

Petitioner's Exhibit 5

IURC
PETITIONER'S
EXHIBIT NO. 5
10-7-21 cl
DATE REPORTER

OFFICIAL
EXHIBITS

CONTRACT FOR WATER SERVICE

31st This CONTRACT FOR WATER SERVICE ("Contract"), made and entered into this day of March, 2021, is between Gibson Water Authority ("Gibson Water") and Toyota Motor Manufacturing Indiana, Inc. ("TMMI") and is regarding the extension of the contractual relationship between Gibson Water and TMMI for the sale and purchase of water and an increase in the amount of water available to TMMI on a prospective basis.

RECITALS:

A. Gibson Water is a "water authority" created pursuant to Indiana Code § 13-18-16-16 that is authorized to provide water service in certain areas of Gibson and Warrick Counties, Indiana.

B. TMMI owns and operates an automobile manufacturing facility within Gibson Water's service territory.

C. The parties initially executed a Water Sale and Purchase Agreement on March 1, 1997 ("1997 Agreement"), in which Gibson Water agreed to provide TMMI with up to 1 million gallons of water per day ("mgd").

D. The parties subsequently executed an Amendment to the Water Sale and Purchase Contract on March 27, 2019 ("2019 Amendment") and an Addendum to the Water Sale & Purchase Contract dated April 30, 2020 ("2020 Addendum").

E. The 2020 Addendum temporarily increased the capacity available to TMMI from 1 mgd to 1.8 mgd for a period of time ending on December 31, 2020.

F. On January 20, 2021, Gibson Water and Toyota executed a Memorandum of Understanding ("MOU") which outlined the process necessary to increase TMMI's available water capacity from 1 mgd to 2 mgd upon completion of certain improvements by Gibson Water's wholesale water supplier, Evansville Water and Sewer Utility ("Evansville Water").

G. The MOU also: (i) required that the terms and conditions set forth within the MOU be memorialized in a permanent, long-term contract between the parties on or before April 1, 2021; and (ii) extended TMMI's available capacity of 1.8 mgd (as originally granted in the 2020 Addendum) from December 31, 2020 to April 1, 2021.

H. The parties now wish to execute a new long-term agreement (i.e. the Contract) for the purpose of increasing the amount of water available to TMMI, establishing the terms upon which service will be available, and replacing and superseding all prior agreements.

NOW, THEREFORE, in consideration of the mutual agreement and covenants set out in this Contract, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I

Rights and Responsibilities of Gibson Water

Section 1.1. Provision of Service. Gibson Water shall provide water service to TMMI, subject to the terms, conditions, and limitations outlined below.

Section 1.2. Purchase of Additional Water Supply from City of Evansville. Gibson Water will pay \$3,181,541 to its wholesale water supplier, Evansville Water, in order to increase Gibson Water's contract capacity from 2.8 mgd to a total of 4 mgd. The 1.2 mgd increase in its contractual capacity from Evansville Water will allow Gibson Water to increase the amount of water available to TMMI consistent with this Contract.

Section 1.3. Additional Capacity for TMMI. Gibson Water agrees to furnish TMMI potable, treated water meeting applicable purity standards of the Indiana Department of Environmental Management in an amount not to exceed a maximum quantity of 2 mgd, unless Gibson Water gives its express written approval to any exceedance of this amount. Gibson Water shall furnish water to TMMI at a reasonably constant pressure of approximately 80 psi at the existing point of delivery located on the west side of County Road 100 East approximately one-half (1/2) mile north of Gibson Water's 1.5 million gallon elevated storage tank.

Section 1.4. Timing for Availability of Additional Water. Gibson Water will increase the capacity available to Toyota from 1 mgd to 2 mgd after all of the following conditions are met: (i) Gibson Water receives the approvals from the IURC (as described in Section 1.10); (ii) TMMI makes the requisite payment as described in Section 2.2; (iii) Evansville Water completes certain projects that are necessary to increase the amount of wholesale water supply available to Gibson Water; and (iv) Evansville Water formally makes the additional capacity available to Gibson Water.

Section 1.5. Temporary Extension of Capacity for TMMI. Upon execution of this Contract, Gibson Water agrees to provide TMMI with available capacity of 1.8 mgd (as originally granted in the 2020 Addendum and MOU) until the date on which TMMI is required to make the payment for its Financial Obligation (defined below) as required in Section 2.3. Once the Financial Obligation is paid and the conditions in Sections 1.4 and 1.10 are satisfied, TMMI's available capacity will be increased from 1.8 mgd to 2 mgd for the term of this Contract. If TMMI does not timely make payment for its Financial Obligation for any reason, the terms and conditions in this Contract shall be null and void, TMMI's capacity shall be reduced to 1 mgd, and TMMI shall be responsible for its Financial Obligation (as set forth in Section 2.2).

