

INTERGOVERNMENTAL WHOLESALE WATER SERVICE AGREEMENT

BETWEEN

THE CITY OF RACINE, RACINE WATER UTILITY,

VILLAGE OF CALEDONIA AND

CALEDONIA WATER UTILITY DISTRICT

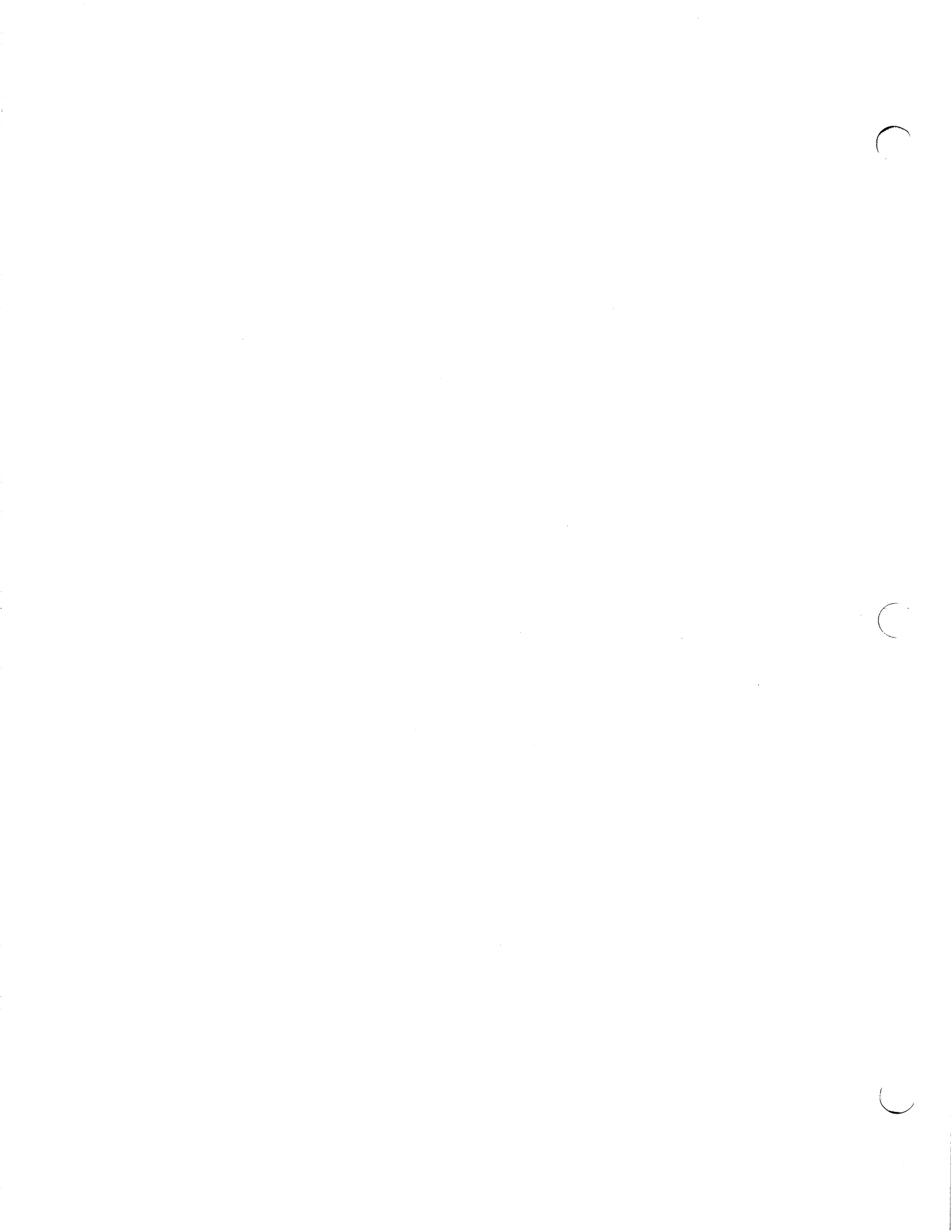


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**INTERGOVERNMENTAL WHOLESALE WATER SERVICE AGREEMENT
BETWEEN THE CITY OF RACINE, RACINE WATER UTILITY, VILLAGE OF
CALEDONIA AND CALEDONIA WATER UTILITY DISTRICT**

²⁰¹¹ This Intergovernmental Wholesale Water Service Agreement is entered into as of this 20th day of February 2013 by and between the City of Racine, Wisconsin ("City"), a Wisconsin municipal corporation, the Racine Water Utility ("Racine Utility"), a municipal public utility, governed by the Racine Waterworks Commission, the Village of Caledonia, Wisconsin ("Village"), a Wisconsin municipal corporation, and the Caledonia Water Utility District ("Caledonia Utility") of the Village of Caledonia, a department of the Village and a municipal public utility governed by the Caledonia Utility District Commission. The City, Racine Utility, Village and Caledonia Utility are hereinafter collectively referred to in this Agreement as the "Parties" or individually as a "Party".

WHEREAS, the City owns the Racine Utility, whose operations currently provide retail water service to the territory within the City and provide wholesale and retail water service to other municipalities within Racine County; and,

WHEREAS, the Village owns and operates the Caledonia Utility, which currently provides public water facilities serving some of the Village of Caledonia in Racine County, Wisconsin (the "Village Water System"), obtaining its water on a wholesale basis from the Racine Utility and the City of Oak Creek; and,

WHEREAS, as used herein, "Municipal Retail Customers" or "Municipal Retail Customer" shall mean municipalities or a municipality whose property owners are retail customers of the Racine Utility, and "Individual Retail Customers" are property owners whose property is located within the boundaries of a Municipal Retail Customer; and

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

WHEREAS, the Water System Plan evaluated two alternative plans for providing water supply to the greater Racine area—continuation of the existing wholesale and retail service arrangements ("Combined Wholesale/Retail Service Area") and full retail service to an expanded service area ("Area-Wide Retail Service Area") and recommended, among other things, that the Racine Utility should provide water service to the territory of 10 municipalities, including the Village, and various related municipal entities within a recommended expanded 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") ("Expanded Water Service Area"), 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; and

WHEREAS, the Water System Plan recommended new Racine Utility water facilities

that, along with its new water treatment facilities that were currently under construction at the time of the Plan's preparation, are needed prior to year 2030 to provide water service to the Expanded Water Service Area (the "Recommended Regional Water Facilities" or "Regional Water Facilities"); and

WHEREAS, the governing body of the Village prefers to continue to purchase water wholesale and distribute it through its existing and future water facilities, thereby serving its citizens with Village water service; and

WHEREAS, the governing bodies of the City and Village have determined that the most appropriate method to achieve their individual, yet similar, goals, while increasing efficiency and achieving cost savings, is for the Racine Utility to provide water on a wholesale basis to the Village Water System, upon the terms and conditions set forth in this Agreement; and

WHEREAS, the Combined Wholesale/Retail Service Area of the Water System Plan has been updated to add several areas which are in the current sewer service area (the "Recommended Racine Wholesale Water Service Area") and is shown on the attached Exhibit 1, which is incorporated herein by reference; and

WHEREAS, the Racine Utility caused a report entitled "Water Utility System Connection Fee Report", dated December 2003, to be prepared by Ruckert/Mielke (the "Connection Fee Report") which made a series of recommendations for determining the amount of contract connection charges ("Connection Fee") 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") as a method of sharing the carrying costs of providing water system facilities to serve future growth and development and shielding existing customers/ratepayers from the costs of such facilities; and

WHEREAS, the Parties intend the City and the Racine Utility to pursue and implement the functional equivalent of the recommendations of the Water System Plan, the Water Provision Study and the Connection Fee Report, recognizing that the Village shall be a wholesale rather than retail customer; and

WHEREAS, the Parties wish to enter into an agreement providing for present and future wholesale water service to certain portions of the Village, for distribution by the Village, with the intention that the City and the Racine Utility can still successfully implement the intent of 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 and that the Village would be prohibited from reselling or providing access to the wholesale water provided under this

Agreement other than to the Caledonia Service Area; and,

WHEREAS, in light of the fact that the Village prefers to purchase water from the Racine Utility on a wholesale basis, the Racine Utility and the Village have cooperatively agreed to a cost recovery methodology to be equivalent to the Connection Fee payment system currently being charged to Municipal Retail Customers;

WHEREAS, the Parties are parties to a written agreement dated April 4, 1996 which provides for the wholesale purchase of water by the Caledonia Utility from the Racine Utility ("former Wholesale Water Agreement") and,

WHEREAS, it is the intent of the Parties that this Agreement shall supersede and replace the former Wholesale Water Agreement.

