

MEMORANDUM OF UNDERSTANDING
RACINE COUNTY, WISCONSIN
and
VILLAGE OF MOUNT PLEASANT, WISCONSIN
and
VILLAGE OF CALEDONIA, WISCONSIN

BACKGROUND

Racine County, Wisconsin ("County") and Village of Mount Pleasant, Wisconsin ("Mt. Pleasant") have entered into a Development Agreement for the Foxconn Project dated as of December 1st, 2017 (the "Development Agreement") with SIO International Wisconsin, Inc., FEWI Development Corporation and AFE, Inc. (collectively, "Foxconn"), to implement a transformational and sustainable high-tech manufacturing and technology ecosystem in Mt. Pleasant and the County. As contemplated in the Development Agreement, the Mt. Pleasant Village Board on November 20, 2017 and the Joint Review Board on November 29, 2017 approved a Project Plan for Tax Incremental District No. 5 ("MP TID 5") to finance various infrastructure improvements, including but not limited to, certain infrastructure improvements bringing water service to MP TID 5.

Water service will be provided to MP TID 5 by the City of Racine, Wisconsin, including the Racine Water Utility and the Racine Water Utility Commission (collectively, "Racine"). Racine has allocated to the Village of Caledonia, Wisconsin ("Caledonia") a "Direct Payment Capital Charge for Future Growth" as defined in the Intergovernmental Wholesale Water Service Agreement between Racine and Caledonia dated February 20, 2013 (the "Water Agreement") of approximately \$27,000,000, arising from the water infrastructure improvements contemplated in the Project Plan for MP TID 5 ("Caledonia's Water Cost Allocation"). The parties understand that costs to remedy existing deficiencies in the Racine water system will be paid by all retail and wholesale customers through water rates. Racine is not a party to this Memorandum Of Understanding (this "MOU"). *Nothing in this MOU shall be construed as an admission by Caledonia of liability to Racine for a capital charge in connection with the installation of the water infrastructure improvements described herein; Caledonia expressly denies any such liability.*

Wastewater treatment service will be provided to MP TID 5 by Racine pursuant to the Racine Area Intergovernmental Sanitary Sewer Service, Revenue Sharing, Cooperation and Settlement Agreement dated April 25, 2002, by and among Racine, Mt. Pleasant, Caledonia and other parties, as amended (the "Racine Sewer Agreement"). To facilitate development within and outside of MP TID 5, Caledonia has agreed to permanently transfer to Mt. Pleasant one (1) million gallons per day of the average daily flow of wastewater treatment capacity ("Available Capacity") allocated to Caledonia under the Racine Sewer Agreement but not being utilized by

Caledonia. Mt. Pleasant and the County have agreed to hold Caledonia harmless from Caledonia's Water Cost Allocation as consideration for Caledonia's permanent transfer of the Available Capacity to Mt. Pleasant and the remaining terms of this MOU.

In addition, to facilitate development within and outside of MP TID 5, Caledonia and Mt. Pleasant have agreed to amend the Mount Pleasant/Caledonia Shared Sanitary Sewer Service Agreement dated November 12, 2008, between them and their respective sewer utility districts, as the same was amended by a First Amendment dated August 26, 2014 (collectively, the "Mt. Pleasant/Caledonia Sewer Agreement"), as described below and in the amendment attached hereto as Exhibit A.

The County, Mt. Pleasant and Caledonia (collectively, the "Parties") have, through their authorized representatives, engaged in a series of discussions to facilitate certain water infrastructure improvements contemplated in the Project Plan for MP TID 5, the permanent transfer of the Available Capacity by Caledonia to Mt. Pleasant and the additional sanitary sewer upgrades contemplated in the attached amendment. The Parties' discussions have resulted in the preparation and joint execution of this MOU, which sets forth the terms and conditions to facilitate the water and sewer infrastructure improvements and the Available Capacity transfer.