Section 1.6. Metering Equipment. Gibson Water shall operate and maintain at its own expense the necessary standard metering equipment that is used for measuring the quantity of water delivered to TMMI. Any meter(s) registering not more than 2% above or below any test results will be deemed to be accurate. The previous readings of any meter disclosed by tests to be inaccurate to the extent of more than 2% shall be corrected for the two (2) months previous to such tests in accordance with the percentage of inaccuracy in excess of 2% found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the

failure, unless Gibson Water and TMMI agree upon a different amount. The metering equipment shall be read monthly. An appropriate official of TMMI shall have access to the meter or its readings at all reasonable times for the purpose of verifying its consumption.

Section 1.7. Monthly Billing. Gibson Water shall send TMMI on the 15th day of each month an itemized billing of the amount of water furnished to TMMI in the preceding month. If the 15th day of a given month is on a Saturday, Sunday, or holiday, then the bill will be sent to TMMI on the next business day. TMMI shall, in turn, pay the monthly invoice by the 1st day of the following month unless the first day of the month falls on a Saturday, Sunday, or holiday. In this event, payment shall be made by the first business day thereafter.

Section 1.8. Water in Excess of 2 mgd. Subject to engineering and operational constraints, Gibson Water may, in its sole discretion, make water in excess of 2 mgd available to TMMI should TMMI request additional quantities of water and Gibson Water determines such additional quantities are available. Before the additional water is taken, the request must be approved in writing by Gibson Water. In the event TMMI takes more water than its maximum daily quantity (i.e. 2 mgd) without prior approval, then a surcharge shall be paid by TMMI of \$0.50 per 1,000 gallons taken each day in excess of 2 mgd.

Section 1.9. Limitation of Source of Supply. Gibson Water shall not be liable to TMMI for failing to supply water pursuant to this Contract when water is physically not available due to causes beyond the control of Gibson Water. TMMI acknowledges that the water supply for Gibson Water is obtained from Evansville Water pursuant to a contractual agreement. However, Gibson Water shall not make commitments to sell more water from Gibson Water's supply than can be reasonably obtained through Gibson Water's contractual agreement with Evansville Water. Notwithstanding such commitment, Gibson Water agrees that it will fairly and equitably apportion the supply available between all of its customers, including TMMI, should a shortage of water occur. In the event of a need for implementation of water use rationing, curtailment or conversion, Gibson Water shall not require TMMI to reduce its consumption to a greater degree than that required of its other customers, unless an emergency exists.

Section 1.10. Financing of Costs for Additional Capacity. Within thirty (30) days of execution of this Agreement (if not sooner), Gibson Water shall seek authority from the Indiana Utility Regulatory Commission ("IURC") to: (i) incur long-term indebtedness in an amount necessary to pay Evansville Water for the cost of the additional capacity; and (ii) adjust Gibson Water's rates and charges. Any obligations under this agreement are contingent upon Gibson Water obtaining all approvals from the IURC deemed necessary by Gibson Water, in its sole discretion.

Section 1.11. Rates and Charges. Gibson Water will impose the rates and charges as approved from time to time by the IURC. When filing its 2021 case with the IURC (as contemplated in Section 1.10), Gibson Water will seek to recover from Gibson Water's other ratepayers approximately 33% of costs for the increased contract capacity from Evansville Water ("Evansville Capacity Costs") that will not be paid by TMMI. Gibson Water's rate case testimony will clearly demonstrate that TMMI has already agreed to pay its proportionate share of the Evansville Capacity Costs and that TMMI should not be allocated any additional Evansville Capacity Costs beyond those specified in the MOU. Moreover, Gibson Water will oppose any

effort to charge TMMI any additional Evansville Capacity Costs beyond those specified in the Contract. Finally, Gibson Water will not attempt to charge TMMI for the cost of the capacity payment to Evansville in any future rate case filed after the upcoming filing in 2021, and will oppose any efforts by any others to do so.

Section 1.12. Modifications and Improvements. If TMMI requires special, expanded, or modified facilities, then upon mutual agreement of the parties, Gibson Water may complete the desired facilities, and Gibson Water may impose on TMMI the cost of the special, expanded, or modified facilities.

Section 1.13. Access to Facilities. Gibson Water shall have access to its equipment and facilities located on TMMI's property at all reasonable times and with reasonable notice to inspect, maintain, operate, repair, or replace any of such equipment or facilities. Notwithstanding the foregoing, Gibson Water does not have or assume any obligation to operate or maintain any of the facilities not owned by Gibson Water.

ARTICLE II

Rights and Responsibilities of TMMI

Section 2.1. Maximum Capacity. TMMI seeks, and Gibson Water hereby agrees to provide, a maximum volume of 2 mgd at a pressure of approximately 80 psi. If TMMI requires additional water (i.e. beyond 2 mgd), TMMI will be subject to additional fees or charges for the same.