NOW, THEREFORE, in consideration of the mutual provisions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and pursuant to Sections 61.34(1) and (2), 62.11(5), 66.0301, 66.0809, 66.0813, 196.58 of the Wisconsin Statutes and other applicable provisions of such statutes, the Parties hereby agree as follows:

1. Status of the Racine Utility and Caledonia Utility.

(a) The Racine Utility has assumed the contractual obligations of the City in this Agreement, and the Racine Utility's authority to act for the City in such matters is defined by this Agreement and by the applicable provisions of the City's ordinances and Wisconsin Statutes. The Parties agree that pursuant to City of Racine Ordinance Section 98-1(b), the Racine Utility has assumed any contractual obligations of the City in this Agreement. Any reference to the "Racine Utility" in this Agreement shall include the Racine Utility in its limited role as having assumed the contractual obligations of the City in this Agreement and as a municipal public utility. The City's responsibility for the actions, and omissions and failures to act of the Racine Utility and the Racine Waterworks Commission pursuant to this Agreement shall be limited as set forth in Section 31.

(b) The Caledonia Utility shall be deemed to be an instrument of the Village, to which obligations of the Village are delegated by this Agreement, and whose authority to act for the Village in such matters is defined by this Agreement and by the applicable provisions of the Village's ordinances and Wisconsin Statutes. Any reference to the "Caledonia Utility" in this Agreement shall include the Caledonia Utility in its limited role as an instrument of the Village and a municipal public utility. The Village shall be responsible for the actions, and omissions and failures to act of the Caledonia Utility and the Caledonia Utility District Commission pursuant to this Agreement.

2. Provision of Wholesale Water Service.

(a) Conditions of Service. The Racine Utility shall continue to provide wholesale

water service to the territory of the Village served by the Racine Utility as of the Effective Date, which was established in the former Wholesale Water Agreement, referred to herein as the "Existing Service Area", as well as new territory within the Village, referred to herein as the "Expanded Service Area", which together with the Existing Service Area shall be referred to herein as the Caledonia Service Area, (as shown on Exhibit 2 and described below in Section 3), upon the following conditions:

(1) that such water users are located within the Caledonia Service Area; and

(2) that such water users are connected to the Village 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.

(b) Standard Water Quality. The water provided by the Racine Utility to the Caledonia Utility pursuant to this Agreement shall satisfy all applicable federal and state quality standards for safe drinking water, as those standards shall be amended from time to time, and shall be of the same purity and quality as water provided to Individual Retail Customers in the City and surrounding communities that receive retail water service from the Racine Utility ("Standard Quality Water").

(c) Maximum Delivery Volume. "Maximum Daily Delivery Volume" shall be defined as the maximum measured volume delivered through a metering location during any single day of the year from January 1st through December 31st. "Maximum Hourly Delivery Volume", shall be defined as the maximum measured volume delivered through a metering location during any single hour of a day from January 1st through December 31st. "Maximum Daily Volumes" shall collectively mean the Maximum Daily Delivery Volume and Maximum Hourly Delivery Volume.

(d) Adequate Water Service. Except as otherwise provided in this Agreement, the Racine Utility shall supply uninterrupted service of Standard Quality Water at a pressure sufficient to satisfy all applicable pressure requirements of the Wisconsin Department of Natural Resources and Public Service Commission of Wisconsin ("PSC") at the following Maximum Hourly Delivery Volumes ("Adequate Water Service") to the Caledonia Utility at the following metering locations (collectively "Metering Locations" or individually "Metering Location"), subject to the limitations described hereinafter.

<u>Metering Locations</u>	<u>Maximum Daily Delivery Volume (million gallons per day)</u>	<u>Maximum Hourly Delivery Volume (million gallons per day)</u>	<u>Pressure Gradient at Maximum Hourly Delivery Volume (AMSL)</u>
Three Mile Road and Highway 32	0.025	0.050	747
Green Bay Road and Highway 38	0.510	1.020	749
Newman Road and Highway 38	0.884	1.768	832
Emmertsen Road and Highway 38	1.650	3.300	832
Charles Street and Three Mile Road	1.733	3.466	729
Main Street and Three Mile Road	1.887	3.714	729
Highway V and Mt. Pleasant/Caledonia Boundary	3.534	7.068	910
	Total 10.223	20.386	

In the event there is a future desire on the part of the Caledonia Utility to add any new Metering Locations to serve the Caledonia Service Area, the Caledonia Utility may apply to the Racine Utility. If the Racine Utility determines that an additional Metering Location can be provided without adversely affecting the Racine Water System, as determined by the Racine Utility's hydraulic model or equivalent analysis, the table of Metering Locations and Maximum Delivery Volumes will be adjusted accordingly.

(e) Use in Excess of Maximum Hourly Delivery Volumes. An additional charge for excessive demand ("Excessive Demand Charge") will be imposed whenever the Caledonia Utility's demand at any Metering Location exceeds the applicable Maximum Hourly Delivery

Volume for more than 30 minutes during the first year after the Effective Date or for more than 10 minutes after the first year after the Effective Date (said 30 or 10 minute period is referred to as the "grace period"). For every hour or portion thereof after the applicable grace period that the Caledonia Utility's demand exceeds the applicable maximum hourly flow rate, the Village shall be charged the corresponding dollar amounts as set forth in the following table:

Maximum Flow Rate in Excess of Maximum Hourly Delivery Volume (MGD)	Excessive Demand Charge (per hour or portion thereof)
0.000	N/A
0.001 – 0.500	\$10,000
0.501 – 1.000	\$20,000
1.001 – 1.500	\$30,000
1.501 – 2.000	\$40,000
2.001 – 2.500	\$50,000

An additional \$10,000 per hour Excessive Demand Charge will apply for each additional 0.500 MGD increment above 2.500 MGD in excess of the Maximum Hourly Delivery Volume. For the purposes of calculating the Excessive Demand Charge, time shall be measured in one-minute intervals.

(1) Excessive Demand Charges, if applicable, shall be added to the Village's quarterly wholesale water charges and shall be paid to the Racine Utility in accordance with Section 6(d).

(2) The additional charges set forth above shall not apply in the following circumstances:

(i) Where excessive demand is due to use of water for fire protection service if the Racine Utility is notified by the Village within 48 hours after the fire protection service.

(ii) Where excessive demand is due to an act of God, war, terrorism, sabotage or other catastrophic event beyond the control of the Village if the Racine Utility is notified by the Village within 48 hours after the act of God, war, terrorism, sabotage or catastrophic event. The 48 hour notification period is exclusive of Saturdays, Sundays and legal holidays. To qualify for this exception,

however, the Caledonia Utility must reduce its hourly demand to less than the applicable Maximum Hourly Delivery Volume within four hours after the end of the event, or if it is not possible for the Caledonia Utility to so reduce its hourly demand within said four hour period, the Caledonia Utility shall reduce its hourly demand to less than the applicable Maximum Hourly Delivery Volume within such period as is reasonably possible. If the Caledonia Utility, due to an act of God, war, terrorism, sabotage or other catastrophic event beyond the control of the Village, does not reduce its hourly demand to less than the applicable Maximum Hourly Delivery Volume within said four hour period, the Racine Utility may restrict the flow of water to the Caledonia Utility to the extent necessary to: (a) provide the customers of the Racine Utility, other than the Caledonia Utility, with Standard Quality Water at a minimum pressure of 35 pounds per square inch ("psi"), and (b) preserve the quality, capacity and delivery of the water service provided to the customers of the Racine Utility, other than the Caledonia Utility.

