AGREEMENT FOR OAK CREEK TO PROVIDE WATER AT WHOLESALE TO THE VILLAGE OF CALEDONIA

This Agreement is made and entered into pursuant to §66.0301, Wis. Stats., by and between the City of Oak Creek and the Oak Creek Water and Sewer Utility ("Oak Creek") and the Village of Caledonia ("Caledonia") (collectively, Oak Creek and Caledonia are referred to in this agreement as "the Parties").

RECITALS:

- A. Caledonia desires to purchase water from Oak Creek at wholesale and at rates which are approved by the Public Service Commission of Wisconsin, ("the PSC") and at standards of service which are prescribed by the PSC; and
- B. Oak Creek has constructed and will continue to construct facilities within the City of Oak Creek to ensure that Caledonia receives an adequate water supply and Oak Creek will continue to maintain said facilities; and
- C. Oak Creek must be assured that Caledonia will continue to obtain its water supply from Oak Creek so that Oak Creek may prudently plan expansion of its facilities and so that such facilities, when constructed, will be utilized as fully as possible; and
- D. Any extensions of water service into and within Caledonia shall be accomplished by the Parties in compliance with Caledonia's Land Use Plan in effect at the time of said extensions.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this agreement, Caledonia and Oak Creek agree as follows:

- 1. <u>RECITALS</u>. The above recitals are true and correct and are incorporated herein by reference.
- 2. <u>SERVICE AREA</u>. Oak Creek shall provide water at wholesale to area 1 of Caledonia, as depicted on Exhibit A, which is attached and incorporated herein by reference ("Initial Water Service Area").

Subject to the provisions of Paragraph 8, upon the request of Caledonia, Oak Creek shall provide water at wholesale to all or portions of area 2 of Caledonia, as depicted on Exhibit A.

Oak Creek shall provide water service to the remainder of Caledonia or portions thereof, including those areas of Caledonia East Utility District, Caledonia West Utility District, and the Village of Wind Point presently served by the Racine Water Utility ("Additional Water Service Area"), provided:

- A. Notice is provided by Caledonia pursuant to Section 8 of this Agreement; and
- B. Oak Creek has sufficient capacity to serve the additional territory as reasonably determined by Oak Creek, after consultation with its engineers, and taking into account the future capacity needs within the City of Oak Creek. Before any determination is made by Oak Creek that there is insufficient capacity to serve the additional territory, Caledonia shall be given an opportunity to provide input on the issue, with its engineers having access to information relevant to the issue of capacity.
- CONSTRUCTION OF METERING STATIONS. Caledonia, at its sole expense, shall construct all metering stations, including telemetry (to allow remote monitoring of volume, pressure and/or other quality parameters as needed by Oak Creek or required by regulation) integrated with Oak Creek's control system, located in Caledonia and required to measure the quality and quantity of water supplied to Caledonia. Caledonia shall prepare all required engineering plans, drawings, diagrams, specifications and other related documents which shall be subject to review and approval by Oak Creek. Caledonia shall prepare all required construction contracts, advertisements for bids, award contracts to a successful bidder and shall obtain required property rights and/or easement rights and/or any other approval necessary for the installation of such improvements in Caledonia. All plans and specifications for work completed within the City limits of Oak Creek, including all mains and appurtenance on the City side of the metering facility, and including the metering stations regardless of where it is located, must conform to Oak Creek standards and shall be approved by Oak Creek prior to the time that contracts are awarded or materials are purchased for construction of metering stations. Plans and specifications shall be reviewed by Oak Creek within thirty (30) days of the date that plans and specifications are submitted to Oak Creek. Oak Creek shall provide written approval of or provide written objection to the plans and specifications within 30 days of the submittal to Oak Creek. Within twenty (20) days after Oak Creek has received written notification that such construction is ready for final inspection. Oak Creek shall provide written approval of or submit written objection to the construction of any facility. All construction work incidental to construction of metering stations shall be inspected by Caledonia, in accordance with Oak Creek inspection standards. Oak Creek reserves the right to make periodic inspections during construction, with the authority to make field directives within the context of the bid contract. All construction inspection costs and any resulting inspection fees for metering stations that are required prior to the time that such stations are placed in operation shall be paid by Caledonia. Prior to operation, the metering stations must receive Oak Creek approval, including approval of all record drawings prepared by Caledonia. Caledonia shall pay all costs, charges, fees and expenses incidental to construction, maintenance and operation of the water distribution system located within the corporate limits of Caledonia, except that water meters (including recording and measuring devices) shall be supplied and calibrated by Oak Creek at Oak Creek's expense and installed by Caledonia at Caledonia's expense. Oak Creek shall have access to the metering stations to remove, test and replace the