Section 2.2. TMMI's Responsibility for Cost of Additional Capacity. TMMI is willing to make a lump sum payment of up to 67% of the \$3,181,541 cost to Gibson Water to increase Gibson Water's contractual capacity from Evansville Water as described in Section 1.2, not to exceed \$2,131,632. TMMI will also be responsible for its share of the soft costs for this project, not to exceed \$231,752. These two costs combined shall be referred to as "TMMI's Financial Obligation." TMMI's Financial Obligation was calculated as follows:

CALCULATION OF ESTIMATED CAPACITY PAYMENT FROM TMMI

	<u>Total</u>	<u>All Other Customers</u>	<u>TMMI</u>
Lump Sum Payment to Evansville	\$3,181,541	\$1,049,909	\$2,131,632
Estimated Negotiation, Agreement Drafting, Rate Case and Related Costs	345,899	114,147	231,752
Total Estimated Costs	\$3,527,440	\$1,164,056	\$2,363,384

Section 2.3. Timing for Payment of TMMI's Financial Obligation. TMMI will pay TMMI's Financial Obligation after the IURC has issued a final order in Gibson Water's 2021 rate case that authorizes Gibson Water to recover the cost of its capacity payment from other ratepayers as discussed in Section 1.10 and within thirty (30) days of receiving written notice from Gibson Water requesting payment. Gibson Water anticipates giving such notice and TMMI making the payment in the latter half of 2021, but no later than December 31, 2021.

Section 2.4. Conditions for Payment of TMMI's Financial Obligation. TMMI will provide payment to Gibson Water in order to increase TMMI's contract capacity from Gibson Water to a total of 2 mgd for the term of this Contract. Any payment obligation by TMMI is specifically contingent upon TMMI's receipt of potable, treated water meeting applicable purity standards of the Indiana Department of Environmental Management.

Section 2.5. TMMI's Facilities. Gibson Water has multiple meters and connection points on TMMI's property. While Gibson Water is responsible for all facilities up to and including the individual meters, TMMI is responsible for all other water facilities and equipment located on its property. Such facilities include, but are not necessarily limited to, service lines from the meters to the structures on TMMI's property, the internal piping within the buildings located on TMMI's property, and its water wells. TMMI shall also be responsible for ensuring that the wells on its property are not interconnected with or pose a potential risk of cross-contamination with Gibson Water's potable water supply.

Section 2.6. Backflow Prevention Device and Responsibility for Water After Meter. TMMI shall operate, maintain, and replace at its own expense any backflow devices that are necessary and required under Indiana law and by Gibson Water. TMMI shall have its backflow devices tested regularly in accordance with state and local requirements and shall submit copies of the test results to Gibson Water upon completion. TMMI shall also be solely responsible for the quality and distribution of the water after it has passed through Gibson Water's meters.

Section 2.7. Use of Gibson Water's System. TMMI agrees to obtain all of its water needs (up to 2 mgd) for TMMI's Gibson County manufacturing facilities, including but not limited to, water for fire protection, cooling, manufacturing, and domestic use, from Gibson Water only. Nothing in this Section, however, is intended to prevent TMMI from using its own wells for irrigation purposes only. To the extent that Gibson Water is either unable or unwilling to supply TMMI the full 2 mgd, then TMMI may obtain water from other sources for the difference between the amount that Gibson Water is willing and able to provide and 2 mgd until Gibson Water notifies TMMI, in writing, that Gibson Water is willing and able to resume supply up to 2 mgd. TMMI will refrain from using Gibson Water's water system in any way which inhibits Gibson Water from providing service to other customers, causes damage to Gibson Water's facilities or violates Gibson Water's policies or resolutions. TMMI is prohibited from working on or altering Gibson Water's facilities, and TMMI will not permit or allow the unauthorized connection to, or extension of, its facilities or any part of Gibson Water's system.

Section 2.8. Additional Easements. TMMI agrees to provide additional water easements in, over, and across the Real Property with appropriate compensation, but in a form and location acceptable to Gibson Water and TMMI, to facilitate the provision of water service to users in the area.

Section 2.9. Support for Gibson Water. Subject to TMMI's discretion, TMMI agrees to reasonably support Gibson Water's efforts to obtain regulatory approval from the IURC for this Contract. Such support could include, among other things, the filing of supportive testimony or exhibits before the IURC.

ARTICLE III **Miscellaneous**

Section 3.1. Term of Contract. This Contract shall extend for a period of ten (10) years from the date of execution hereof. Following the initial ten (10) year term, the Contract will automatically renew for successive three (3) year periods thereafter unless and until either party gives the other written notice of termination at least three hundred sixty-five (365) days prior to expiration of the initial ten (10) year term or any subsequent successor three (3) year period.