(f) Supply Meters. Currently, the Racine Utility owns each of the water meters servicing the Existing Service Area, and the Village owns each of the master wholesale water meter pits servicing the Expanded Service Area, at all metering points, except at the Emmertsen Road location, which is owned by the Racine Utility. Upon execution of this Agreement, the Village shall deed all rights, title and interest in the land, equipment, fixtures and improvements of said master wholesale water meter pits to the Racine Utility. Any future master wholesale water meter pits serving the Caledonia Service Area, including but not limited to, the planned metering point located at Highway V and the Mount Pleasant/Caledonia boundary, will be constructed in accord with the terms of this Agreement. Any future master wholesale water meter pits serving the Caledonia Service Area shall be constructed by the Racine Utility, and Caledonia shall reimburse the Racine Utility for the actual costs of said construction within 30 days after receipt of each invoice for said costs. Furthermore, in the event any of said meters or master wholesale water meter pits needs to be repaired or replaced, said repair or replacement shall be performed by the Racine Utility. In determining whether to repair or replace a meter or master wholesale water meter pit, the Racine Utility shall choose the alternative that is reasonably cost effective, and Caledonia shall reimburse the Racine Utility for the actual costs of said repair or replacement within 30 days after receipt of each invoice for said costs. Caledonia may, upon reasonable notice to the Racine Utility, examine and test the meters contained in the Caledonia master wholesale water meter pits to determine whether the meters are accurately calibrated to measure the water flowing through said meter pits. Caledonia shall provide the Racine Utility with the written results of all meter examinations and testing within 10 days after the completion thereof. The Racine Utility shall, upon request of Caledonia, provide Caledonia with a description of the methods and measuring devices used by the Racine Utility to measure water usage at the master wholesale water meter pits serving the Caledonia Service Area. Notwithstanding the foregoing, if the amount to be reimbursed the Racine Utility in any invoice described in this Section 2(f) exceeds \$50,000.00, Caledonia shall have a period of one year after receipt of said invoice to reimburse the Racine Utility for the amount of said invoice.

(g) Force Majeure. As used herein the term "Force Majeure Event" means an event not the fault of, or beyond the reasonable control of the Party claiming an excuse which makes it impossible or extremely impractical for such party to perform an obligation or obligations imposed on it by this Agreement, by virtue of its effect on physical facilities, the operation of physical facilities or employees essential to such performance. Force Majeure includes, without limitation: (i) an "act of God" such as an earthquake, flood, earth movement, severe weather, ice or similar catastrophic event, (ii) an act of a public entity, terrorism, sabotage, war, civil disturbance or similar event, (iii) a strike, work stoppage, picketing or similar concerted labor action, (iv) delays in construction caused by negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts; (v) an order or regulation issued by a federal or state agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date; or (vi) if the Racine Utility is unable to obtain or extract water from Lake Michigan that is suitable for treatment and eventual use as Standard Quality Water.

(1) Excuse from Performance. Except for the Excessive Demand Charges to the extent required to be paid by the Village under Section 2(e), no Party shall be liable for damages to any other party for delay in performance of, or failure to perform its obligations under this Agreement if such delay or failure is caused by a Force Majeure Event.

(2) Notice. The Party claiming excuse shall deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this section shall be given promptly in light of the circumstances of the Force Majeure Event. Such notice shall describe the Force Majeure Event, the physical facilities and/or services impacted by the claimed event and the length of time the Party intends to take to restore its ability to perform.

(3) Obligation to Restore Ability to Perform. Any suspension of performance by a Party due to a Force Majeure Event shall only be to the extent and for a period of no longer duration than, required by the nature of the Force Majeure, and the Party claiming excuse shall use reasonable efforts to remedy its inability to perform.

(h) Emergencies. Restrictions may be placed upon the use of water in the Caledonia Service Area as a result of an occurrence adversely affecting the operation of the Racine Utility caused by circumstances beyond the control of the Racine Utility, including but not limited to, Force Majeure Events or the issuance of a declaration of emergency under City of Racine Ordinance 98-71, resulting in the Racine Utility being unable to provide Adequate Water Service to the Caledonia Utility ("Emergency"), provided such restrictions apply uniformly to all customers of the Racine Utility. The Racine Utility shall give the Caledonia Utility as much prior notice as is reasonably possible of any such restrictions. Whenever the Racine Utility does not supply Adequate Water Service, the Caledonia Utility may obtain emergency water service from any other source for the specific period of time during which the Racine Utility is unable to provide such service.

(i) Mutual Cooperation. The Parties shall reasonably cooperate to facilitate the provision of wholesale water service by the Racine Utility so that the Caledonia Utility may serve existing and future retail customers located within the Caledonia Service Area. Provided, however, that the Racine Utility shall have the sole right to determine the location of any new connections between the Racine Utility's water distribution system and the distribution system for the Caledonia Service Area. The Racine Utility approves the location of a connection between the Racine Utility's water distribution system and Caledonia's water distribution system for the Caledonia Service Area at the intersection of Highway V and the Mt. Pleasant/Caledonia boundary as described in Section 7(a)(1).

3. Caledonia Service Area.

(a) Caledonia Service Area. The "Caledonia Service Area" is the geographical area shown on the map south of Five Mile Road entitled "Village of Caledonia Utility District Water Service Areas" which is attached hereto as Exhibit 2 and incorporated herein by reference which includes Wind Point, as such area may be expanded from time to time pursuant to this Section 3. The Racine Utility shall be the exclusive provider of wholesale water service to the Caledonia Service Area, and the Caledonia Utility shall be the exclusive provider of retail water service to the Caledonia Service Area.

(b) Expansion of Caledonia Service Area Beyond Current Boundaries. In the event there is a future desire on the part of the Village to add territory to the Caledonia Service Area, the Village may apply to the City and the Racine Utility. There shall be no expansion or extension of the Caledonia Service Area without written agreement of the City and the Racine Utility, either through a new agreement or an amendment of this Agreement.

(c) Service Area Limitations on Village. Except in accordance with the express provisions of this Agreement, the Village and the Village Utility shall not sell, resell or exchange water purchased under this Agreement outside of the Caledonia Service Area on a wholesale or retail basis and shall not permit any municipality, entity or person to provide water service within the Caledonia Service Area other than the Racine Utility. Provided, however, the provisions of this Section 3(c) shall not prohibit customers of the Caledonia Utility other than a municipality or governmental entity from bottling water and selling bottled water purchased under this Agreement, or using water purchased under this Agreement to formulate, manufacture and sell products that contain water and other compounds or liquids.

(d) Low-Capacity Wells. As used herein, a low-capacity well system shall mean one or more wells used to withdraw water for on-site consumption or use on one property where the total pumping capacity of all wells on the property is less than 70 gallons per minute based on the pump curve at the lowest system pressure setting, or based on the flow rate. Nothing herein shall be deemed to prohibit the Village from approving low-capacity well systems for on-site consumption or use in parcels located in the Caledonia Service Area where water from the Racine Utility is not accessible.

(e) High-Capacity Wells. As used herein, the term "high-capacity well" shall mean a

high capacity well system as defined in Section NR 812.05(53) of the Wisconsin Administrative Code. The Village may approve high-capacity wells only for on-site consumption or use in parcels located in the Caledonia Service Area where water from the Racine Utility is not accessible, provided, however, that within 90 days after water from the Racine Utility becomes available at or near the boundary of any such parcel with a high-capacity well, the parcel owner shall, at the parcel owner's expense, be required to abandon said well and construct the necessary connections to obtain water for the parcel exclusively from the Racine Utility. The intent of this paragraph is to enable the Village to attract high volume water users to develop parcels within the Caledonia Service Area and use a high-capacity well on a temporary basis until water service from the Racine Utility becomes available to said parcel.