metering equipment. Caledonia shall repipe or reconfigure the water system and electrical system of the metering station at its sole cost and expense as required to accommodate future meter installations or regulations. Caledonia retains and shall have the sole right to assess benefited property owners in Caledonia for the cost and expense of operation, maintenance, repair and replacement of the water distribution system within the Village of Caledonia.

4. <u>CONSTRUCTION OF WATER MAIN EXTENSION TO RACINE</u> <u>COUNTY LINE</u>,

- A. <u>Construction</u>. Caledonia shall construct and install the necessary water main extensions and appurtenances from the present terminus of Oak Creek water main on S.13th Street and connect with the existing Caledonia water system, and Caledonia shall perform all services related thereto, including the following:
 - (1) Prepare all required engineering plans, drawings, diagrams, specifications and other related documents. The portion of the water main within Oak Creek shall be constructed and installed in accord with Oak Creek specifications.
 - (2) Prepare all required construction contracts, advertise for bids, award contracts to a successful bidder, and obtain required property rights and/or easement rights and/or any other approvals required for the construction project.
 - (3) Provide a metering station at or near the county line between Caledonia and Oak Creek, at a mutually agreeable location which metering equipment shall be supplied and calibrated by Oak Creek.
 - (4) Let contracts to construct and install the water mains and appurtenances.
 - Upon completion of construction, Caledonia shall provide Oak Creek with the final, actual construction costs and final, as-built information. Upon completion of construction, Caledonia shall dedicate that portion of the water main and appurtenances in Oak Creek to Oak Creek. The metering facility shall be owned by Caledonia.
- B. <u>Inspection</u>. Oak Creek reserves the right to inspect the water main construction between the Oak Creek system and the metering stations
- C. Approvals. If necessary, Caledonia shall apply to the PSC for any requisite authority to connect to the Oak Creek water system and construct

the water main extensions as herein provided. Caledonia shall also obtain any other required permits for completing the improvements.

