsection 66.0617(6) of the Wisconsin Statutes (2001-02), applied to this situation by analogy, as though the Racine Utility were a municipality and the Village and the other Municipal Retail Customers of the Racine Utility were developers within such municipality. If the review of the charge indicates that the Racine Utility is likely to collect substantially more than the amount of its Future Growth Costs, the Racine Waterworks Commission shall freeze the amount of the charge until the next review.

e. Village Objection to Periodic Adjustments. The Racine Utility shall promptly notify the Village and the City in writing of any proposed adjustments in the amount of the contract connection charge or in the number of gallons per year constituting a single REC

pursuant to Subsection 10.d, above, not less than 60 days prior to the proposed date of implementation, which shall be stated in the notice. The Village may object to the proposed adjustment by written notice to the Racine Utility and City not less than 30 days prior to the proposed date of implementation. The notice shall state the basis for the Village's objection. Representatives of the Parties shall meet as promptly as possible and in any event within 15 days after the effective date of the Village's notice of objection to attempt to resolve the objection. Representatives of the Parties shall meet again within 15 days after the first meeting if the objection is not resolved at the first meeting. If the objection is not resolved after two meetings, or within 40 days after the effective date of the Village's notice of objection, whichever is earlier, the Village may invoke the mediation process pursuant to and in accordance with Subsection 31.d of this Agreement, beginning with the 60-day written notice provided for therein; provided, however, that references in Subsection 31.d to the purpose set out in Subsection 31.c and to "material change of circumstances", the "cost-benefit balance" of this Agreement or the smooth and efficient administration of this Agreement shall be inapplicable; and further provided that the sole issue in the mediation shall be whether the Racine Waterworks Commission determined the adjustment at issue in accordance with Subsection 10.d, above. In lieu of mediation, the Parties may agree to submit such issue to an independent expert or governmental agency for review and comment. If the objection is not resolved as a result of mediation or independent third-person review and comment, the Village may invoke administrative or judicial remedies pursuant to and in accordance with Section 39 of this Agreement. If the Village fails to timely object to a proposed periodic adjustment, or fails to invoke mediation pursuant to Subsection 31.d or administrative or judicial remedies pursuant to Section 39 within 30 days after having the right to do so, any right the Village might otherwise

have had to challenge or contest the proposed adjustment (or any lesser adjustment) shall be deemed to be waived, and the Village agrees not to challenge or contest any such adjustment. No proposed periodic adjustment shall be implemented before a timely objection by the Village is resolved pursuant to this Subsection 10.e.

f. Determining Number of RECs.

(1) Initial Determination. The number of RECs to be used in computing any contract connection charge shall be determined by reference to the REC table and methodology set out in the City's Connection Charge Ordinance. The Village shall obtain reliable information on a water connection charge worksheet, a sample of which is attached to this Agreement as Exhibit 6 and incorporated herein by reference. The worksheet will be completed by each applicant for a permit or approval to connect to the Racine Water System, at the time of application, relating to the specific proposed use(s) of the property and for any nonresidential use the maximum employee hours for a peak day of operations. The Village shall obtain the same information from the applicant for any Village zoning, building or other permit or approval required for a change of use or for the addition of a new use or for a new or expanded building on a lot or parcel already connected to the Racine Water System at the time of application. The Village shall obtain such information on a water connection charge worksheet, a sample of which is attached to this Agreement as Exhibit 6 and incorporated herein by reference. The Village shall furnish to the Racine Utility a copy of each application for any such connection, zoning, building or other permit or approval, together with a water connection charge worksheet completed by the applicant, within 10 days after receipt of such application. Within 10 days after receipt of a copy of an application for any such

nonresidential connection, zoning, building or other permit or approval, and a copy of a related water connection charge worksheet completed by the applicant, the Racine Utility shall determine the amount of the connection charge to be paid by the Village for the subject property and shall furnish written notice of such amount to the Village. The Village shall furnish to the Racine Utility a copy of any approval or permit granted or issued with respect to any such residential or nonresidential application in accordance with Subsection 11.a of this Agreement.

(2) REC Calculation for Changed or Additional Uses or New or Expanded Buildings. Any connection charge for a change of use or the addition of a new use or for a new or expanded building or other facility, after an initial connection charge has been paid by the Village with respect to the lot or parcel on which such use or facility is located, shall be based on the difference between the projected water usage of the total new or expanded use or facility determined pursuant to the City's Connection Charge Ordinance and the actual annual average water usage of the use or facility for which the initial connection charge was paid, if available, or if not, the projected water usage of such prior use or facility determined pursuant to such Ordinance. Any connection charge for a change of use or the addition of a new use or for a new or expanded building or other facility, when no connection charge has previously been paid with respect to the lot or parcel on which such use or facility is located, shall be based on the difference between the projected water usage of the total new or expanded use or facility determined pursuant to the City's Connection Charge Ordinance and the actual annual average water usage of the most recent prior use or facility, if available, and if not, the projected water usage of such prior use or facility determined pursuant to such Ordinance.