4. Regional Water Facilities.

(a) Provision of Regional Water Facilities. The Racine Utility shall be responsible for designing, constructing, installing or otherwise providing all Regional Water Facilities, that are requested from time to time by the Village in the manner set forth in Sections 7 or 8, and that, in the reasonable judgment of the Racine Utility, are necessary or desirable to provide wholesale water service to the Caledonia Service Area. Said Regional Water Facilities are those facilities located outside of the Caledonia Service Area that include, without limitation, water treatment facilities, water pumping facilities, water storage facilities and water mains.

(b) Ownership, Operation, Maintenance and Location. The City or Racine Utility shall own, operate, maintain and replace as necessary all Regional Water Facilities and the City or the Racine Utility shall hold title to all rights, title and interest in the land, equipment, fixtures and improvements at the Regional Water Facilities. To the extent reasonably practicable, such Regional Water Facilities shall be located outside of the Village. However, in the event that it is necessary and convenient to locate any Regional Water Facilities within any part of the Village in order to provide wholesale or retail water service to any existing or future Municipal Wholesale Customers or Municipal Retail Customers, the Racine Utility shall be permitted to install and maintain Regional Water Facilities within any part of the Village in order to provide wholesale or retail water service to any existing or future Municipal Wholesale Customers or Municipal Retail Customers so long as the Regional Water Facilities are constructed in a manner so as not to interfere with Caledonia utilities and provided that if Caledonia objects to the location proposed by the Racine Utility for a Regional Water Facility to be located in the Village, the Racine Utility shall install and maintain the proposed Regional Water Facility in an alternate location designated by the Village if said alternate location does not cost more to install and maintain the Regional Water Facility than the location proposed by the Racine Utility. All costs associated with the acquisition of land by eminent domain or condemnation, or with installation and maintenance of Regional Water Facilities within any part of the Village that are not the responsibility of the Village under Sections 7 or 8 shall be the sole responsibility of the Racine Utility. The Village agrees to reasonably cooperate with the City and Racine Utility to the extent requested by the City and Racine Utility to enable the acquisition by the Racine Utility of land in the Village that is needed for the installation and maintenance of said Regional Water Facilities via eminent domain or condemnation. Said cooperation may, at the discretion of the City and Racine Utility, include the Village acquiring said land via eminent domain or

condemnation and then conveying said property to the Racine Utility for the same cost incurred by the Village in the eminent domain or condemnation proceedings necessary to acquire the land.

(c) Oversizing of Regional Water Facilities to be located in the Village. After the determination of the location of a proposed Regional Water Facility to be located within the Village is made pursuant to Section 4(b), the Racine Utility shall give Caledonia a written notice that provides Caledonia with the opportunity to oversize said Regional Water Facility to the extent necessary to enable Caledonia to provide retail water service to any existing or future Municipal Retail Customers of the Village, provided, however, that Caledonia shall pay the entire cost of said oversizing in an amount and upon terms satisfactory to the City and the Racine Utility. If a written agreement for said oversizing has not been duly approved by the governing bodies of the Parties and signed by the appropriate and duly authorized officers of such Parties within 45 days after Caledonia's receipt of said written notice, or Caledonia provides the Racine Utility with a written waiver of its opportunity to oversize said Regional Water Facility, then the Parties agree that Caledonia shall have permanently waived its opportunity to oversize said Regional Water Facility.

(d) No Obligation to Provide Regional Water Facilities that Cannot Be Financed. Notwithstanding this Section 4 or any other provisions of this Agreement, 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 unable to secure financing, under terms satisfactory to the City and the Racine Utility, for the provision of such facilities. If, however, the Village can and is willing to pay for such facilities, the Parties shall use good faith efforts to amend this Agreement in a mutually satisfactory manner to accomplish the provision of such facilities.

5. Local Water Facilities.

(a) Provision of Local Water Facilities. The Village, or Village Utility, or a developer or benefited property owner with the Village's approval, shall be responsible for the design, construction, operation and maintenance, including all costs, charges, fees and expenses incurred, of all municipal water facilities located within the Caledonia Service Area that exclusively service the Caledonia Service Area (collectively, "Local Water Facilities").

(b) Approval and Inspection by Racine. The Village shall obtain prior written approval from the Racine Utility (which approval shall not be unreasonably withheld) for the installation of any Local Water Facilities. The Racine Utility has the right, at its own expense, to inspect any and all phases of the construction of any Local Water Facilities. In the event the Racine Utility chooses not to conduct its own inspections, the Village agrees to make available to the Racine Utility copies of the Village's inspection reports and as-built records as requested by the Racine Utility.

(c) Billing Individual Retail Customers for Retail Water Service. The Village Utility shall be solely responsible for the billing of all charges and fees to customers of the Village

Water System ("Village Customers") and for the collection of all charges and fees from Village Customers. The failure of the Village to obtain payments for any use, charge or other fee that is ultimately due to the City or Racine Utility, shall not excuse the Village from paying any amounts due to the City or Racine Utility on a timely basis. Any payments due hereunder from the Village or Village Utility to the City or Racine Utility are not contingent on the receipt of any money by the Village or Village Utility.

6. Charges for Wholesale Water.

(a) Water Facilities Charges. As consideration for the provision of current and ongoing water service, the Village agrees to make payments to the Racine Utility in order that the Racine Utility may recover a fair and equitable share of the Racine Utility's costs of constructing, operating, maintaining water facilities and infrastructure, and other costs associated with the provision of water service. Payments shall be established in accordance with terms of this Agreement and future water rates approved by the PSC.

(b) Cost Recovery Charges. In order to provide for cost recovery of wholesale service to the Village and to compensate the Racine Utility for the provision of water to the Village, the following two types of charges will be imposed on the Village and paid by the Village to the Racine Utility:

(1) Direct Payment Capital Charges to recover a fair share of certain capital costs shall be paid by the Village in accordance with Section 6(c).

(2) Wholesale Water Charges through water rates approved by the PSC shall be paid by the Village in accordance with Section 6(d).

(c) Direct Payment Capital Charges. The Racine Utility has been and shall continue to be responsible for constructing regional water facilities required to serve existing and future customers. Certain facilities have been and will be designed and constructed with additional sizing or capacity to serve projected growth in the system. Prior to construction of new facilities, an allocation shall be made of total costs between future growth costs and deficiency costs. Future growth costs shall represent the share of facility costs that are designed (or the cost of that portion of the capacity thereof that is designed) to serve future growth and development that will be served by the Racine Water System. Deficiency costs shall represent that share of facility costs 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 and shall be paid for by all the retail and wholesale customers of the Racine Utility through water rates approved by the PSC. For each facility for which all or a portion of project costs are designated as future growth cost, the Village shall be responsible for payment of a share of that cost based upon the Village's proportionate share of total projected growth in the Racine Water System. In calculating the total projected growth in the Racine Water System, the most recent adopted land use plans of the retail and wholesale municipal customers of the Racine Utility that are located within the

