

AGREEMENT FOR THE PROVISION OF WATER  
TO THE RACINE WATER UTILITY BY THE TOWN OF SOMERS  
FOR A DESIGNATED PORTION VILLAGE OF MT. PLEASANT AREA

This Agreement (hereinafter referred to as the "Agreement") is made and entered into on this 13<sup>th</sup> day of February, 2006 by and between the following municipalities, hereinafter collectively referred to as the "Parties":

- a) TOWN OF SOMERS, a town existing under the laws of the State of Wisconsin and located in Kenosha County, Wisconsin with its Town Hall at 7511 – 12<sup>th</sup> Street, Somers, Wisconsin (the "Town"); and
- b) Town of Somers Water Utility, a utility owned by the Town of Somers and organized under the laws of the State of Wisconsin and located in Kenosha County, WI, with its headquarters at 7511 – 12<sup>th</sup> Street, Somers, Wisconsin (the "Town Utility"); and
- c) CITY OF RACINE, WISCONSIN, a municipal corporation organized under the laws of the State of Wisconsin, with its City Hall at 730 Washington Avenue, Racine, Wisconsin (the "City"); and
- d) CITY OF RACINE WATER UTILITY, a utility organized under the laws of the State of Wisconsin, with its main offices at 800 Center Street, Racine, Wisconsin (hereinafter referred to as the "Utility"); and
- e) VILLAGE OF MT. PLEASANT, a municipal corporation organized under the laws of the State of Wisconsin, with its Village Hall at 6126 Durand Avenue, Racine, Wisconsin (the "Village").

WHEREAS, the Town operates a water distribution system and purchases water on a wholesale basis from the Kenosha Water Utility; and

WHEREAS, the Utility is desirous of contracting with the Town to obtain Town water to be sold by the Utility to specific residents of the Village located within a designated area of the Village, such water to be sold by the Town to the Utility on a wholesale basis, and the Utility, in turn, to sell such municipal water to such Village residents on a retail basis; and

WHEREAS, the ultimate plan for servicing this area is by the Racine Water Utility upon extension of future transmission mains.

WHEREAS, the Parties are entering into this Agreement to provide municipal water to the residents of the Village located within the geographical area of the Village shown on Exhibit A of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I

#### WHOLESALE PURCHASE OF WATER

1.1 Wholesale Purchase of Water. Pursuant to and subject to the terms and provisions of this Agreement, and the rules/regulations of the Wisconsin Public Service Commission, the Town shall sell water on a wholesale basis to the Utility. The Utility shall, on a wholesale basis, purchase water from the Town through and from the Town's municipal water distribution system to be sold by the Utility to residents/customers located within the geographical area of the Village shown on Exhibit A of this Agreement.

1.2 Quality of Water. The water provided at the master meter(s) by the Town under this Agreement shall be of the same type, purity and quality as the water provided to the other users of the Town's municipal water system. The water shall be provided at a rate of not less than 500 gallons per day minute at a pressure of at least 20 psi at the intersection of Highway KR and Meachem Road (22<sup>nd</sup> Avenue), except when unable to do so because of area wide emergencies due to natural catastrophes, equipment breakdowns or similar causes; provided, however, that following such event, water shall be supplied to the Utility in the same manner as it is provided to other users.

1.3 Cost of Water. The Utility shall pay to the Town the wholesale price for such water as may from time to time be determined by the Public Service Commission of the State of Wisconsin ("PSC").

1.4 Time of Payment. The Town shall submit to the Utility a written invoice for the water sold/purchased under this Agreement for each calendar quarter. The moneys due for a particular calendar quarter shall be based upon the readings of the Master Meter located in the vicinity of Meachem Road and Highway KR. The Utility shall construct a meter pit in which the Town Utility will place the master meter facilities equipment. The Town Utility shall own, install and maintain the master meter(s) facilities equipment after their installation. The moneys due for a particular calendar quarter shall be based on the readings of this Master Meter, and shall be reflected in a written invoice which the Town shall submit to the Utility by the 20<sup>th</sup> day of the month following the end of each billing period. The Utility shall pay such invoice within thirty (30) days after the date of the invoice. In the event the Utility fails to pay such an invoice, there shall be a late payment charge of 1-½% per month on the unpaid amount from the date of the invoice, except as otherwise provided by the PSC. The timeframe

for billings and payment may, from time to time, be modified by mutual agreement of the Parties.

1.5 Customers Served. All customers within the Service Area shall be served by the Utility. No customers within the Service Area shall be served directly by the Town.

