

**EIGHTH AMENDMENT TO
CENTRAL BROWN COUNTY WATER AUTHORITY
WATER PURCHASE AND SALE CONTRACT**

This EIGHTH AMENDMENT to CENTRAL BROWN COUNTY WATER AUTHORITY WATER PURCHASE AND SALE CONTRACT is effective this ____ day of _____, 20__.

1. The Water Purchase and Sale Contract, with an initial effective date of November 24, 2003, as subsequently amended effective December 20, 2004, November 14, 2007, September 22, 2008, January 5, 2010, September 24, 2012, May 28, 2014 and May 22, 2017 33, is hereby further amended as shown by the blacklining in Attachment A to this Amendment.

APPROVAL OF THIS AMENDMENT IS SIGNIFIED BY THE CERTIFIED RESOLUTIONS OF THE CENTRAL BROWN COUNTY WATER AUTHORITY AND THREE-FOURTHS OF THE AUTHORITY MEMBERS WHICH RESOLUTIONS SHALL BE ATTACHED TO THIS AMENDMENT.

ATTACHMENT A

**CENTRAL BROWN COUNTY
WATER AUTHORITY
WATER PURCHASE AND SALE CONTRACT**

This Water Purchase and Sale Contract is dated as of November 24, 2003, by and between the Central Brown County Water Authority (the "Authority"), a joint water authority and separate political subdivision and body public and corporate of the State of Wisconsin, and the City of De Pere, the Villages of Allouez, Bellevue, and Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2, and the Town of Ledgeview which enters into this Contract to fulfill the obligations of the Ledgeview Sanitary District No. 2. *[Revised by Second Amendment to Contract effective 11/14/07]*

WHEREAS, the Authority has been organized pursuant to Wisconsin Statute §66.0735 [now §66.0823, Stats.], adopted in 1997 Wisconsin Act 184, for the purpose of jointly developing, financing, constructing, operating, maintaining, and administering a joint water system which will provide Potable Water consisting entirely or primarily of Lake Water to the aforementioned units of local government (the "Charter Customers" as hereafter defined); and

WHEREAS, the Charter Customers will each execute counterparts of this Contract which will enable the Authority to obtain a Lake Michigan water supply and construct and complete its waterworks system (the "Authority's Waterworks System" as hereafter defined) and will enable the Charter Customers to receive Potable Water consisting entirely or primarily of Lake Water from the Authority; and

WHEREAS, there are a variety of methods or combination of methods that the Authority may use to provide for its Charter Customers' water supply needs; and *[Revised by Second Amendment to Contract effective 11/14/07]*

WHEREAS, the Charter Customers each have or will have a waterworks system (a "Unit System" as hereafter defined); and

WHEREAS, the Authority proposes to issue and sell its "Bonds" from time to time during the term of this Contract in sufficient amounts for the payment of "Authority Project Costs" (as hereafter defined) and other capital facilities costs required to be paid for by the Authority; and

WHEREAS, the Bonds will be issued from time to time by the Authority pursuant to a "Bond Resolution" as hereafter defined; and

WHEREAS, pursuant to Wisconsin Statute §66.0735 [now §66.0823, Stats.], the Charter Customers are authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, the Charter Customers are surrendering none of their respective rights to the ownership and operation of their respective Unit Systems, except as expressly provided in this Contract, nor is the Authority surrendering any of its rights to the ownership and operation of the Authority's Waterworks System; and

WHEREAS, in order to finance the cost of the Authority's Waterworks System and other capital facilities required to be financed by the Authority through the issuance of bonds and other forms of indebtedness, the Authority must have in place long-term contracts with its Charter Customers which can serve as security for the Authority's indebtedness; and

WHEREAS, in order to improve the financing ability of the Authority, the Authority must also have in place certain assurances by which towns will fulfill the obligations of Charter Customers which are town sanitary districts; and

WHEREAS, the Charter Customers recognize that the Authority may in the future enter into contracts with other "Subsequent Customers" as hereafter defined and those Subsequent Customers may be served from time to time; and

WHEREAS, this Contract contains certain requirements for the nature and composition of the vote of the Authority required to effectuate certain actions relating to the contractual rights of the Charter Customers herein; and such Charter Customers execute this Contract in reliance upon the continuation of such requirements for the term of this Contract;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

The preambles set forth above are incorporated herein by reference, as if set out in full. Article and Section numbers and captions are for reference and convenience only and do not expand or limit the meaning as contained in the text of this Contract. A definition in the singular may be used in the plural, and vice-versa.