Expanded Water Service Area shall be used.¹ Future growth costs allocated to retail customers of the Racine Utility shall be recovered from connection fees and front foot charges under the Racine Utility's retail service agreements. Future growth costs allocated to Caledonia shall serve as the basis for Direct Payment Capital Charges under this Agreement. Future growth costs that are to be recovered from connection fees and front foot charges under the Racine Utility's retail service agreements and Direct Payment Capital Charges under this Agreement will be booked as Contributions in Aid of Construction (CIAC). There will be no recovery of depreciation or return on investment through rates for these capital costs. The Racine Utility will annually file a Capital Improvement Plan ("CIP") with the PSC that includes the information required by Section PSC 184 of the Wisconsin Administrative Code. Said CIP shall also include all projects for which future growth costs may be allocated to wholesale water service customers of the Racine Utility, even if any of such projects are exempt from PSC review under Section PSC 184 of the Wisconsin Administrative Code. After the Effective Date, within seven days after the submission of a CIP to the PSC, the Racine Utility shall provide a copy thereof to the Village and all other wholesale water customers of the Racine Utility. For every project identified in a CIP that involves the allocation of future growth costs, said CIP shall include the estimated total cost of the project, and an allocation illustrating the amount of future growth costs that would be allocated to retail customers of the Racine Utility and each wholesale water customer of the Racine Utility. The amount allocated in a CIP to the Village shall be used as the basis for calculating the Direct Payment Capital Charges for Future Capital Projects that are to be paid by the Village pursuant to Section 6(c)(2). It is the intent of the parties that all current and future retail and wholesale customers of the Racine Utility shall pay a fair share of future growth costs, and accordingly, the CIPs submitted to the PSC by the Racine Utility after the Effective Date shall reflect an allocation of future growth costs based upon the proportionate share of each retail and wholesale customer of the Racine Utility in the total projected growth of the Racine Water System.

(1) Direct Payment Capital Charges for Completed Projects. Prior to the Effective Date, certain projects have been completed by the Racine Utility for which a portion of the capital costs have been designated as "Completed Future Growth Project Costs" and have served as the basis for recovery of connection fees from new

¹ For example, assume that a new facility will cost \$200,000, of which \$150,000 is allocated to future growth costs and \$50,000 is allocated to deficiency costs. Also assume that a review of the most current adopted land use plans of all retail and wholesale municipal customers of the Racine Water Utility located in the Expanded Water Service Area indicates that Caledonia's proportionate share of the total projected growth in the Racine Water System is 20%. In determining that share, differences in the planning time frames of the adopted land use plans (e.g. some plans may have a 10 year planning time frames while other plans may have a longer or shorter time frame) will be adjusted to a common planning time frame via straight line projections. Further assume that based upon a review of all the land use plans, after adjusting said plans to a common planning time frame as set forth above, the annual projected increase in water demand of all retail and wholesale municipal customers of the Racine Water Utility was 20,000,000 gallons, and from Caledonia's land use plan it was determined that the annual projected increase in water demand in Caledonia was 4,000,000 gallons, then Caledonia's proportionate share would be 20%. In this example, Caledonia's share of the future growth costs attributable to the new facility would be \$30,000 (\$150,000 x 20%) and the \$50,000 of deficiency costs would be paid for by all the existing customers in the service area through rates.

connections in the communities that receive retail service from the Racine Utility. In order for the Racine Utility to recover from the Village a fair and equitable share of the Completed Future Growth Project Costs, the Village shall pay the Racine Utility: (a) an Initial True-up Payment for the Completed Future Growth Project Costs incurred prior to the Effective Date, and (b) annual Direct Payment Capital Charges for the remaining amortization of Completed Future Growth Project Costs associated with said projects that have outstanding balances that are to be paid after the Effective Date. For purposes of this Agreement, all amortization schedules shall be based upon a twenty year period that commenced at the time said projects were constructed and at an interest rate equal to the Racine Utility's cost of borrowing at the time that said projects were constructed.

(a) Initial True-up Payment. In consideration of the fact that prior to the Effective Date the Village did not pay any Completed Future Growth Project Costs, the Village shall make an Initial True-up payment within one year after the Effective Date in the amount of the cumulative amortization of costs paid by the Racine Utility prior to the Effective Date that equal the Village's share of completed Future Growth Project Costs as set forth in Table 4 of Exhibit 3.

(b) Annual Payments for Completed Future Growth Projects. An annual Direct Payment Capital Charge shall be established to recover the Village's share of the Racine Utility's previously incurred Completed Future Growth Project Costs for projects completed prior to the Effective Date as set forth in Table 3 of Exhibit 3. The annual payments shall be based upon the remaining debt service amortization of said Completed Future Growth Project Costs using the Racine Utility's borrowing rate for financing of said projects. The Direct Payment Capital Charges for the remaining amortization of Completed Future Growth Projects completed prior to the Effective Date are set forth on Table 5 of Exhibit 3 and are due and payable on an annual basis and shall continue through the end of the remaining amortization period as shown in Table 5 of Exhibit 3. The Racine Utility shall submit an invoice to the Village for each said annual payment, and the payment of each said invoice shall be made by the Village to the Racine Utility within 20 days after the date of an invoice. Interest at the rate of 1% per month shall accrue and be paid by the Village on any balance that is not paid within said 20 day period. The Village may prepay its obligations under this paragraph at any time without penalty. The amount of any such prepayment shall be the sum of: (i) the portion of the then-remaining principal balance payable by Caledonia, and (ii) the interest thereon accrued to the date of the prepayment.

(2) Direct Payment Capital Charges for Future Capital Projects. The Racine Utility may construct projects in the future for which all or a portion of the capital costs will be designated as "Future Growth" costs. The Village shall be responsible for payments of its share of "Future Growth" costs as determined by an engineering cost of service study to be completed by or on behalf of the Racine Utility. The Village's payments shall be based upon a twenty year amortization of the Village's share of the actual costs of said projects. The amortization and interest rate to be charged the Village

shall be based upon the Racine Utility's borrowing rates and amortization schedule for the said projects. The Racine Utility shall submit an invoice to the Village for each said annual payment, and the payment of each said invoice shall be made by the Village to the Racine Utility within 20 days after the date of an invoice. Interest at the rate of 1% per month shall accrue and be paid by the Village on any balance that is not paid within said 20 day period. The Village may prepay its obligations under this paragraph at any time without penalty. The amount of any such prepayment shall be the sum of: (i) the portion of the then-remaining principal balance payable by Caledonia, and (ii) the interest thereon accrued to the date of the prepayment.

(d) Wholesale Water Rates and Charges. The Village shall pay the Racine Utility for wholesale water service in accordance with rates and rules approved by the PSC. For purposes of determining the water rates to be paid by the Village, the revenue requirements shall include operations and maintenance (O&M) costs, depreciation, taxes and tax equivalents, return on investment (ROI) and other costs as may be deemed appropriate by the PSC. The rate of return used to determine the wholesale return on investment shall be equal to the prevailing PSC benchmark rate of return at the time of each rate case application. The rate base for purposes of determining return on investment shall exclude future growth costs that will be recovered from connection fees and front foot charges under the Racine Utility's retail service agreements and Direct Payment Capital Charges and prepayments made under Section 6(c) and payments made under Sections 7 and 8. The Racine Utility shall submit an invoice to the Village for the wholesale water charges on a quarterly basis, and the payment of each said invoice shall be made by the Village to the Racine Utility within 20 days after the date of an invoice. Interest at the rate of 1% per month shall accrue and be paid by the Village on any balance that is not paid within said 20 day period.

7. Village Requested Regional Water Mains Located Outside the Village Boundary.

(a) Request, Approval and Payment Process.

(1) Initiation of Approval Process. Upon the Racine Utility's receipt of a written request from the Village for the design and construction of a regional water main located outside the Village Boundary that is shown in the Racine Utility's Regional Growth Plan, as amended from time to time, and that is necessary to directly and substantially provide adequate service to the Caledonia Service Area or serve new growth or development in the Caledonia Service Area (a "Requested Regional Water Main"):

(i) The Racine Utility shall advise the Village by written notice, within 45 days after receiving such a request, of the estimated total project costs (the "project costs") of the Requested Regional Water Main (said project costs shall include all engineering, design, testing, investigation, bidding, property acquisition, construction and other costs expected to be incurred for the construction of the Requested Regional Water Main), and the estimated total amount of the Front Foot Charge that will be required to be paid by the Village to the Racine Utility with respect to the Requested Regional Water Main computed

pursuant to Section 7(c) and any right of recovery that the Village may have pursuant to Section 7(d); and

(ii) The Village may withdraw a request for the construction of a Requested Regional Water Main by providing the Racine Utility with a written notice of withdrawal within 60 days after the effective date of the Racine Utility's notice described in Section 7(a)(1)(i).