OBLIGATIONS OF THE PARTIES

A. **Caledonia.** Caledonia agrees to:

1. Permanently transfer the Available Capacity to Mt. Pleasant, by not later than June 30, 2018, at no cost to Mt. Pleasant or the County, and in accordance with the terms of the Racine Sewer Agreement. Such transfer may be made prior to June 30, 2018 if there is a waiver in writing by the Parties of all Contingencies set forth below. The Parties agree that the Available Capacity has an estimated value of \$4 million.
2. Enter into, and perform its obligations under, the amendment to the Mt. Pleasant/Caledonia Sewer Agreement attached hereto as Exhibit A, including but not limited to paying \$4,000,000 to Mt. Pleasant under such amendment.

B. **Mt. Pleasant.** Mt. Pleasant agrees to:

1. Accept the transfer of the Available Capacity from Caledonia, in accordance with the terms of the Racine Sewer Agreement.
2. Together with the County, Mt. Pleasant shall, and hereby does, indemnify and hold harmless Caledonia, and Caledonia's officials, officers, employees, and agents from and against any and all costs, expenses (including, but not limited to, reasonable actual attorney fees), claims, actions, judgments, and/or liability of any nature whatsoever, that may arise with respect to the Caledonia Water

Cost Allocation or other water infrastructure constructed or to be constructed in MP TID 5, as MP TID 5 is currently constituted and as it may be amended in the future by Mt. Pleasant. This shall expressly include, but not be limited to, any such costs, expenses, attorney fees, claims, actions, judgments, and/or liability as a result of Caledonia's contractual obligation under its Water Agreement with Racine for the Caledonia Water Cost Allocation related or applied to Foxconn water infrastructure.

3. Enter into, and perform its obligations under, the amendment to the Mt. Pleasant/Caledonia Sewer Agreement attached hereto as Exhibit A, including but not limited to applying the \$4,000,000 payment received from Caledonia thereunder toward public infrastructure improvements benefiting MP TID 5.

- C. **County.** Together with Mt. Pleasant, the County shall, and hereby does, indemnify and hold harmless Caledonia, and Caledonia's officials, officers, employees, and agents from and against any and all costs, expenses (including, but not limited to, reasonable actual attorney fees), claims, actions, judgments, and/or liability of any nature whatsoever, that may arise with respect to the Caledonia Water Cost Allocation relating to water infrastructure constructed or to be constructed in MP TID 5, as MP TID 5 is currently constituted and as it may be amended in the future by Mt. Pleasant. This shall expressly include, but not be limited to, any such costs, expenses, attorney fees, claims, actions, judgments, and/or liability as a result of Caledonia's contractual obligation under its Water Agreement with Racine for the Caledonia Water Cost Allocation related or applied to Foxconn water infrastructure.

CONTINGENCY OF THE PARTIES

While the Parties intend to implement their respective obligations set forth in the previous section, the Parties acknowledge that the cooperation of certain third parties is required to realize all of their intentions. Accordingly, the Parties' obligations shall be contingent upon:

- A. Mt. Pleasant and the County executing a definitive, comprehensive agreement, on terms acceptable to them, in their sole discretion, with Racine ("Racine/Mt. Pleasant/County Agreement") to enable Mt. Pleasant and the County to perform their respective obligations to implement certain water infrastructure improvements bringing water service to MP TID 5 consistent with the Development Agreement. The Racine/Mt. Pleasant/County Agreement shall explicitly acknowledge that the payment of the Caledonia Water Cost Allocation is being paid for and/or is otherwise indemnified by Mt. Pleasant and the County under this MOU.
- B. The Racine Wastewater Utility Commission certifying that the permanent transfer of the Available Capacity from Caledonia to Mt. Pleasant is consistent with the terms of the Racine Sewer Agreement.

- C. The State of Wisconsin Department of Administration certifying that the water infrastructure improvements and the transfer of the Available Capacity, as described in this MOU, benefit MP TID 5.
- D. Caledonia and Mt. Pleasant executing the amendment to the Mt. Pleasant/Caledonia Sewer Agreement attached hereto as Exhibit A.