g. Recalculation of REC Charge. The Racine Utility shall have the right to recalculate any connection charge at any time between the first and third anniversary dates of any contract connection charge due date, based upon the highest actual recorded usage during any 12-month period since such due date. If the recalculated charge exceeds the original connection charge paid by the Village, the Racine Utility shall give written notice of the difference to the Village and such amount shall be due from the Village 30 days after the effective date of such notice. There shall be no refund in the event the recalculated connection charge is less than the amount of the connection charge originally paid; provided, however, that such paid for excess capacity shall be carried forward as a credit in the event the use changes in accordance with Subsection 10(d)(ii), above.

h. Payment. Payment of contract connection charges to the Racine Utility shall be due from the Village 30 days after the granting of any permit or approval by the Village or any agency or agent of the Village for a water service connection to the Racine Water System, or within 30 days after the granting of any permit or approval by the Village or any agency or agent of the Village for a change of use, or for the addition of a new use, or for a new or expanded building, on a lot or parcel already connected to the Racine Water System for which a payment is required.

i. Deposit in Segregated Account/Use/Accounting. Any payments of contract connection charges pursuant to this Section 10 made by the Village to the Racine Utility shall be deposited by the Racine Utility in an interest-bearing segregated account and shall be used by the Racine Utility only to pay Future Growth Costs. The funds in such account shall be accounted for separately in the annual financial audit performed pursuant to Section 23 of this Agreement. The Racine Utility shall only be required to maintain a single segregated account in

which to deposit payments of contract connection charges made by any of its Municipal Retail Customers.

j. Phase-in of Contract Connection Charges. Notwithstanding any other provision of this Agreement, no contract connection charge shall be due from the Village with respect to the connection to the Racine Water System of a lot or parcel within 12 months after the effective date of this Agreement (see Section 44 of this Agreement) if such lot or parcel was developed with a principal building prior to such effective date, and if the water main to which such lot or parcel is connected was existent prior to such effective date and if the connection is made in compliance with the requirements of Section 13 of this Agreement. Notwithstanding any other provision of this Agreement, no contract connection charge shall be due from the City during the 12 months after the effective date of this Agreement.

11. Village Reporting Requirement/Audit And Review Of Contract Charges.

a. Village Reporting. The Village shall give written notice to the Racine Utility, not later than the fifth day of each month, of any conveyance of a lot or parcel within the Village; any division of a lot or parcel within the Village by means of subdivision, certified survey map, other platting, conveyance or by any other means; any permit or approval for any development activity of any kind on a lot or parcel within the Village for or relating to residential, commercial, industrial, institutional or other non-residential or non-rural purposes; any permit or approval for a change of use, the addition of a new use, or the construction of a new or expanded building within the Village; or any permit or approval for a water service connection to the Racine Water System within the Village; which was granted or approved by the Village or any agency or agent of the Village during the preceding calendar month, or of which the Village or any agency or agent of the Village acquired or received actual knowledge or

actual notice in its official capacity during the preceding calendar month. Such notice shall include a copy of any document constituting or describing the events of circumstances requiring notice or a statement of the particulars of such events or circumstances.

b. Audit and Review of Contract Charges. The Racine Utility shall conduct an annual audit within 90 days after January 1 of each year, of contract front-foot charges and contract connection charges that should have been paid by the Village during the preceding calendar year. The cost of such an audit shall be treated as an operational cost by the Racine Utility. The Village shall cooperate fully with the Racine Utility in facilitating such audit. The Racine Utility shall give the Village a copy of such audit. The Racine Utility may conduct informal reviews at any time of the status of payment of contract front-foot charges and contract connection charges. Any unpaid charges which come to light as a result of the annual audit or any informal review shall be paid by the Village within 30 days after written notice.

12. **Recovery Of Contract Charges By The Village.** To the extent permitted by law, the Village shall be entitled to recover from benefited developers, property owners or water users within its boundaries the amount of any contract connection charge payments and contract front-foot charge payments made by the Village to the Racine Utility pursuant to Sections 9 and 10 of this Agreement, and any reasonably related administrative fees, by any appropriate means and shall be entitled to retain all such amounts. The decision of whether, by what means, from whom, when, to what extent and under what circumstances to recover payments for contract connection charges or for contract front-foot charges shall be left to the sound discretion of the Village. The City and Racine Utility shall reasonably cooperate with the Village in the exercise of the Village's authority under this Section 12, e.g. by providing requested documents, information, or personnel assistance.

13. **Water Service Connections.** The Village may permit owners of land within the Mt. Pleasant Service Area abutting any water main designed to provide direct service to land (e.g. not designed solely for purposes of looping) that is part of the Racine Water System to connect to such main (up to the full future growth capacity of such main) for their water needs, upon Village approval of their applications for such connections. Any such water service connection shall be made only in accordance with the rules and regulations of the City, as filed with and approved by the PSC. A water meter shall be supplied, installed and maintained by the Racine Utility. The water meter shall remain the property of the Racine Utility, and shall be subject to inspection by the Racine Utility. The Village shall not allow service to a new connection, other than the testing of the water service, until after a water meter has been installed by the Racine Utility.