The parties acknowledge that the Village believes a regional water main will be needed to supply water to the planned Metering Location at Highway V and the Mt. Pleasant/Caledonia Boundary, and therefore the Village may submit a written request to the Racine Utility as set forth above.

(2) Triggering Resolution and Bidding. If, within 60 days after the effective date of the Racine Utility's notice described in Section 7(a)(1)(i), the Village either:

(i) does not withdraw its request by sending a written notice pursuant to Section 7(a)(1)(ii), or

(ii) affirmatively accepts the estimated total amount of the Front Foot Charge to be paid by the Village for the Requested Regional Water Main by providing written notice thereof to the Racine Utility,

then the Village's request shall be granted by a resolution adopted by the Racine Waterworks Commission. The Racine Utility shall thereafter promptly notify the Village in writing of the granting of the Village's request. The adoption of such resolution shall trigger the Village's obligation to pay the amount that is required to be paid by the Village for the Requested Regional Water Main computed in accordance with Section 7(c), provided however, that after the Racine Utility's determination of the lowest responsible bid for construction of a Requested Regional Water Main, the Racine Utility shall use the amount of the lowest responsible bid to recompute the Village's estimated total Front Foot Charge for construction of the Requested Regional Water Main (the "revised estimated total Front Foot Charge"), and if the revised estimated total Front Foot Charge is greater than 125% of the estimated amount of the total Front Foot Charge that was previously provided by the Racine Utility to the Village under Section 7(a)(1)(a), the Village may withdraw its request sent pursuant to Section 7(a)(1) by written notice to the Racine Utility within 30 days after the Village's receipt of the revised estimated total Front Foot Charge. The Racine Utility shall provide the Village with written notice of the amount of the revised estimated total Front Foot Charge for construction of the Requested Regional Water Main within 15 days after the opening of bids. If the Village withdraws its request for construction of the Requested Regional Water Main after its receipt of the revised estimated total Front Foot Charge, the Village shall reimburse the Racine Utility for all engineering, design, testing, investigation, bidding, property acquisition and all other costs incurred by the Racine Utility for the Requested Regional Water Main after the Racine Waterworks Commission adopted the resolution approving

the Village's request for the Requested Regional Water Main, and the Village's share of said costs incurred by the Racine Utility shall be determined by using the same percentage that was used in determining the Village's share of the revised estimated total Front Foot Charge for construction of the Requested Regional Water Main.

(b) Payment. At least 30 days prior to the commencement of the construction of each Requested Regional Water Main described above, the Village shall deposit with the Racine Utility the total amount of the revised estimated total Front Foot Charge for construction of the Requested Regional Water Main. Such payment by the Village is a condition precedent to the Racine Utility's obligation to construct each Requested Regional Water Main. The Racine Utility will place the amount deposited by the Village in a separate interest bearing account (the "Account"). As project costs for each Requested Regional Water Main are incurred by the Racine Utility, the Racine Utility shall give written notice to the Village of such incurred costs and the proportionate share thereof that the Village is obligated to pay will be drawn by the Racine Utility from the Account and used to pay said incurred costs. In the event that the Village's share of the total actual cost incurred for construction of said Requested Regional Water Main is less than the amount deposited in the Account, the Racine Utility shall refund the amount remaining in the Account after the completion of construction. In the event that the Village's share of the total actual cost incurred for construction of said Requested Regional Water Main exceeds the amount deposited in the Account, the Racine Utility shall provide written notice to the Village of the difference between the amount deposited in the Account and the Village's share of the total actual cost incurred for construction of said Requested Regional Water Main ("Actual Cost Shortage"). The Village shall within 30 days after receipt of said notice pay the Racine Utility the Actual Cost Shortage and the Racine Utility shall thereafter deposit the amount of the Actual Cost Shortage in the Account and said amount shall thereafter be drawn by the Racine Utility to pay the portion of the incurred actual cost equal to the Actual Cost Shortage.

(c) Computation of Amount to be Paid by the Village for Requested Regional Water Mains. With respect to each Requested Regional Water Main to be constructed and installed by the Racine Utility upon the request of the Village, the total amount to be paid by the Village for said Requested Regional Water Main shall be computed based on the equivalent cost of the minimum sized water main needed to serve abutting developable land uses (the "Front Foot Charge"). The Racine Utility shall pay all costs over and above the amount of the total Front Foot Charge for Requested Regional Water Mains to be paid by the Village in accordance with this Section 7, and shall recover those costs in accordance with Sections 6(c) as (i) a future growth cost, and/or (ii) a deficiency cost, as appropriate. The amount of the total Front Foot Charge to be paid by the Village for a Requested Regional Water Main shall be computed in accordance with the following:

(1) Minimum Sized Main to Serve Anticipated Development. For Requested Regional Water Mains that are shown in the Racine Utility's Regional Growth Plan, as amended from time to time, the minimum sized main needed to serve any abutting land uses shall be assumed to be an 8-inch diameter main for residential land use and 12-inch

diameter main for industrial or commercial land use.

(2) Equivalent Cost Ratio. As used in this Agreement, the “Equivalent Cost Ratio” for an 8-inch main or 12-inch main relative to each of the water main sizes set out below shall be as follows:

Main Size	Equivalent Cost Ratio for 8 Inch Main	Equivalent Cost Ratio for 12 Inch Main
12”	84.6%	
16”	74.5%	88.0%
20”	55.4%	65.5%
24”	38.5%	45.6%

(3) Frontage. For each Requested Regional Water Main, the “Frontage” subject to an 8-inch or 12-inch minimum sized main requirement shall be computed by the Racine Utility at the time the Racine Utility computes the estimated project costs under Section 7(a)(1)(i). 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 Requested Regional Water Main or abuts the street, highway or other right-of-way in which or adjacent to which the Requested Regional Water Main is constructed or 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 Requested Regional Water Main. The Total Frontage shall include all Frontage from the beginning to the end of the Requested Regional Water Main, including Frontage of lots or parcels within municipal entities other than the Village, but the Frontage of all land within the City shall be deemed to be land that is already served by the Racine Utility and thus excluded from the Total Frontage.

(4) Computation Methodology. The total Front Foot Charge to be paid by the Village for a Requested Regional Water Main shall be computed as follows. The total project cost of the Requested Regional Water Main shall be multiplied by the applicable 8-inch or 12-inch Equivalent Cost Ratio. The total project cost of the Requested Regional Water 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 total Front Foot Charge shall be further allocated to each municipality that is subject to Front Foot Charges as follows. The total Front Foot Charge shall be multiplied by the Frontage on such new main within each municipality subject to Front Foot Charges, and 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 or 12-inch equivalent Front Foot

Charge allocated to that municipality. The total Front Foot Charge that the Village shall be required to pay to the Racine Utility 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 Section 7(d) below.

(d) Cost Recovery for Frontage in Another Municipality. In the event of the construction of a Village initiated Requested Regional Water Main, that portion of the front foot charge associated with lots or parcels having Frontage on such main that is within a municipality other than the Village shall be paid to the Village by the Racine Utility in the manner set forth below. The Racine Utility shall collect front foot charges from a Municipal Retail Customer in which such main is located if such Municipal Retail Customer has entered into a retail water service agreement that requires payment of contract front foot charges. Upon the occurrence of a Triggering Event, as defined by the Municipal Retail Customer's agreement with the Racine Utility, relating to any lot or parcel within that municipality having Frontage on a Village initiated Requested Regional Water 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. The amount to be recovered by the Village shall be limited to the 8-inch or 12-inch equivalent front foot charge previously paid by the Village. Accrued interest to be recovered by the Village on any such front foot charge shall be limited to any interest paid to the Racine Utility by the Municipal Retail Customer. Front foot charges and interest collected by the Racine Utility for which the Village has the right of recovery shall be paid by the Racine Utility to the Village within 30 days after collection by the Racine Utility. Payment of said front foot charges and interest to the Racine Utility shall be a condition precedent to the Racine Utility's obligation to pay said front foot charges and interest to the Village.