In the event that any of the contingencies in this section are not satisfied, any of the Parties may terminate this MOU by delivering written notice of termination to the other Parties to this MOU prior to June 30, 2018. If no written notice of termination has been delivered by June 30, 2018, the contingencies to this MOU shall be deemed satisfied and the MOU shall remain in full force and effect.

This MOU may be executed electronically and in counterparts, each which shall be deemed an original and together which shall constitute one and the same instrument.

Date: February _____, 2018

RACINE COUNTY, WISCONSIN

Jonathan Delagrave, County Executive

Date: February _____, 2018

**VILLAGE OF MOUNT PLEASANT,
WISCONSIN**

David DeGroot, Village President

Date: February _____, 2018

VILLAGE OF CALEDONIA, WISCONSIN

James R. Dobbs, Village President

EXHIBIT A

SECOND AMENDMENT TO MOUNT PLEASANT/CALEDONIA SHARED SANITARY SEWER SERVICE AGREEMENT

This SECOND AMENDMENT to the MOUNT PLEASANT/CALEDONIA SHARED SANITARY SEWER SERVICE AGREEMENT is dated as of February ____, 2018, by and among the Village of Mount Pleasant and Mount Pleasant Sewer Utility District No. 1 (collectively, "Mt. Pleasant") and the Village of Caledonia and the Village of Caledonia Utility District (collectively, "Caledonia").

WITNESSETH:

WHEREAS, Mt. Pleasant and Caledonia entered into the Mount Pleasant/Caledonia Shared Sanitary Sewer Service Agreement on November 12, 2008, as amended by a First Amendment dated August 26, 2014 (collectively, the "Agreement") to set forth terms and conditions on which Mt. Pleasant would allow Caledonia to utilize sanitary sewer infrastructure owned by Mt. Pleasant and to facilitate the parties' shared goals of maximizing sanitary sewer infrastructure and promoting the orderly and cost-efficient development of both Mt. Pleasant and Caledonia;

WHEREAS, Mt. Pleasant intends to undertake a "Major Capacity Project" to increase the capacity of certain segments of the "Shared Sanitary Sewer Conveyance System" to transport wastewater, and Caledonia has requested Mt. Pleasant, as a part of such Major Capacity Project, to accommodate the transport of ultimate peak flow of an estimated 12 million gallons per day of wastewater from various properties within the Caledonia Service Area; and

WHEREAS, the parties have agreed to undertake and fund the Major Capacity Project generally described on Attachment 1 hereto, on the terms set forth below;

NOW THEREFORE, in consideration of the mutual provisions of this Amendment and other good and valuable consideration, the receipt and sufficiency of which the parties to this Amendment hereby each acknowledge, the parties hereby agree to amend the Agreement as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Mt. Pleasant Obligation to Undertake and Fund 2018 Major Capacity Project.** Mt. Pleasant shall undertake and fund the Major Capacity Project generally described on Attachment 1 attached hereto (the "2018 Major Capacity Project"), which 2018 Major Capacity Project shall include, but not be limited to, installing new sanitary sewer pipes and a lift station and re-routing the flow of wastewater from the Caledonia Conveyance System to accommodate the transport of an ultimate peak flow of an estimated 12 million gallons per day of wastewater from the Caledonia Service Area through a new interceptor to become a part of the Mt. Pleasant System. Such 2018 Major Capacity Project is estimated to cost a total of approximately \$72,263,000 (of which Caledonia's pro rata share is estimated to be approximately \$26,600,000) and to be completed as needed. Caledonia shall be allowed to connect its Caledonia Conveyance System to the new interceptor at the same time that Mt. Pleasant connects Mt. Pleasant's conveyance system to the new interceptor. Upon Caledonia's connection to the new interceptor, the Agreement shall no longer apply to the currently shared use of Mt. Pleasant's southerly sanitary sewer conveyance system, with such shared use of the said southerly system being cancelled, terminated and removed from the Agreement, and this Amendment shall instead apply to the shared use by Caledonia and Mt. Pleasant of the new interceptor, with all of its original terms continuing in effect, except as may be removed or modified by this Amendment.