14. **Local Ordinances.** The Village shall promptly enact and thereafter enforce all ordinance provisions necessary to facilitate the orderly and adequate provision of retail water service by the City and the Racine Utility to the Mt. Pleasant Service Area in accordance with this Agreement. Such ordinance provisions shall include, without limitation, the following:

- a. An ordinance provision prohibiting connection to the Racine Water System by any persons or for any property outside of the Mt. Pleasant Service Area;
- b. An ordinance provision prohibiting connection to the Racine Water System except upon prior written permit or approval of the Village;
- c. An ordinance provision prohibiting average daily water usage by a single water user exceeding 9,000 gallons per day per acre unless any special arrangements or requirements specified by the Racine Utility after review of the situation are duly made and satisfied;

d. An ordinance provision permitting City agents, contractors and employees to enter upon private property for the purpose of reading and maintaining water meters, inspecting water meters, inspecting water connections and any other purposes that are associated with the City's discharge of its responsibilities under this Agreement (and the Village shall fully cooperate with the Racine Utility in obtaining any necessary special inspection warrants under Section 66.0119 of the Wisconsin Statutes);

e. An ordinance provision requiring developers of land within the Mt. Pleasant Service Area to comply with all of the rules and regulations imposed by the City and/or the Racine Utility with respect to standards for the construction or installation of water mains, related equipment and appurtenances;

f. An ordinance provision prohibiting the unauthorized use of fire hydrants and providing for local prosecution of theft of water from fire hydrants;

g. An ordinance provision providing for the enforcement of any lawn watering ban or other such limitation on the use of water that might be ordered when the City or the Racine Utility, in its sole discretion, gives notice of such a ban or order;

h. Ordinance provisions that provide for and facilitate implementation of the requirements set out in Subsection 5.b of this Agreement;

i. Ordinance provisions requiring a written permit or approval from the Village for any water service connection to the Racine Water System, and for any change of use, or for the addition of any new use, or for any new or expanded building on a lot or parcel already connected to the Racine Water System, and requiring the filing of reliable information from the applicant for any such permit regarding the applicant's proposed use(s) of real property and the applicant's maximum employee hours for a peak day of operations for any non-residential use(s).

The forms of the foregoing ordinance provisions, which the Village has reviewed and determined to be acceptable prior to the Date of this Agreement are collectively set out in the attached Exhibit 7, which is incorporated herein by reference. The Village shall also adopt and thereafter enforce such other and additional ordinance provisions relating to the provision of water service to the Mt. Pleasant Service Area as the City or the Racine Utility may reasonably request from time to time. The City and the Racine Utility shall consult with the Village regarding the proposed text and justification for any such additional ordinance provisions before requesting the Village to adopt such provisions.

15. **Compliance with State Law.** The Parties shall comply with all Wisconsin Statutes and regulations of the PSC and the DNR, insofar as they are applicable to matters covered by this Agreement, including, without limitation, well abandonment and cross connections between wells and the Racine Water System.

16. **Reserves.** Notwithstanding the provisions of Section 66.0811 of the Wisconsin Statutes, permitting the Racine Utility to pay excess income into the general fund or special funds of the City, the Racine Utility shall maintain such reserve funds as may be required by the PSC. The Waterworks Commission may approve and make payments to the City as a fund transfer from reserves of the Racine Utility only as follows. The maximum payment for each year 2005 through 2009 shall be \$230,000. The maximum payment for subsequent years shall be calculated using the U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index for all urban consumers series ID: CUURX200SA0 (not seasonally adjusted, Midwest - size class B/C, all items, December 1996=100) or an appropriate replacement should this series become unavailable. The amount of the maximum payment shall be calculated as follows: for any budget year, starting with 2010, the annual CPI index from two years earlier shall be divided

by the annual CPI index for 2007. The resulting ratio represents the percentage increase from the base year. This ratio will be multiplied by the base amount of \$230,000 resulting in the maximum payment to be budgeted for the year in question. As an example, for budget year 2012, assume that the base year 2007 CPI (currently, actual is unknown) is 120.2, and assume that the CPI index from two years earlier, 2010 (currently, actual is unknown), is 127.6. Calculate the maximum payment as follows: $(\text{CPI index from 2010})/(\text{CPI index from base year 2007}) = \text{percentage increase ratio}$: $127.6 / 120.2 = 1.061564$. Percentage increase ratio times \$230,000 = maximum amount payable for 2012: $1.061564 \times \$230,000 = \$244,160$.

17. **Coordination.**

a. Annual Meetings. Representatives of the Parties shall meet annually, ideally during the month of July, to discuss their respective capital improvement programs and other matters of common interest to facilitate coordinated planning and implementation of capital projects.

b. Ad Hoc Meetings. Upon request from the Village and upon reasonable advance notice, the City and/or the Racine Utility shall make available a knowledgeable representative to meet with representatives of the Village and/or a developer regarding matters relating to water service, water improvements or other issues arising under or in connection with this Agreement. Upon request from the City and/or the Racine Utility and upon reasonable advance notice, the Village shall make available a knowledgeable representative to meet with representatives of the City and/or the Racine Utility and/or a developer regarding matters relating to water service, water improvements or other issues arising under or in connection with this Agreement.

18. **Term.** The term of this Agreement is intended to be permanent, unless the Parties amend this Section 18 or terminate this Agreement pursuant to Section 40 of this Agreement.