- 1 **Definitions.** The following words and phrases shall have the following meanings when used in this Contract, unless the context clearly indicates a different meaning is intended.
 - 1.1 **"Act"** means Wisconsin Statute §66.0735 [now §66.0823, Stats.], adopted in 1997 Wisconsin Act 184, as such statute has been and may be, from time to time, amended or renumbered.
 - 1.2 **"Aggregate Costs"** means Operation Costs, Fixed Costs, Security Fund Payments and Default Shares, collectively, as herein defined.
 - 1.3 *[Section 1.3 was originally deleted by Second Amendment to Contract effective 11/14/07. A new Section 1.3 was created by the Third Amendment to Contract effective 9/22/08, and then deleted by the Fourth Amendment to Contract effective 1/5/10.]*

1.4 **"Annual Water Usage"** means for an Authority Customer the amount of Potable Water taken from the Authority by that Authority Customer in a particular year measured in accordance with Section 5.2. Notwithstanding the foregoing, if the sum of all the Authority Customer's Annual Water Usage at the end of the Fiscal Year is less than the number set forth on Exhibit B-1 for the Authority as a whole, all ~~Charter Authority~~ Customers with an Annual Water Usage lower than the number set forth on Exhibit B-1 for that Customer shall have their Annual Water Usage increased proportionately so that the Annual Water Usage for the Authority as a whole is equal to the amount shown in Exhibit B-1. Exhibit B-1 may be amended ~~by the Authority's Board of Directors~~ in accordance with Section 2.13. *[Section 1.4 was originally deleted by Second Amendment to Contract effective 11/14/07. A new Section 1.4 was created by the Third Amendment to Contract effective 9/22/08, and then revised by the Fourth Amendment to Contract effective 1/5/10, and the Sixth Amendment to Contract effective 5/28/14, and the Seventh Amendment to Contract effective May 22, 2017.]*

1.5 *[Deleted by Second Amendment to Contract effective 11/14/07]*

1.6 **"Authority"** means the Central Brown County Water Authority located in Brown County, Wisconsin, as formed by the Agreement Establishing the Central Brown County Water Authority pursuant to § 66.0735, Wis. Stats. effective as of January 19, 1999.

1.7 **"Authority Customers"** means Charter Customers and Subsequent Customers collectively.

1.7m **"Authority Formation Agreement"** means the Agreement Establishing the Central Brown County Water Authority, originally effective September 9, 1998, as subsequently amended and restated.

1.8 **"Authority Project"** means any acquisition or construction related to the Authority's Waterworks System including initial acquisition and construction thereof and all future improvements or extensions, acquisition, construction, repair or replacement thereof.

1.9 **"Authority Project Costs"** means, with respect to an Authority Project, all costs of the Authority Project, including, but not limited to, costs of the acquisition of necessary lands, easements, and rights-of-way over lands and waters; the erection, construction, installation, rehabilitation, repair and replacement of intake, pumping, storage or treatment facilities, mains and pipelines, or any other facilities; costs of financing and administration during any period of acquisition, erection, construction, rehabilitation, repair, replacement or installation; costs of repayment of such interim indebtedness as may be incurred for such costs, including administrative expenses prior to issuance of Bonds for an Authority Project; and costs for such other purposes, including without limitation reasonable reserves and working capital, as may be determined by the Authority.

1.9m **"Authority's Board of Directors"** means the Board of Directors of the Authority established as provided in the Authority Formation Agreement.

- 1.10 **"Authority's Waterworks System"** means all land, easements, rights-of-way over lands and waters; intake, pumping, storage and treatment facilities; mains and pipelines; and all other facilities, now or in the future acquired by purchase, lease, contract, or otherwise, or constructed by the Authority, and used for the purposes of providing and transmitting Potable Water to Authority Customers. "Authority's Waterworks System" also includes all contract rights and other tangible and intangible assets of the Authority used or useful in connection with such real property and facilities, including without limitation any contract right or other contractual arrangement for the long-term or short-term delivery of water to or purchase of water by the Authority. "Authority's Waterworks System" shall not include: (a) any properties or interest in properties of any Authority Customer unless the Authority obtains an interest in such properties from such Authority Customer pursuant to a contract; (b) any properties or interest in properties of the Authority which the Board of Directors of the Authority determine shall not constitute a part of the Authority's Waterworks System for purposes of this Contract; and (c) any properties or interest in properties of a Third Party Water Supplier unless the Authority obtains an interest in such property from the Third Party Water Supplier pursuant to a contract.
- 1.11 **"Average Day Demand"** means for an Authority Customer that Authority Customer's Estimated Annual Water Requirement divided by 365.
- 1.12 **"Bonds"** means any bonds, notes, or other evidences of indebtedness issued by the Authority from time to time to finance or refinance any cost, expense or liability paid or incurred or to be paid or incurred by the Authority in connection with investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning or disposing of any part of the Authority's Waterworks System or otherwise paid or incurred or to be paid or incurred by the Authority in connection with the performance of its obligations under this Contract or any Third Party Water Supply Contract or for any other lawful purpose permitted under the Act.
- 1.13 **"Bond Resolution"** means one or more resolutions, indentures or similar instruments of the Authority providing for the issuance of Bonds.
- 1.14 **"Charter Customers"** means the City of De Pere, the Villages of Allouez, Bellevue, and Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2. *[Revised by Second Amendment to Contract effective 11/14/07]*
- 1.15 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 1.16 **"Contract"** means this contract.
- 1.17 **"Default Shares"** means the additional costs each ~~Authority~~ Authority Charter Customer must pay in accordance with Section 6.10 if another ~~Authority~~ Authority Charter Customer defaults in its payment of Aggregate Costs and there are insufficient funds in the defaulting ~~Authority~~ Authority Charter Customer's Security Fund Account to pay such costs.