3. **\$4,000,000 Payment by Caledonia.** The currently unpaid reimbursement and all interest thereon due from Caledonia to Mt. Pleasant under Section 5.01 of the Agreement relating to the previous Mt. Pleasant Interceptor System shall be amended and restated such that Caledonia's entire obligation under Section 5.01 of the Agreement shall be \$4,000,000. Caledonia shall pay such \$4,000,000 to Mt. Pleasant, free from additional interest and penalties, not later than ninety (90) days after the satisfaction of the contingencies in the Memorandum of Understanding among Racine County, Mt. Pleasant and Caledonia dated

February __, 2018. No further payments shall be due from Caledonia to Mt. Pleasant under Section 5.01 of the Agreement, including the approximate \$3,900,000 otherwise currently payable over future years by Caledonia to Mt. Pleasant under Section 5.01 of the Agreement.

4. Caledonia Pro Rata Share of 2018 Major Capacity Project. Caledonia shall pay Mt. Pleasant a pro rata share of the 2018 Major Capacity Project in the manner set forth in Section 5.02 of the Agreement, subject to the default provisions of Section 5.05 of the Agreement, or as otherwise agreed by Caledonia and Mt. Pleasant in writing. Caledonia estimates that its ultimate peak flow in the upgraded segments will be 12 million gallons per day, and Mt. Pleasant estimates that its ultimate peak flow in the affected segments will be 27 million gallons per day. However, the actual ultimate peak flows of Caledonia and Mt. Pleasant in affected segments upon final design of the 2018 Major Capacity Project shall be the basis for determining the parties' respective pro rata shares of the 2018 Major Capacity Project. In any event, Mt. Pleasant agrees to finance Caledonia's pro rata share of the 2018 Major Capacity Project on the same basis, over the same period and at the same interest cost, that Mt. Pleasant finances its own pro rata share of the 2018 Major Capacity Project.

5. No Challenges to this Amendment. The parties hereby waive any right to commence or maintain any civil action in State or Federal Court or any other administrative proceeding to contest or challenge the adoption or validity of this Amendment. More specifically, each of the parties hereto waives any right to complain or commence an administrative action with the State of Wisconsin Public Service Commission (the "PSC") and hereby agrees not to complain to the PSC pursuant to Sec. 66.0821(5) of the Wisconsin Statutes, as amended, that this Amendment or any provision of this Amendment is unreasonable or unjustly discriminatory.

6. Agreement Remains in Full Force and Effect. Except as expressly amended herein, the Agreement remains unmodified and in full force and effect. In the event of any inconsistency between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control.

7. Counterparts. This Amendment may be executed electronically and in counterparts, each which shall be deemed an original and together which shall constitute one and the same instrument.

Date: February ____, 2018

**VILLAGE OF MOUNT PLEASANT,
WISCONSIN**

David DeGroot, Village President

Date: February ____, 2018

VILLAGE OF CALEDONIA, WISCONSIN

James R. Dobbs, Village President

ATTACHMENT I
DESCRIPTION OF 2018 MAJOR CAPACITY PROJECT

The 2018 Major Capacity Project, the Project, will consist of a gravity sewer system and a pressure sewer system.

The gravity sewer system element of the Project will start at the STH 20/International Drive intersection. The gravity sewer will consist of two major sections. Section 1 will be located between STH 20 and CTH KR. Section 2 will generally parallel CTH KR between proposed Wisconn Valley Way and the Pike River.

The pressure sewer system element will consist of a new lift station to be located north of CTH KR and west of the Pike River and a new force main(s). The new force main(s) will be located along CTH KR between the Pike River and STH 32 and along STH 32 and public roads or easements to the Racine Wastewater Treatment Plant located near 21st Street and Wisconsin Avenue.