19. **Default in Making Timely Payment.**

a. Interest Charge. Payments due from the Village to the Racine Utility pursuant to this Agreement shall be considered delinquent if not timely paid after written notice, bill or invoice. Delinquent payments shall be subject to an interest charge of 1% per month on the unpaid balance.

b. Condition Precedent to Action or Complaint. Timely payment in full of any amount due to the Racine Utility from the Village and all accrued interest, within 15 days after notice of default, shall be a condition precedent to the Village commencing or maintaining a legal action in court or filing or maintaining a complaint to the PSC relating to this Agreement or to any act or failure to act of the Racine Utility or the City under or with respect to this Agreement.

20. **Village Water Requirements.** The Village shall obtain all of its requirements for municipal water service from the Racine Utility unless, and only to the extent that, the Racine Utility cannot provide water service to a particular area or refuses or fails to provide water service to a particular area within a reasonable period of time (in light of all of the attendant circumstances) after the Village has formally requested in writing water service for such area and any necessary related approvals pursuant to Subsection 9.b(1) of this Agreement (and, if necessary, pursuant to Subsections 3.d, 3.e or 3.f of this Agreement) and has satisfied all conditions precedent to receiving such service and approvals pursuant to this Agreement.

21. **Disconnection.** Nothing in this Agreement shall be construed to prevent the Racine Utility from disconnecting Individual Retail Customers from the Racine Water System in accordance with PSC regulations and other applicable law.

22. **Reliance on PSC.** The Parties acknowledge that in entering into this Agreement they are mutually relying on the regulatory role played by the PSC, as of the date of this Agreement (see the first paragraph on page 1, above) with respect to matters relating to water service rates, rules and practices. In the event that the responsibilities of the PSC or any successor agency with respect to such matters change materially, or in the event that the level of involvement of the PSC or any successor agency in such matters changes materially as a result of funding cuts or otherwise, or in the event that the PSC ceases to exist without its responsibilities regarding such matters being transferred to a successor agency, the provisions and procedures of Section 31 of this Agreement shall be invoked.

23. **Annual Financial Audit.** The Racine Utility shall have an independent financial audit of the Racine Utility prepared each year by a qualified accounting firm. Such audit shall be prepared in accordance with generally accepted accounting principles as applied to water utilities and shall, without limitation, determine whether costs incurred or payments received in connection with retail water service and wholesale water service are properly allocated and accounted for in accordance with the terms of this Agreement.

24. **Water Service to Other Customers.** Without amending this Agreement, and without the approval of the Village, the City and the Racine Utility shall be free to expand the geographic area within which they provide water service to the territory of Municipal Retail Customers other than the Village (including both those referred to in the Water System Plan and others) and to Municipal Wholesale Customers (including both existing Municipal Wholesale

Customers as of the date of this Agreement and others), and to special non-municipal wholesale customers (e.g. an electric power generation facility), within and beyond the Recommended Racine Retail Water Service Area, and shall be free to plan, design, construct and otherwise provide water improvements and facilities to serve such territory and customers, subject to each of the following conditions:

(1) similarly situated Municipal Retail Customers other than the Village (i.e., the Village of Sturtevant and the Town of Caledonia, if they become Municipal Retail Customers) and Individual Retail Customers within their respective contract service areas shall be served and charged by the Racine Utility on the same basis as are the Village and the Individual Retail Customers within the Village, including, without limitation, the same contract front-foot charges, the same contract connection charges, and the same retail rates and surcharge (the Parties hereby acknowledge and agree that the Village of Elmwood Park, the Village of North Bay, the Town of Somers and Individual Retail Customers within the respective contract service areas of these Municipal Retail Customers will not be similarly situated for all purposes if these Municipal Retail Customers fail to enter into retail water service agreements similar to this Agreement); and

(2) the acquisition by the Racine Utility of the water system facilities of Municipal Retail Customers other than the Village shall be structured generally in accordance with the principles outlined in the Water Provision Study; and

(3) the Village, other Municipal Retail Customers and the Individual Retail Customers within their respective contract service areas shall not be required to

subsidize the costs of serving any Municipal Wholesale Customers or any special non-municipal wholesale customers; and

(4) no material diminution of the quantity, quality or pressure of the water provided to the Village will result from the Racine Utility providing additional water service to other such entities.

25. **Implementation.** Each of the Parties shall promptly take such actions as may be necessary or desirable to effectuate and implement this Agreement.