Section 3.2. Entire Agreement. This Contract constitutes the entire agreement of the parties and supersedes any and all prior agreements, arrangements, and understandings relating to the subject matter hereof. Specifically, this Contract will replace and supersede the 1997 Agreement, 2019 Amendment, 2020 Addendum, and the MOU.

Section 3.3. Counterparts. This Contract may be executed separately by one or more of the parties hereto and all said counterparts taken together shall be deemed to constitute one and the same instrument.

Section 3.4. Modifications. Neither this Contract nor any term hereof may be changed, modified, altered, waived, discharged, or terminated, except by written instrument. Failure to insist upon strict adherence to any term of this Contract shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Contract.

Section 3.5. Authority to Execute. Each party and signatory hereto has the authority to enter into this Contract and at all times has full authority to perform this Contract. No further approval or consent by any other person or authority is required.

Section 3.6. Recordation. Gibson Water may, at its cost, record this Contract.

Section 3.7. Successors and Assigns. Neither party may assign this Contract without the express written consent of the other.

Section 3.8. No Waiver. No waiver of any provision of this Contract shall be deemed to have been made unless expressed in writing and signed by the party charged therewith. No delay or omission in the exercise of any right or remedy accruing upon the breach of this Contract shall impair such right or remedy or be construed as a waiver of the breach. The waiver by Gibson Water or TMMI of any breach shall not be deemed a waiver of any other breach of the same or any other provision of this Contract.

Section 3.9. Severability. If any provision of this Contract is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms hereof will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as part of this Contract that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 3.10. Governing Law. This Contract shall be governed by and construed under the laws of the State of Indiana.

Section 3.11. Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) 1 business day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) 1 business day after being sent to the recipient by facsimile transmission or electronic mail, or (iv) 4 business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

Gibson Water: Gibson Water Authority
517 E. 1250 S.
Haubstadt, IN 47639
Attn: Steve Jenkins

With Copy To: Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Attn: J. Christopher Janak

TMMI: Toyota Motor Manufacturing Indiana, Inc.
4000 Tulip Tree Drive
Princeton, Indiana 47670
Attn: Jeff Chandler, Plant Engineering

With Copy To: Toyota Motor North America, Production Engineering
151 Engineering Way
Georgetown, KY 40324
Attn: Utility Contracts, Facilities Engineering

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision.

Section 3.12. Gibson Water's Liability. Neither Gibson Water nor TMMI shall be liable to the other for any act, omission or event caused by strikes, acts of God, or unavoidable accidents or contingencies beyond its control. Any liability of Gibson Water's provision of utility service is governed by Gibson Water's tariff, applicable IURC rules, and Indiana law. -

Section 3.13. Effective Date. Notwithstanding anything herein to the contrary, this Contract shall not be effective until both Parties hereto have approved and executed this Contract. However, the obligations of the parties under this Contract are contingent upon: (i) Evansville Water completing the improvements necessary to increase Gibson Water's capacity from 2.8 mgd to 4 mgd; (ii) the IURC authorizing Gibson Water to borrow the funds necessary to pay Evansville Water for an increase in Gibson Water's daily capacity and adjust Gibson Water's rates and charges; and (iii) Gibson Water making available to TMMI up to 2 mgd of potable, treated water meeting applicable purity standards of the Indiana Department of Environmental Management.

[Remainder is Intentionally Left Blank]

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IN WITNESS WHEREOF, the parties hereto have executed this Contract and all rights and responsibilities created by this Contract shall be binding on their successors and assigns.

Toyota Motor Manufacturing Indiana ("TMMI")

By: 

Printed: Ted Brown

Title: Vice President & Secretary

STATE OF _____)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of Toyota Motor Manufacturing Indiana, who acknowledged the execution of the foregoing "Contract for Water Service" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 2021.

My Commission Expires:

My County of Residence:

Notary Public

(Printed Signature)

Gibson Water Authority ("Gibson Water")

By: Duane Michel

Printed: Duane Michel

Title: President

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the President of Jasper County Council, who acknowledged the execution of the foregoing "Contract for Water Service" on behalf of said entity.

WITNESS my hand and Notarial Seal this _____ day of _____, 2021.

My Commission Expires:

My County of Residence:

Notary Public

(Printed Signature)

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EXECUTED AND DELIVERED in my presence:

Witness Signature

Witness Name Printed

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by _____ in the above-named witness's presence, that the above-named subscribing witness saw _____ execute the foregoing instrument, and that the above-named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this ____ day of _____, 2021.

(Signature)

_____, Notary Public
(Printed Name)

Residing in _____ County, Indiana

My Commission Expires: _____

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