## ARTICLE II

### SERVICE AREA

2.1 Service Area. The geographical area within the Village which shall receive municipal water service under this Agreement shall be the geographical area designated and shown on attached Exhibit A (the "Service Area"), which is incorporated herein by reference.

2.2 Change in Service Area. The Service Area may be changed from time to time by mutual agreement of the Parties, through an amendment to this Agreement.

## ARTICLE III

### DISTRIBUTION SYSTEM

3.1 Points of Connection. The water to be provided by the Town under this Agreement shall be delivered and supplied to the Utility with a single connection at a mutually agreed location, 22<sup>nd</sup> Avenue and County Hwy. K.R.)

3.2 Location: Distribution Lines. Distribution Lines shall be constructed and installed in the Service Area at such location(s) as the Utility may from time to time elect. The location of Distribution Lines shall be subject to the written approval of the Village, but its approval shall not be unreasonably withheld.

3.3 Time of Installation. Distribution Lines. The Distribution Lines shall be constructed and completed at such time(s) as the Utility elects, subject to requirements of any other existing Agreement between the Utility and the Village.

## ARTICLE IV

### CONSTRUCTION RESPONSIBILITIES OF UTILITY

4.1 Construction by Village and/or Utility. As between the Parties, the Village ~~(and/or its utility district)~~ shall be responsible for performing the following work with respect to the construction of Distribution Lines and Related Facilities in the Service Area, including:

- a) Preparation of all required engineering plans, drawings, diagrams, specifications or other related documents; and
- b) Preparation of all required construction contracts, advertisements of the same for bids, and the awarding of the contract(s) to successful bidder(s); and
- c) Obtaining all required property rights and/or any other approvals or consents required for the construction project; and

All agreements and contracts entered into for the above purposes shall be entered into directly between the Village and the appropriate third party(ies). These services would be covered under a Developers Agreement between the Village and a third party.

4.2 Approval by Utility. With respect to the steps and procedures described in Section 4.1 of this Agreement, the Utility shall obtain the prior written approval of the Town (which approval shall not be unreasonably withheld) regarding the installation of any water line extensions in the Service Area.

4.3 Inspection by Utility. The Utility shall inspect any and all phases of any construction project(s) being performed pursuant to this Agreement. The Utility agrees to make available to the Town copies of the Utility's inspection reports as requested by the Town.

## ARTICLE V

### OWNERSHIP AND OPERATION OF THE DISTRIBUTION SYSTEM

5.1 Operation by the Utility. Except to the extent otherwise expressly provided in this Agreement, the Utility shall, as between the Parties, be solely and exclusively responsible for the operation and administration of the Distribution System (described in Sections 3.1 through 3.2) through which the water purchased under this Agreement will be sold at retail by the Utility to the residents/customers of the Village located within the Service Area.

5.2 Ownership of the Water System. The Town's delivery system leading up to the Village's boundaries shall be owned by the Town. The Distribution System described in Article III shall be owned by the Utility.

As the respective owners of components of the Water System, as to their respective portions of the Water System, the Parties shall have all of the rights, entitlements, duties and obligations arising out of such ownership. This shall include, but not be limited to (i) the right to depreciate such components as may be allowed by law, and (ii) the duty to repair, replace and maintain such components.

5.3 Maintenance of Balance of System. The Distribution System described herein shall be connected to the rest of the Town's entire municipal water service system ("Balance of the System"). As between the Parties to this Agreement, the Town shall, at its own cost and expense, maintain in good condition and good working order the Balance of the System so that adequate and sufficient water may be provided as required under this Agreement.

5.4 Future Connection Providing Water Through the Racine Water Utility.

Upon provision of a water piping system providing Racine Water Utility water directly to the Service Area and connection of such system to the Service Area, the following shall take place:

- a) This contract shall thereupon terminate, excepting that obligations arising under this Agreement relating to payment and other liabilities shall continue until satisfied.
- b) The Service Area shall become part of Racine's retail system.
- c) The Town Utility shall close the valve at the master meter installed pursuant to this Agreement and secure the valve in a closed position.
- d) The connection shall be maintained by the Utility in case of emergencies.

5.5 Connections to be in Service Area. Except upon expansion of the Service Area that that is the subject of this Agreement, only properties located within the Service Area described in (and/or revised pursuant to) Article II of this Agreement shall be allowed to connect to the Distribution System described in Article III of this Agreement.