26. **Notices.**

a. Written Notices. Each notice required by or relating to this Agreement shall be in writing and shall specifically refer to this Agreement by name (the “Intergovernmental Retail Water Service Agreement Between the City of Racine and the Village of Mt. Pleasant”) and shall refer specifically to the number of the section(s) or subsection(s) or to the designation of the exhibit(s), map(s) or table(s) to which the notice relates. Any such notice shall be delivered to each notice addressee of the Party receiving the notice by personal delivery (or alternatively, if the address specified for such notice addressee is an office address, by personal delivery during normal business hours to the person apparently in charge of such addressee’s office), or shall be mailed to such addressee by certified mail-return receipt requested or by first class mail, or shall be transmitted to such addressee by facsimile (provided that the notice is mailed the same day by first class mail), at the address stated in Subsection 26.f, below. Notice addressees and addresses may be changed from time to time in accordance with Subsection 26.b, below. Nothing in this Section 26 shall be deemed to require delivery of a notice to any notice addressee by any particular means, provided that the means used is approved by this Agreement or is approved in writing by the recipient Party.

b. Changing Notice Address. Each Party may, from time to time and as appropriate, change its notice addressees, change its notice address, or add additional addresses for notice by electronic mail or other communications media (which shall be treated like notice by facsimile), by written notice to the other Parties pursuant to this Section 26.

c. Effective Date of Notice. Each notice shall be effective upon delivery in person, or two days after mailing by certified mail-return receipt requested or first class mail, or upon facsimile transmission with receipt confirmed, or upon actual receipt without regard to the method of delivery or transmission, whichever occurs first. Any time period specified by this Agreement in connection with a notice requirement shall be determined with respect to the effective date of the notice unless a different intent is clearly stated.

d. Emergency Notice. The Parties may reasonably shorten the time for any notice required by this Agreement when necessary to deal with a serious emergency situation; provided, however, that an emergency resulting from a failure of such Party to act promptly in response to circumstances clearly requiring attention shall not qualify as an emergency.

e. Waiver of Notice. The governing body of any Party shall have authority to waive, in writing, any notice that it is entitled to receive under this Agreement.

f. Notice Addressees and Addresses. The notice addressee(s) for each of the Parties, and their respective addresses for purpose of giving notice pursuant to or in connection with this Agreement, shall be as follows:

(1) City of Racine:

City Clerk
City of Racine
Room 102
730 Washington Avenue
Racine, WI 53403

City Attorney
City of Racine
730 Washington Avenue
Racine, WI 53403

(2) Racine Water Utility:

General Manager, Racine Water and Wastewater Utilities
City Hall Annex
800 Center Street, Room 227
Racine, WI 53403

(3) Village of Mt. Pleasant:

Village Administrator
Village of Mt. Pleasant
6126 Durand Avenue
Racine, WI 53406.

27. **Waiver.** Except as otherwise specifically provided in this Agreement, any right of a Party pursuant to this Agreement can only be waived in writing. A waiver on one occasion, or in one set of circumstances, shall not be deemed to be a waiver of such right on any other occasion or in any other circumstances.

28. **Changing Escalator Index.** In the event that any escalator index provided for in this Agreement or subsequently selected pursuant to this Agreement is discontinued, or in the event that the methodology used to prepare any such index is materially altered, the Racine Utility shall select an alternative escalator index that approximates as closely as possible the results of the prior index, and shall promptly notify the other Parties of such modification in writing.

29. **Mutual Indemnification.** The Village shall hold harmless, indemnify and defend the City, the Racine Utility and the Racine Waterworks Commission, and their officers, employees and agents from and against any and all claims, causes of action, liability, damages, expenses and costs (including reasonable attorneys' fees) for or in connection with personal injury, death or property damage resulting from or arising out of acts or omissions of the Village, its officers, employees, agents, consultants or contractors, or their subcontractors, when such acts

or omissions relate to the Village's obligations pursuant to this Agreement. The City and the Racine Utility shall hold harmless, indemnify and defend the Village, its officers, employees and agents from and against any and all claims, causes of action, liability, damages, expenses and costs (including reasonable attorneys' fees) for or in connection with personal injury, death or property damage resulting from or arising out of acts or omissions of the City, the Racine Utility or the Racine Waterworks Commission, their officers, employees, agents, consultants or contractors, or their subcontractors, when such acts or omissions relate to the obligations of the City, the Racine Utility or the Racine Waterworks Commission pursuant to this Agreement.

30. **Severability.** In the event that any provision of this Agreement, or any part thereof, is held or determined by a court or agency of competent jurisdiction to be invalid or unenforceable, the balance of this Agreement shall be deemed to be severable and shall survive; provided, however, that such a holding or determination shall invoke the provisions and procedures of Section 31 of this Agreement.

31. **Material Change of Circumstances.** In the event of any change of circumstances resulting from judicial, legislative or administrative action by federal, state or local authorities after the Date of this Agreement, which is not specifically provided for in this Agreement, and which has the effect of materially altering the carefully structured balance of benefits and burdens that the Parties have extensively negotiated and accepted in this Agreement (the "Cost-Benefit Balance" of this Agreement) or which disrupts, hampers or obstructs the smooth and efficient administration of this Agreement (a "Material Change of Circumstances"), the provisions and procedures of this Section 31 shall be invoked.

a. **Notice.** Any Party to this Agreement may give written notice to the other Parties that a potential Material Change of Circumstances has occurred or may occur in the

foreseeable future. Any such notice shall describe the potential Material Change of Circumstances and its potential impact upon this Agreement.