- 5. OPERATION AND MAINTENANCE. Except for the construction of water mains as provided in paragraph 4 Oak Creek shall, at its sole cost and expense, operate, maintain or repair and replace all parts of the water delivery system which provides the water as set forth in this agreement which are located in the City of Oak Creek. Any new wholesale water meter shall be located in Caledonia and shall be supplied by Oak Creek. Caledonia shall install the new meter. Oak Creek shall repair or replace all wholesale meters subsequent to the initial installation of the meter. Caledonia shall install flow control equipment at interconnection points between the two systems. Oak Creek shall control the flow control equipment to ensure adherence to this Agreement. Caledonia, upon request, may exercise secondary control to further limit the flow of water into Caledonia. Oak Creek retains and shall have the sole right to assess benefited property owners in Oak Creek for the cost and expense of operation, maintenance, repair and replacement of the water system within the City of Oak Creek.
- 6. RATES. Caledonia shall be a wholesale customer of Oak Creek. Customers of Caledonia shall be retail customers of Caledonia. Caledonia shall be solely responsible for billing and collection of all fees or charges from its retail customers for water service. The initial rate of charges for services at wholesale for water supplied to Caledonia by Oak Creek shall be the current rates authorized by the Public Service Commission ("PSC"), which rates shall cover all commodity and fixed excess demand related charges inclusive of public fire protection charges. The schedule of water rates shall be subject to modification during the term of this agreement provided that such changes are approved by the PSC. Oak Creek shall submit invoices to Caledonia on a monthly basis. A reasonable rental fee for the operation, maintenance and repair of metering and demand measuring devices will be charged to Caledonia and incorporated in the monthly service fee as approved by this PSC. All such invoices shall be payable to Oak Creek within twenty (20) days. If payments are not received within twenty (20) days a penalty of 1% per month on any delinquency shall be due and payable by Caledonia.
- 7. **RELIANCE ON PSC.** The Parties acknowledge that in entering into this agreement they are mutually relying on the regulatory role of the PSC, as of the date of this agreement 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 or in the event that the PSC ceases to exist or exercise regulatory authority regarding water service rates and practices and such authority has not been transferred to a successor agency, the provisions and procedures of Section 24 of this Agreement shall be invoked.
- 8. <u>WATER QUALITY, QUANTITY AND PRESSURE STANDARDS</u>. Oak Creek shall provide water to Caledonia which is safe for human consumption and which meets all primary drinking water quality standards from time to time established by the State and Federal governments. The water shall be of the same purity and quality

as water provided to individual retail customers in Oak Creek, and shall be at a pressure sufficient to satisfy all applicable pressure requirements of the Wisconsin Department of Natural Resources ("the DNR") and PSC. Oak Creek shall accept and analyze for bacteria the water samples taken by Caledonia as deemed necessary by the DNR and shall provide Caledonia with the tests results at cost up to 20 samples per month. Oak Creek shall have no obligation to accept and analyze water samples for bacteria in the event Oak Creek does not maintain a laboratory certified by the State of Wisconsin.

The minimum hge shall be 810 (USGS datum) at each metering station at the downstream side of each meter at the locations noted above. The initial supply of water for newly served areas in Caledonia shall be at a rate as needed by Caledonia, up to two hundred thousand gallons per day (200,000 gd), in addition to the existing water demand already supplied by Oak Creek (estimated to be 1.2 million gd), measured at any point in time at the above criteria. At no time during the term of this agreement shall the supply of water from Oak Creek to Caledonia to serve areas 1 and 2 of Exhibit A be greater than seven million gallons per day (7,000,000 gd) measured at any point in time, except with Oak Creek's consent. In the event Oak Creek is unable to satisfy Caledonia's request to supply water service beyond 7,000,000 gd (or such higher demand figure as agreed to by Oak Creek), Caledonia may obtain water service from any other source without violating the terms of this Agreement.

To enable Oak Creek to meet future water service demands, Caledonia shall develop a five (5) year plan to be reviewed by Caledonia on an annual basis. By April 1 of each calendar year, Caledonia shall notify Oak Creek of its updated five (5) year plan. Oak Creek shall meet such demand, except that demand increases in any one year will not exceed 200,000 gd measured at any point in time, unless Oak Creek approves the increase. If Caledonia does not provide an update of its five (5) year plan by April 1st, Year 1 of the prior year's plan will become Year 1 of the updated plan.

Caledonia shall prohibit connections to water mains within Area 1 (adjacent to Interstate I-94), as depicted on Exhibit A, for a period of two (2) years from execution of this Agreement. Connections to water mains within Area 2 that are receiving Oak Creek water shall be prohibited by Caledonia for a period of one (1) year from the date of the execution of this Agreement. Notwithstanding the prohibition on connections, Caledonia shall be permitted to connect to water mains within Areas 1 and 2 for public fire protection purposes.