8. Computation of Amount to be Paid by the Village for Other than Regional Water Main Projects Requested by the Village.

(a) Initiation of Approval Process. As used herein, an "Other Regional Water Facility" shall mean water storage facilities, pumping facilities or any other facilities, other than a Regional Water Main, that are necessary to provide adequate service to the Caledonia Service Area or serve new growth or development in the Caledonia Service Area. Upon the Racine Utility's receipt of a written request from the Village for the design and construction of an Other Regional Water Facility (a "Requested Water Facility"):

(1) The Racine Utility shall prepare a Cost of Service Study to determine the proportionate share of the costs for the Requested Water Facility which are attributable to the Village and the Racine Utility shall advise the Village by written notice, within 45 days after receiving the Village's request, of the estimated cost of the Requested Water Facility, and the estimated total amount that will be required to be paid by the Village for said Requested Water Facility.

(2) The Village may withdraw a request for construction of a Requested Water Facility by providing the Racine Utility with a written notice of withdrawal within

60 days after the effective date of the Racine Utility's notice described in Section 8(a)(1).

(b) Triggering Resolution and Bidding. If, within 60 days after the effective date of the Racine Utility's notice described in Section 8(a)(1), the Village either:

(1) does not withdraw its request by sending a written notice pursuant to Section 8(a)(2), or

(2) affirmatively accepts the estimated total amount that will be required to be paid by the Village for the Requested Water Facility by providing written notice thereof to the Racine Utility,

then the Village's request shall be granted by a resolution adopted by the Racine Waterworks Commission. The Racine Utility shall thereafter promptly notify the Village in writing of the granting of the Village's request. The adoption of such resolution shall trigger the Village's obligation to pay the amount that is required to be paid by the Village for the Requested Water Facility in accordance with Section 8(c), provided however, that after the Racine Utility's determination of the lowest responsible bid for construction of the Requested Water Facility, the Racine Utility shall use the amount of the lowest responsible bid to recompute the estimated total amount that will be required to be paid by the Village for said Requested Water Facility (the "Village's revised estimated cost"), and if the Village's revised estimated cost is greater than 125% of the estimated cost of the Requested Water Facility that was provided by the Racine Utility to the Village under Section 8(a)(1), the Village may withdraw its request sent pursuant to Section 8(a) by written notice to the Racine Utility within 30 days after the Village's receipt of the amount of the Village's revised estimated cost. The Racine Utility shall provide the Village written notice of the amount of the Village's revised estimated cost within 15 days after the opening of bids. If the Village withdraws its request for construction of a Requested Water Facility after its receipt of the amount of the Village's revised estimated cost, the Village shall reimburse the Racine Utility for all the engineering, design, testing, investigation, bidding, property acquisition and all other costs incurred by the Racine Utility for the Requested Water Facility after the Racine Waterworks Commission adopted a resolution approving the estimated cost of the Requested Water Facility.

(c) Payment. At least 30 days prior to the commencement of the construction of each Requested Water Facility as described above, the Village shall deposit with the Racine Utility the total amount of the Village's revised estimated cost of construction of the Requested Water Facility. Such payment by the Village is a condition precedent to the Racine Utility's obligation to construct each Requested Water Facility. The Racine Utility will place the amount deposited by the Village in a separate interest bearing account ("Account"). As project costs for each Requested Water Facility are incurred by the Racine Utility, the Racine Utility shall give written notice to the Village of such incurred costs and the total amount thereof that the Village is obligated to pay will be drawn by the Racine Utility from the Account and used to pay said incurred costs. In the event that the Village's share of the total actual cost incurred for construction of said Requested Water Facility is less than the amount deposited in the Account, the Racine Utility shall refund the amount remaining in the Account after the completion of

construction. In the event that the Village's share of the total actual cost incurred for construction of said Requested Water Facility exceeds the amount deposited in the Account, the Racine Utility shall provide written notice to the Village of the difference between the amount deposited in the Account and the Village's share of the total actual cost incurred for construction of said Requested Water Facility ("Actual Cost Shortage"). The Village shall within 30 days after receipt of said notice pay the Racine Utility the Actual Cost Shortage and the Racine Utility shall thereafter deposit the amount of the Actual Cost Shortage in the Account and said amount shall thereafter be drawn by the Racine Utility to pay the portion of the incurred actual cost equal to the Actual Cost Shortage.

9. Compliance with State Law.

The Parties shall comply with all Wisconsin Statutes and regulations of the PSC and the Wisconsin Department of Natural Resources, insofar as they are applicable to matters covered by this Agreement.

10. 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/or the Caledonia Utility 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 and/or Caledonia Utility 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.

11. Term.

(a) The initial term of this Agreement shall be a period of 40 years, commencing on the Effective Date. Upon the expiration of the initial 40 year term, the term of this Agreement shall be automatically renewed and extended for additional periods of 5 years. Each 5 year renewal period is referred to herein as a "renewal term". The term of this Agreement shall not be extended if either the City or Village gives a notice of termination to the other party at least 3 years before the end of the initial term or any renewal term. In the event that the City terminates this Agreement as provided above, then, effective on the date of termination, the City, Racine Utility, Village and Caledonia Utility shall have no further obligation under this Agreement EXCEPT that the obligations of the Village and Caledonia Utility for payments due under Section 6(d) shall survive said termination and the Village and Caledonia Utility shall remain

liable for said obligations and shall timely make all payments required under said section, and the City and Racine Utility shall have all rights under this Agreement to enforce the making of said payments. In the event the Village terminates this Agreement as provided above, then, effective on the date of termination, the City, Racine Utility, Village and Caledonia Utility shall have no further obligations under this Agreement EXCEPT that the obligations of the Village and Caledonia Utility for payments due under Sections 6(c)(2), 6(d), 7 and 8 shall survive said termination and the Village and Caledonia Utility shall remain liable for said obligations and shall timely make all payments required under said sections, and the City and Racine Utility shall have all rights under this Agreement to enforce the making of said payments.

(b) The parties may also agree to terminate this Agreement pursuant to Section 29.

12. Default in Making Timely Payment.

(a) Default by Village. Failure of the Village to make timely payment of any amount due, including, without limitation, any accrued interest, to the Racine Utility within 30 days after a written notice of nonpayment is provided by the Racine Utility to the Village, shall constitute a default of this Agreement by the Village that entitles the City and Racine Utility to any remedy allowed at law or equity.

(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, shall be a condition precedent to the Village or Caledonia Utility commencing or maintaining a legal action in court or filing or maintaining a complaint with the PSC relating to this Agreement or for any act or failure to act of the Racine Utility or the City under or with respect to this Agreement, provided, however, that nothing herein shall be deemed to preclude the Village and Caledonia Utility from commencing or maintaining a legal action or maintaining a complaint with the PSC relating to the proposed imposition of any Direct Payment Capital Charges under Section 6(c)(2) and/or modified wholesale water rates under Section 6(d).

13. 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 Effective Date 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 Parties shall use good faith efforts to amend this Agreement in a mutually satisfactory manner to accomplish the continued provision of Adequate Water Service by the Racine Utility to the Village.

14. 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.

15. Water Service to Other Customers.

Without amending this Agreement, and without the approval of the Village or Caledonia Utility, the City and the Racine Utility shall be free to expand the geographic area within which water service is provided to the territory of Municipal Retail Customers (including both those referred to in the Water System Plan and others) and to Municipal Wholesale Customers other than the Village (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. Nothing in this Agreement shall prohibit Caledonia from negotiating and agreeing with other Municipal Wholesale Customers to share in the use and cost of construction of water pipelines and infrastructure that are proposed to be constructed by other Municipal Wholesale Customers in order to better serve the water needs of Caledonia's retail water customers located within the Caledonia Service Area.