b. Initial Meeting. Upon notice being given of a potential Material Change of Circumstances, the Racine Utility shall promptly schedule a meeting of representatives of the Parties, on not less than 10 days prior written notice, to begin discussing whether a Material Change of Circumstances has occurred and how to deal with it. If the potential Material Change of Circumstances will materially affect other retail water service agreements of the Racine Utility similar to this Agreement, the Racine Utility may give written notice of the potential Material Change of Circumstances to the parties to those similar agreements and involve them in the initial meeting and/or subsequent proceedings. (In the event that parties to similar agreements are involved, references in the following provisions of this Section 31 to “Parties” or “Party” or “Agreement” shall be understood to include such other similar agreements and the parties to them.)

c. Amendment. If any of the Parties believes that a Material Change of Circumstances has occurred, the Parties shall discuss how best to restructure this Agreement and/or the relationship of the Parties so that the original Cost Benefit Balance of this Agreement, or a reasonable approximation thereof, and the reasonably smooth and efficient administration of this Agreement, can feasibly be reestablished and maintained. As between the two, restoring the Cost Benefit Balance of this Agreement is primary and restoring the smooth and efficient administration of the Agreement is secondary. The Racine Utility shall schedule and conduct meetings of the Parties as often as may be helpful, and the Parties shall use their best efforts (including, but not limited to, holding special meetings) to rapidly find, design and implement a means of successfully accomplishing this purpose, including, but not limited to, the negotiation

of appropriate amendments of this Agreement. In doing so, and in any follow-up mediation or arbitration conducted pursuant to this Section 31, each Party shall have the obligation to act in good faith in attempting to restore the original Cost Benefit Balance of this Agreement, or a reasonable approximation thereof, and the reasonably smooth and efficient administration of this Agreement.

d. Mediation. In the event the Parties are not able to reach agreement within 60 days after the initial meeting of the representatives of the Parties, any Party may, by 60-day prior written notice to the others, require submission of such dispute (including whether a Material Change of Circumstances has occurred) to an impartial mediator, to be selected by the Parties during such 60-day period, for non-binding mediation if the dispute is not resolved during such 60-day period. All of the Parties shall participate in the mediation unless a Party opts out by written notice to the other Parties. The mediator selected shall be the best qualified individual the Parties can find to mediate their differences regarding how best to accomplish the purpose set out above in Subsection 31.c, above, and/or whether a Material Change of Circumstances has occurred. Within 30 days after the mediation notice, each Party to the mediation shall notify the other Parties in writing of its nomination of up to two disinterested potential mediators, together with appropriate background information regarding each. Not later than 60 days after the mediation notice, the Racine Waterworks Commission shall conduct a meeting of representatives of the Parties, on not less than 30 days prior written notice, to select the mediator. If the Parties to the mediation are unable to agree upon a mediator by unanimous vote, the mediator shall be selected from the panel of potential mediators nominated by the Parties. The mediator shall be selected by use of a modified alternate strike method, as follows: Each Party shall have a single vote to cast in each round of strikes against the nominated mediators. In each successive round

of strikes, the nominated mediator(s) with the greatest number of strikes shall be eliminated. In the event that the last two or more nominated mediators repeatedly receive the same number of strikes, the choice between the remaining nominated mediators shall be made by the flip(s) of a coin. The Parties shall jointly retain the mediator through the Racine Utility. The Racine Waterworks Commission shall cause a written notice to be sent to each participating Party upon retention of the mediator stating the name and address of the mediator. The fees and expenses of the selected mediator shall be paid by the Racine Utility as an operational cost. The Parties may be represented by legal counsel in the mediation, but each Party shall be responsible for its own attorneys' fees.

e. Arbitration. In the event that the Parties are unsuccessful in reaching agreement with the assistance of the mediator within a reasonable period of time, any Party to the mediation may, by 60-day prior written notice to the other Parties to the mediation, require submission of such dispute to an impartial arbitrator, to be selected in the same manner and pursuant to the same procedures as the mediator, for binding arbitration if the dispute is not resolved during such 60-day period. All Parties shall participate in any arbitration unless a Party opts out by written notice to the other Parties. (Any Party which opts out of the arbitration shall nevertheless be bound by the results of the arbitration.) Unless otherwise specifically provided in this Subsection 31.e, or otherwise agreed to by the Parties involved in the arbitration, the arbitration shall be conducted procedurally in accord with the then current Commercial Arbitration Rules of the American Arbitration Association; provided, however, that the Parties shall not be required to make use of or involve the American Arbitration Association in the proceedings. Without limitation, the arbitration procedure shall include written briefs to explain and advocate for and against the final proposed solutions, and discovery and evidentiary hearing

relating to any questions of fact. Except as is otherwise specifically provided in this Subsection 31.e, the arbitrator shall be limited in his or her decision to a selection of the final proposed solution of each participating Party that most closely restores or approximates the original Cost Benefit Balance of this Agreement, and secondarily provides for the reasonably smooth and efficient administration of this Agreement. The Parties shall jointly retain the arbitrator through the Racine Utility. The Racine Utility shall cause a written notice to be sent to each participating Party upon retention of the arbitrator stating the name and address of the arbitrator. The fees and expenses of the arbitrator shall be paid by the Racine Utility as an operational cost. The Parties may be represented by legal counsel in the arbitration, but each Party shall be responsible for its own attorneys' fees. The Parties shall submit their respective preliminary proposed solutions to the arbitrator and to each of the participating Parties by written notice within 10 days of the arbitrator retention notice. The Parties may amend their respective proposed solutions until having submitted their final proposed solutions under the direction of the arbitrator. The arbitrator shall select the final proposal that most closely restores the original Cost Benefit Balance of this Agreement and, secondarily provides for reasonably smooth and efficient operation of this Agreement, and he shall reject all other proposals, stating the reasons for his decision. The Parties to this Agreement shall be bound by the result of the arbitration, except as provided by law. Upon completion of this arbitration, the decision of the arbitrator shall become an automatic amendment to this Agreement and shall be binding upon the Parties. The decision of the arbitrator shall be deemed to be an administrative decision made pursuant to this Agreement by delegation of the Parties.