9. **EMERGENCIES**. Oak Creek may restrict use of water by Caledonia as a result of the occurrence of any emergency, including but not limited to major firefighting, major hydrant flushing, major water main breaks or drought, which will affect the water pressure or other performance capabilities of the water system within Oak Creek. Whenever Oak Creek is unable to supply water service in accordance with the terms of this agreement Caledonia may obtain emergency water service from any other source without violating the terms of this agreement but only for the specific period of time in which Oak Creek is unable to provide such supply.

- 10. <u>UNIFORMITY</u>. Oak Creek shall not discriminate or differentiate in quality of service or in its method of calculating rates between Caledonia and other wholesale customers of Oak Creek.
- 11. <u>SOLE PROVIDER</u>. Subject to the provisions of Paragraph 8, and as depicted on Exhibit A, Oak Creek shall be the sole provider of water service to Caledonia in an area North of Five Mile Road. In accordance with its Land Use Plan, Caledonia shall obtain all of its water for its own use and the use of its retail customers from Oak Creek within the Initial Water Service Area depicted in area 1 of Exhibit A, and as may be amended to include all or portions of area 2 of Exhibit A, and/or territory within the Additional Water Service Area as provided in Section 2 of this Agreement.
- 12. **TERM.** This agreement shall terminate forty (40) years from the effective date, as set forth below.
- 13. **EXPANSION**. In the event that the corporate limits of Caledonia shall be either extended or enlarged in any manner whatsoever, such extended/enlarged area of Caledonia may be added to the Additional Water Service Area in the manner described above in Section 2.
- 14. <u>METER FACILITIES</u>. Caledonia shall furnish and install metering facilities complete with meter setting except for the meters. The meters, including total recording and measuring devices, shall be calibrated and supplied by the Oak Creek Water and Sewer Utility at Oak Creek's expense. Oak Creek shall also pay all costs and expenses incurred as a result of testing metering devices.
- 15. <u>RECORD ACCESS</u>. Caledonia and Oak Creek shall create and maintain corporate records and record information relating to this agreement. The parties agree to allow representatives of the other party to evaluate inspect and copy documents, records and facilities of the other. Upon request of either party, the other shall provide any requested information, documents or records at cost regarding any matters relating to the subject matter of this agreement or the construction or operation of the utility system. This paragraph shall not be construed to eliminate any requirement for public record keeping in conformance with Wisconsin State statutes.
- 16. <u>INSURANCE</u>. During the term of this agreement each party shall maintain at its sole expense, comprehensive general liability insurance in the minimum amount of \$3,000,000. Upon request each party shall provide evidence to the other party of the existence of an effective policy and the policy limits. Each party shall be named as additional insured on the insurance policy of the other party hereto. Each party shall properly notify the other if the policy limits are reduced or the policy is canceled or not renewed. In addition, each party shall, at its sole expense, obtain and maintain worker's compensation insurance covering its employees performing the services for that party in at least the minimum amounts required from time to time by applicable State of Wisconsin statutory requirements.

- 17. <u>LEGAL RELATIONSHIP</u>. Nothing in this agreement shall be construed to create an employer/employee relationship, a joint venture relationship or a principal/agent relationship.
- 18. <u>INDEMNIFICATION</u>. Caledonia shall hold harmless, indemnify and defend Oak Creek, and their officers, employees and agents from and against any and all claims, causes of action, liability, damages, expenses and costs (including reasonable attorneys' fees) for or in connection with personal injury, death or property damage resulting from or arising out of acts or omissions of Caledonia, its officers, employees, agents, consultants or contractors, or their subcontractors, when such acts or omissions relate to Caledonia's obligations pursuant to this agreement. Oak Creek shall hold harmless, indemnify and defend Caledonia, its officers, employees and agents from and against any and all claims, causes of action, liability, damages, expenses and costs (including reasonable attorneys' fees) for or in connection with personal injury, death or property damage resulting from or arising out of acts or omissions of Oak Creek, their officers, employees, agents, consultants or contractors, or their subcontractors, when such acts or omissions relate to the obligations of Oak Creek pursuant to this Agreement.