5.6 Emergencies. Upon notice to the Town, the Town shall promptly notify the Utility of any emergency or condition, which may affect the quality or quantity of water provided to the Utility. The Utility shall promptly notify the Town of any emergencies, including, but not limited to, major fire fighting, major hydrant flushing or major water main breaks, which would affect the water pressure or other performance capabilities of the water system within the Utility. The Utility reserves the right to impose water use restrictions in the event of emergencies, consistent with water use restrictions imposed on the remainder of the Utility's Town's service area.

5.7 Residential Equivalent Charges – Prior to receiving retail water service from the Utility, a property owner desiring municipal water service in the Service Area established pursuant to this Agreement shall pay the Utility a residential equivalent connection charge (REC) as determined by the existing retail contract between Utility and Village.

## ARTICLE VI

### CONTINGENT ON PSC APPROVAL

6.1 Public Service Commission Approval. This Agreement is contingent upon the Parties obtaining the approval of the State of Wisconsin Public Service Commission for the municipal water service system proposed to be created and established hereunder, excepting that such approval shall not be required for the provisions of section 5.8 hereof. The Parties shall jointly seek such approval from the Public Service Commission.

## ARTICLE VII

### DEFAULT AND SPECIAL REMEDY

7.1 Definition of Default. A Party shall be in default of this Agreement if such Party fails to remedy or cure any failure of performance or compliance within thirty (30) days after receiving from the other Party(ies) a written notice describing such failure of performance or compliance. In the event the remedy or cure for such failure, other than the failure to pay money, is of such a nature that it cannot reasonably be completed within such thirty-day time period, then a Party shall be in default of this Agreement if such Party fails to commence the remedying/curing of such failure within thirty (30) days after receiving from the other Party(ies) written notice of the same, and then thereafter proceeding with such remedying/curing of said failure(s) with due diligence.



7.2 All Remedies Available. Upon default, the nondefaulting Party(ies) shall have available to it all remedies available under the law.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Governing Law. This Agreement shall be governed, controlled, interpreted and construed by and under the laws of the State of Wisconsin.

8.2 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and the rules of strict construction will not be applied against any Party.

8.3 Amendments. This Agreement may be modified only by written amendment signed by all Parties.

8.4 Assignment. This Agreement shall not be assigned by any Party without the prior written consent of all other Parties.

8.5 Notices. Any notices required to be given under this Agreement by any Party to the other Parties shall be in writing, and shall be delivered to the other Parties either by (i) personal service, or by (ii) certified mail in a postpaid envelope addressed to the other Parties at the address specified on the first page of this Agreement, or to such other address as may, from time to time, be designated in writing by the Parties.

8.6 Successor to Utility. Utility is a utility created by City under the laws of the State of Wisconsin, and City accordingly may, should it ever so desire, change, modify and/or dissolve Utility. In the event City ever does change, modify and/or dissolve Utility such that Utility is not able to perform its duties and responsibilities under this Agreement, and in the further event City does not create a successor entity which shall perform such duties and responsibilities, then City shall perform the duties and responsibilities imposed upon Utility under this Agreement.

8.7 Term of Agreement. This Agreement shall become effective as of the date first stated above, and shall be implemented as of the date that the contingency contained in Section 6.1 is fulfilled. Thereafter, except as otherwise provided, this Agreement shall continue in full force and effect until the earlier of any of the following dates is attained:

- a) The date which is ten (10) years after the below-described date of execution of this Agreement by the Parties; or
- b) An effective termination date of this Agreement that is agreed to, in writing, by all the Parties to this Agreement; or
- c) The date that the Utility provides water to the Service Area through its own distribution system.

IN WITNESS WHEREOF, the above-named Parties, through their duly authorized undersigned representatives, have caused this Agreement to be executed this 13<sup>th</sup> day of February, 2006.

TOWN OF SOMERS

By: Carol Fischer  
Carol Fischer  
Town Chairman

Attest: Kay Goergen  
Kay Goergen  
Town Clerk

TOWN OF SOMERS WATER UTILITY

Countersigned:

Jean Anderson  
Jean Anderson  
Finance Director

CITY OF RACINE

By: Gary Becker  
Gary Becker  
Mayor

Attest: Janice Johnson-Martin  
Janice Johnson-Martin  
City Clerk

CITY OF RACINE WATER UTILITY

By: Ronald Hart  
Alderman Ronald Hart  
President  
Board of Waterworks Commissioners

Daniel Wright  
Daniel Wright  
City Attorney

VILLAGE OF MT. PLEASANT

By: Michael Andreasen  
Michael Andreasen  
President

Attest: Julie Edmands  
Julie Edmands  
Village Clerk

By: ~~Kevin O'Donnell~~  
~~Village Administrator~~