32. **No Challenges to the Validity or Enforceability of this Agreement.** Except as is otherwise expressly provided in this Agreement, each of the Parties hereby waives any right to

commence or maintain, and hereby agrees not to commence or maintain, any civil action to contest or challenge the validity or enforceability of this Agreement or any of its provisions. Except as is otherwise expressly provided in this Agreement, each of the Parties hereby waives any right to complain to the PSC, and hereby agrees not to complain to the PSC, pursuant to Subsection 66.0821(5) of the Wisconsin Statutes (2001-02), that this Agreement or any provision of this Agreement is unreasonable or unjustly discriminatory on its face. Nothing in this Section 32 shall be construed as preventing a Party from commencing or maintaining a declaratory judgment action regarding the interpretation of this Agreement (provided and to the extent that the Party's position is consistent with a good faith interpretation of the Agreement and does not challenge the validity or enforceability of the Agreement or any of its provisions), or a certiorari action challenging a decision by a Party, or an action seeking equitable relief to enforce this Agreement, or an action seeking damages for breach of this Agreement. Nothing in this Section 32 shall be construed as preventing a Party from complaining to the PSC or maintaining such a complaint pursuant to Subsection 66.0821(5) that a decision made by the City or the Racine Utility under this Agreement is unreasonable or unjustly discriminatory provided that, and to the extent that, such position is consistent with a good faith interpretation of this Agreement and does not challenge the validity or enforceability of this Agreement or any of its provisions.

33. **Interpretation.** This Agreement shall not be deemed to have been drafted by any particular Party so as to be interpreted strictly against such Party. As used in this Agreement, "shall" and "must" are mandatory, "may" and "should" are discretionary, and "municipality" means city, village or town. As used in this Agreement, "person" means individual, corporation, partnership or any other recognized entity.

34. **References.** Any references in this Agreement to any particular agency, organization or official shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by law. Any references in this Agreement to any particular statute, ordinance, rule or regulation shall be interpreted as applying to such statute, ordinance, rule or regulation as amended or recreated from time to time. In the event that any such amendment or recreation effects a Material Change of Circumstances, however, this rule of interpretation shall not be construed as specifically providing for such change so as to make inoperable the provisions of Section 31 of this Agreement relating to a Material Change of Circumstances.

35. **Section and Subsection Titles.** Section and subsection titles in this Agreement are provided for convenience only and shall not be used in interpreting this Agreement.

36. **Successors and Assigns.** This Agreement shall benefit and be binding upon the Parties and their successors and assigns. This Agreement shall not be assigned by any Party without the written consent of each of the other Parties.

37. **Complete Agreement.** This Agreement represents the complete agreement of the Parties and supersedes all agreements, warranties, representations and promises, either written or oral, made during the course of negotiations leading up to this Agreement. This Agreement supercedes any prior agreement between or among the Parties relating to the provision of water service by the City and/or the Racine Utility to the Village or to the Village's predecessor, the Town of Mt. Pleasant, except the May 20, 1992 Water Service Agreement for a portion of the Town of Somers; the August 5, 1994 Water Service Agreement for Brandywine Corporation Avalon Estates Development in the Town of Somers; the July 29, 1998 Water Service Agreement for service to the Milasav Lazaravic development in the Town of Somers; the August

15, 2000 Supplemental Water Agreement, for water service to Jamestown Subdivision; the July 16, 2002 Water Service Agreement, for water service to a portion of the Town of Somers, and the October 3, 2002 Agreement water service for Deer Creek Estates Subdivision, and a potential agreement for water service to The Settlement at Hoods Creek.

38. **Good Faith and Fair Dealing.** The Parties hereby acknowledge and agree that this Agreement imposes on each of them a duty of good faith and fair dealing.

39. **Enforcement/Remedies.**

a. Remedies.

(1) The Village shall have the right and standing to complain to the PSC, pursuant to Subsection 66.0821(5) of the Wisconsin Statutes (2001-02), that any decision made or action taken by the City or by the Racine Utility under or pursuant to this Agreement constitutes an unreasonable or unjustly discriminatory rate, rule or practice, provided and to the extent that the Village's position is consistent with a good faith interpretation of this Agreement and does not challenge the validity or enforceability of this Agreement or any of its provisions.