19. CONNECTION CHARGES AND IMPACT FEES.

A. For the purpose of this subsection, the following definitions shall apply:

Connection Charge: A charge made by a municipality or utility for connecting the customer's service line to the utility's facilities.

Impact Fee: A fee imposed by a municipality on developers, pursuant to §66.0617, Wis. Stats., to pay for the capital costs that are necessary to accommodate land development.

System Development Charge: A contribution of capital toward existing or planned future back-up plant facilities necessary to meet the service needs of new customers to which such fees apply. Various terms are used to describe these charges in the industry, but these charges are intended to provide funds to be used to finance all or part of capital improvements necessary to serve new customers.

B. Notwithstanding any statutory or regulatory authorization, or any Oak Creek ordinance, rule or regulation to the contrary, Caledonia shall not be obligated to collect, on behalf of Oak Creek, nor pay over any equivalent amount to Oak Creek for impact fees, connection charges, system development charges, and other like fees or charges.

20. <u>MISCELLANEOUS</u>.

- A. This agreement shall be subject to applicable rules and regulations of Oak Creek which are on file with the PSC and as such rules and regulations may be amended from time to time.
- B. The failure of either party to insist on strict performance of any of the terms or conditions of this agreement shall not be construed as a waiver or relinquishment of any right granted under this agreement.
- C. In the event that any portion of this agreement is held invalid or unenforceable such invalidity or unenforceability shall not affect the other portions of this agreement.
- D. This agreement shall be binding upon and inure to the benefit of and be enforceable by the parties, their agents, employees, officers and directors. However, it is not intended by the parties hereto that this agreement in any way inure to the benefit of any third party.
- E. This agreement shall be binding upon any successor organization or entity assigns or other successor political entity of either party to this agreement.
- F. This agreement shall not be assigned by any of the parties hereto without the prior written consent of the other party.
- G. This agreement shall be governed and interpreted under the laws of the State of Wisconsin.
- H. This agreement constitutes the entire agreement between the parties relating to the subject matter of this agreement. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this agreement.
- 21. <u>NOTICE</u>. Notices required by this agreement shall be in writing unless an emergency exists and shall be deemed given upon delivery in person or by first class mail postage prepaid to the other party at the following address:

Village of Caledonia 6922 Nicholson Road Caledonia, WI 53108

Oak Creek Water & Sewer Utility 170 West Drexel Avenue Oak Creek, WI 53154 22. <u>AMENDMENT</u>. This agreement may be amended or terminated prior to the end of the term set forth in Paragraph 12 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.

23. <u>ENFORCEMENT/REMEDIES</u>.

A. Remedies.

- (1) Caledonia shall have the right and standing to complain to the PSC, pursuant to §66.0821(5), Wis. Stats., that any decision made or action taken by Oak Creek under or pursuant to this agreement constitutes an unreasonable or unjustly discriminatory rate, rule or practice, provided and to the extent that Caledonia'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 §66.0821(5), Wis. Stats. 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 the 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 alleged breach or dispute to the other Party, 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 shall proceed to mediation pursuant to paragraph 24(d) herein. This Subsection is intended

by the Parties to waive their respective statutory right to any notice under §893.80(1), Wis. Stats., to the extent such subsection is applicable.