16. Great Lakes Compact.

The Parties understand that the Federal Government has recently approved a regional plan referred to as the Great Lakes Compact ("Compact"). The Parties also recognize that the water source utilized by the Racine Utility comes from the Lake Michigan watershed. Preservation of this water source is important for all Parties to this Agreement. The Parties recognize that the Compact includes provisions, laws and regulations that will require users of this resource to establish and maintain practices to conserve and utilize water efficiency methods to further preserve this resource. The Village and the Caledonia Utility agree to comply with all said provisions, laws and regulations, and participate and conform with any and all water conservation efforts to the extent required of all water users of this basin resource, and to cooperate and comply with all reporting requirements associated with the Water Management Program Review provisions of the Compact.

17. Implementation.

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

18. 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 ("Intergovernmental Wholesale Water Service Agreement Between the City of Racine, Racine Water Utility, Village of Caledonia and Caledonia Water Utility District") and shall refer specifically to the number of the Sections(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 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 Section 18(f). Notice addressees and addresses may be changed from time to time in accordance with Section 18(b). Nothing in this Section 18(a) 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 providing a written notice of the change to the other Parties that is sent pursuant to Section 18(a).

(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 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 a Party to act promptly in response to circumstances clearly requiring attention shall not qualify as an emergency.

(e) Waiver of Notice. A 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:

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

With a copy to:
City Attorney
City of Racine
730 Washington Avenue
Racine, WI 53403

Racine Water Utility:
General Manager, Racine Water Utility
City Hall Annex
800 Center Street, Room 227
Racine, WI 53403

Village of Caledonia:
Village Administrator
Village Clerk
Village of Caledonia
6922 Nicholson Road
Caledonia, WI 53108

Caledonia Water Utility District:
Utility Manager
Caledonia Water Utility District
333 – 4 ½ Mile Road
Caledonia, WI 53402

19. 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.

20. 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.

21. No Challenges to the Validity or Enforceability of this Agreement.

Except as 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 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 Section 196.26 that this Agreement or any provision of this Agreement is unreasonable or unjustly discriminatory on its face. Nothing in this Section 21 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 this Agreement and does not challenge the validity or enforceability of this 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 21 shall be construed as preventing a Party from complaining to the PSC or maintaining such a complaint pursuant to Section 196.26 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.

22. 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 an individual, corporation, limited liability company, partnership or any other recognized entity.

23. References.

Any references in this Agreement to any particular agency, organization, municipality or official shall be interpreted as applying to and binding upon any successor agency, organization, municipality or official or to any other agency, organization, municipality or official to which 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 necessitates an amendment of this Agreement in order to continue the provision of Adequate Water Service by the Racine Utility to the Village, the Parties shall use good faith efforts to amend this Agreement in a mutually satisfactory manner to accomplish the continued provision of Adequate Water Service by the City to the Village.

24. 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.

25. Successors and Assigns.

This Agreement shall benefit and be binding upon the Parties and their successors and assigns. Except as provided in Section 23 with regard to any successor agency, organization,

municipality or official, or to any other agency, organization, municipality or official to which functions are transferred by law, this Agreement shall not be assigned by any Party without the written consent of each of the other Parties.

26. 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 supersedes and replaces 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, including, without limitation, the former Wholesale Water Agreement, provided, however, that the "Agreement For the Provision of Municipal Water to the Deer Creek Estates Subdivision" dated October 3, 2006, the Agreement For the Provision of Municipal Water to the Rolling Fields Subdivision dated August 10, 2004, the Settlement at Hoods Creek dated May 28, 2004 and the Supplemental Agreement dated August 15, 2000 relating to Jamestown Subdivision shall not be modified by this Agreement.

27. 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.

28. Enforcement/Remedies.

(a) Remedies.

(1) The Village shall have the right and standing to complain to the PSC, pursuant to Section 196.26 of the Wisconsin Statutes, 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 Section 196.26 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 Section 28 is intended by the Parties to waive their respective statutory right to any notice under Section 893.80(1) of the Wisconsin Statutes, to the extent such section 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 Section 28(b) above, and until after the Party is in compliance with the payment provisions 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.

29. 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.

30. 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 that is not a Party any legal or equitable rights whatsoever.

31. Limitations on Liability.

Notwithstanding any other provision of this Agreement, the City and the Racine Utility shall not be liable to the Village or the Caledonia Utility for any claims, losses or damages resulting from any Force Majeure Event, break in any water main or any other failure of physical facilities to perform (except for breaks or other failures caused by the gross negligence or willful misconduct of the City or the Racine Utility) or any other cause beyond the reasonable control of the City and/or the Racine Utility, or for any consequential damages. It is agreed by the Parties

that any liability of the City arising from this Agreement or water matters shall only be paid or satisfied from the funds of the Racine Utility available for such purpose to the extent that after such payment the Racine Utility shall continue to maintain reasonable and prudent reserves.

32. 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 wholesale 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.

33. Declaration Ruling and Effective Date

Prior to the Effective Date of this Agreement, the Parties agree to execute and submit a Petition For Declaratory Ruling and Other Approvals ("Petition") to the PSC pursuant to Wis. Stat. §227.41 in the form attached hereto as Exhibit 4. The Petition seeks a Declaratory Ruling and other approvals from the PSC that include, without limitation, approval by the PSC of this Agreement and acceptance of this Agreement for filing as the rate schedule governing the Racine Utility's provision of wholesale water service to Caledonia. The Parties agree that the Petition is necessary in order to provide certainty to the Parties that this Agreement is approved by the PSC, which approval will enable the Parties to reasonably rely on the PSC's declaratory ruling issued in response to the Petition. The Effective Date of this Agreement shall be the date the PSC issues a declaratory ruling approving the Agreement. Provided, however, that if the PSC determines that a declaratory ruling is not the appropriate mechanism for approving this Agreement, and (i) if the PSC specifies another mechanism for the Parties to follow in order to obtain PSC approval of the Agreement, the Parties agree to cooperate in seeking approval of the Agreement via whatever mechanism that the PSC specifies is appropriate, and the Effective Date of this Agreement shall be the date the PSC issues an approval of this Agreement, or (2) if the PSC indicates that approval of this Agreement by the PSC is not required or necessary, the Effective Date of this Agreement shall be the date the PSC provides a notification to any or all of the Parties that PSC approval of this Agreement is not required or necessary.

34. Approval/Authority.

Each of the Parties hereby represents that this Agreement was duly approved by its governing body 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.

[SIGNATURE PAGES FOLLOW]

CITY OF RACINE

Approved as to form:

Robert Weber
Robert Weber, City Attorney

By: John Dickert
John Dickert, Mayor

Attest: Jarice M. Johnson-Martin
Jarice Johnson-Martin, City Clerk

Date Signed: 2-20-2013

RACINE WATER UTILITY by the RACINE
WATERWORKS COMMISSION

By: John Engel
John Engel, President

Attest: Keith Haas
Keith Haas, General Manager

Date Signed: January 30, 2013

VILLAGE OF CALEDONIA

By: Ronald Coutts
Ronald Coutts, Village President

Approved as to form:

John Bjelajac
Attorney John Bjelajac
Attorney for Village of Caledonia,
Caledonia Water Utility District
And Caledonia Water District
District Commission

Attest: Karie Torkilsen
Karie Torkilsen, Village Clerk

Date Signed: 1-22-13

CALEDONIA WATER UTILITY DISTRICT by
the CALEDONIA UTILITY DISTRICT
COMMISSION

By: Bob Bradley
Bob Bradley, President

Attest: Howard Stacey
Howard Stacey, Secretary

Date Signed: 1/24/13

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