(2) Each Party shall have the right and standing to seek a declaratory judgment in court regarding the proper interpretation of this Agreement or of the rights or obligations of the Parties under the provisions of this Agreement as stated. Each Party shall have the right and standing to seek any available equitable or legal remedy in court to enforce this Agreement, and/or to seek damages for the breach of this Agreement, unless the PSC has primary jurisdiction over such matter under Subsection 66.0821(5) of the Wisconsin Statutes. No Party, however, shall have the right or standing to use such

an action to challenge the validity or enforceability of this Agreement or any of its provisions.

b. Notice of Breach or Dispute. If a Party believes that any other Party is in breach of this Agreement, or that a dispute exists about the meaning of the Agreement, the aggrieved Party shall promptly give written notice of the breach or dispute to the other Parties, specifying the provision(s) of this Agreement that are involved and the action, inaction, dispute or interpretation that gives rise to the notice. Representatives of the Parties shall meet as promptly as practicable thereafter, and in any event within 30 days after the effective date of the notice, and shall endeavor in good faith to resolve any dispute or other matter amicably. If the initial meeting fails to resolve the dispute or other matter, the Parties shall meet again within 30 days after the first meeting, unless the Parties agree in writing at the first meeting that there is no possibility a second meeting will help resolve the dispute or other matter. After the second meeting or after any agreement not to hold a second meeting, the Parties may pursue remedies in the Circuit Court of Racine County for breaches of this Agreement provided, however, that the Party allegedly in breach shall not be in breach if such Party cures the alleged breach within 30 days after such notice or commences steps which should reasonably cure the alleged breach within a period of time that is reasonable under the circumstances and diligently pursues such steps to completion, and the completion of such steps does cure the alleged breach. This Subsection is intended by the Parties to waive their respective statutory right to any notice under Subsection 893.80(1) of the Wisconsin Statutes (2001-02), to the extent such subsection is applicable.

c. Commencement of Civil Actions or Other Proceedings. A Party shall not commence a civil action or file a complaint with the PSC until after the meeting(s) required by

Subsection 39.b, above or until after the meetings and the mediation or alternative third-person review and comment required by Subsection 10.e of this Agreement, if applicable, and until after compliance with the payment provisions of Subsection 19.b of this Agreement except that a Party may commence an action seeking specific performance or injunctive relief prior to that time if, in that Party's good faith judgment, urgent action is necessary to protect the public health, safety or welfare from serious harm. In any such urgent situations, compliance with Subsections 39.b (or 10.e, if applicable) and 19.b shall be a condition to maintaining such action.

d. Litigation Expenses. Except as otherwise provided in this Agreement, the prevailing Party in any civil action or any proceeding on a complaint to the PSC pursuant to Subsection 66.0821(5) of the Wisconsin Statutes, shall be entitled to recover from the other Party its reasonable costs and expenses of litigation, including reasonable actual attorneys' fees.

40. **Amendment.** This Agreement may be amended or terminated by written agreement duly approved by the governing bodies of the Parties and signed by appropriate and duly authorized officers of such Parties, and approved by the PSC if such approval is required by law.

41. **No Third-Party Beneficiaries.** This Agreement is intended to benefit only the Parties and their successors and assigns, and nothing in this Agreement shall be interpreted as giving to any person which is not a Party any legal or equitable rights whatsoever.

42. **Limitations on Liability.** Notwithstanding any other provision of this Agreement, the City and the Racine Utility shall not be liable to the Village for any claims, losses or damages resulting from any break in any water main or any other failure of physical facilities to perform (except for breaks or other failures caused by the negligence or willful misconduct of the City or the Racine Utility), or from any loss of power, any act of God, any act

of sabotage, terrorism or war, any strike, or any other cause beyond the reasonable control of the City and the Racine Utility, or for any consequential damages; provided, however, that the City and the Racine Utility shall have the duty to reasonably maintain the Racine Water System and to restore any loss of service as rapidly as is reasonably practicable. The full faith and credit of the City shall stand behind the Racine Utility; provided, however, that any liability of the City with respect to water matters shall be paid first from the funds of the Racine Utility available for such purpose to the extent that reasonable and prudent reserves are maintained.

43. **No Revenue Sharing.** There shall be no revenue sharing pursuant to Section 66.0305 of the Wisconsin Statutes required by the City as consideration for the retail water service to the Village that is provided for in this Agreement. The Parties acknowledge and agree that none of the payments required of the Village by this Agreement constitutes such revenue sharing.

44. **Effective Date.** This Agreement shall take effect upon being duly approved and signed by each of the Parties (and upon being approved by the PSC, if such approval is required by law), whichever occurs last.

45. **Approval/Authority.** Each of the Parties hereby represents that this Agreement was duly approved by its governing body on the date stated below in accordance with all applicable state and local laws, and that its governing body has caused its duly authorized officers to execute this Agreement on its behalf on the date stated after each signature below.

Dated this ____ day of _____, 2004.

Approved as to form:

Daniel P. Wright, City Attorney

CITY OF RACINE:

Gary Becker, Mayor

Attest:

Karen M. Norton, City Clerk

RACINE WATERWORKS COMMISSION:

Brian Anderson, President

Thomas J. Bunker, General Manager

VILLAGE OF MT. PLEASANT:

Approved as to form:

William F. White
Special Legal Counsel

James Turek, Village President

Attest:

Juliet Edmands, Village Clerk/Treasurer

Kevin O'Donnell, Village Administrator