- C. Commencement of Civil Actions or Other Proceedings. A Party shall not commence a civil action or file a complaint with the PSC until after mediation required by paragraph 24(b) above 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.
- 24. <u>DISPUTE RESOLUTION</u>. In the event of any change of circumstances resulting from judicial, legislative or administrative action by federal, state or local authorities after the date of this agreement, which is not specifically provided for in this agreement, and which has the effect of materially altering the carefully structured balance of benefits and burdens that the Parties have extensively negotiated and accepted in this agreement (the "Cost-Benefit Balance" of this agreement) or which disrupts, hampers or obstructs the smooth and efficient administration of this agreement (a "Material Change of Circumstances"), the provisions and procedures of this Section shall be invoked.
 - A. <u>Notice</u>. Any Party to this agreement may give written notice to the other Party that a potential Material Change of Circumstances has occurred or may occur in the foreseeable future. Any such notice shall describe the potential Material Change of Circumstances and its potential impact upon this agreement.
 - B. Initial Meeting. Upon notice being given of a potential Material Change of Circumstances, or any dispute as it relates to this agreement or any alleged breach of this agreement Oak Creek shall promptly schedule a meeting of representatives of the Parties, on not less than ten days prior written notice, to begin discussing whether a Material Change of Circumstances has occurred and how to address it. If the potential Material Change of Circumstances will materially affect other wholesale water service agreements of Oak Creek similar to this agreement, Oak Creek may give written notice of the potential Material Change of Circumstances to the parties to those similar agreements and involve them in the initial meeting and/or subsequent proceedings. (In the event that parties to similar agreements are involved, references in the following provisions of this Section 24 to "Parties" or "Party" or "Agreement" shall be understood to include such other similar agreements and the parties to them.)
 - C. <u>Amendment</u>. If any of the Parties believes that a Material Change of Circumstances has occurred, the Parties shall discuss how best to restructure this agreement and/or the relationship of the Parties so that the original Cost-Benefit Balance of this agreement, or a reasonable approximation thereof, and the reasonably smooth and efficient

administration of this agreement, can feasibly be reestablished and maintained. Oak Creek shall schedule and conduct meetings of the Parties as often as may be helpful, and the Parties shall use their best efforts (including, but not limited to, holding special meetings of the respective governing bodies) to rapidly find, design and implement a means of successfully accomplishing this purpose, including, but not limited to, the negotiation of appropriate amendments of this agreement or to resolve the dispute regarding this agreement or to remedy any alleged breach of this agreement. In doing so, and in any follow-up mediation conducted pursuant to this Section 24, each Party shall have the obligation to act in good faith in attempting to restore the original Cost-Benefit Balance of this agreement, or a reasonable approximation thereof, and the reasonably smooth and efficient administration of this agreement.

- D. Mediation. In the event the Parties are not able to reach agreement any Party may, by 60-day prior written notice to the other, require submission of such dispute (including whether a Material Change of Circumstances has occurred) to an impartial mediator, to be selected by the Parties during such 60-day period, for non-binding mediation if the dispute is not resolved during such 60-day period. All of the Parties shall participate in the mediation unless a Party opts out by written notice to the other Parties. The mediator selected shall be selected by mutual agreement of the parties. If the parties are unable to agree on the selection of a mediator the parties shall agree to a process to select a mediator. The Parties shall jointly retain the mediator through Oak Creek. The Board of Water Works and Sewer Commissioners shall cause a written notice to be sent to each participating Party upon retention of the mediator stating the name and address of the mediator. The Parties may be represented by legal counsel in the mediation, but each Party shall be responsible for its own attorneys' fees.
- 25. **REFERENCES**. Any references in this agreement to any particular agency, organization or official shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by law. Any references in this agreement to any particular statute, ordinance, rule or regulation shall be interpreted as applying to such statute, ordinance, rule or regulation as amended or recreated from time to time. In the event that any such amendment or recreation effects a Material Change of Circumstances, however, this rule of interpretation shall not be construed as specifically providing for such change so as to make inoperable the provisions of Section 24 of this agreement relating to Material Change of Circumstances.
- 26. **EFFECTIVE DATE**. This agreement shall take effect upon being duly approved and signed by each of the Parties (and upon being approved by the PSC, if such approval is required by law), whichever occurs last.

Dated this 17th day of December, 2008.

BOARD OF WATER WORKS AND SEWER COMMISSIONERS

By: He weld Wille President

Attest: Fredrick Siepert. Secretary

VILLAGE OF CALEDONIA

Ronald Coutts, President

Wendy Chastensen, CMC, Clerk