- 1.18 **"DNR"** means the Department of Natural Resources of the State of Wisconsin.
- 1.19 **"Effective Date"** shall have the meaning set forth in Section 24.2.
- 1.20 **"EPA"** means the United States Environmental Protection Agency.
- 1.21 **"Estimated Annual Water Requirement"** means for an Authority Customer the estimated amount of Potable Water the Authority Customer is expected to take from the Authority in the upcoming Fiscal Year. The Estimated Annual Water Requirement for each Authority Customer shall be calculated prior to the beginning of each Fiscal Year. The Authority shall work jointly with each Authority Customer to develop the Estimated Annual Water Requirement for that Customer. The Estimated Annual Water Requirement for each Authority Customer shall be based on historical water consumption adjusted for economic conditions, known changes to customer base, system improvements reducing water loss, or other quantifiable factors. In the event that mutual agreement on the Estimated Annual Water Requirement for an Authority Customer cannot be achieved, the Authority shall unilaterally establish the Estimated Annual Water Requirement. Notwithstanding the foregoing, if the sum of all the Authority Customer's Estimated Annual Water Requirements at the beginning of the Fiscal Year is less than the number set forth on Exhibit B-1 for the Authority as a whole, all [Charter Authority](#) Customers with an Estimated Annual Water Requirement lower than the number set forth on Exhibit B-1 for that Customer shall have their Estimated Annual Water Requirements increased proportionately so that the Estimated Annual Water Requirement for the Authority as a whole is equal to the amount shown in Exhibit B-1. Exhibit B-1 may be amended [by the Authority's Board of Directors](#) in accordance with Section 2.13. *[Amended by the First Amendment to Central Brown County Water Authority Water Purchase and Sale Contract effective December 20, 2004; Second Amendment to Contract effective 11/14/07; Third Amendment to Contract effective 9/22/08; Fourth Amendment to Contract effective 1/5/10; and Sixth Amendment to Contract effective 5/28/14, and the Seventh Amendment to Contract effective May 22, 2017.]*

1.21m **"Executive Committee"** means the Executive Committee of the Authority established as provided in the Authority Formation Agreement.

- 1.22 **"Fiscal Year"** means the fiscal year of the Authority, which shall be a calendar year. The Authority's first Fiscal Year for purposes of this Contract begins January 1, 2005. *[Amended by Sixth Amendment to Contract effective 5/28/14.]*
- 1.23 **"Fixed Costs"** means an amount sufficient at all times to pay the principal of and premium, if any, and interest on all Bonds, to provide an adequate depreciation fund for the Authority's Waterworks System, to comply with the covenants of the Bond Resolution (including payment into any accounts and funds of amounts required by the Bond Resolution) related to the Bonds, and to pay reasonable capital costs, including capital costs for which Bonds may be issued and such other capital costs as are necessary or desirable to carry out the corporate purposes and powers of the Authority and its

obligations under this Contract and any Third Party Water Supply Contract; except as any of the above are included in Operation Costs.

- 1.24 **"Force Majeure"** shall have the meaning set forth in Article 13.
- 1.25 **"Full Water Requirements"** means in reference to the current year or a future year, with respect to an Authority Customer, the amount of water necessary from time to time to meet the water requirements of all then current customers served by the Unit System of such Authority Customer (including municipal use where applicable).
- 1.26 **"Governmental Authority"** means any state or federal court, administrative or regulatory agency or commission, or other governmental entity or instrumentality, or any department thereof, having jurisdiction or authority over all or any part of the subject matter of this Contract.
- 1.27 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 1.28 *[Deleted by Sixth Amendment to Contract effective 5/28/14]*
- 1.29 **"Lake Water"** means potable, treated, filtered water drawn from Lake Michigan.
- 1.30 **"Manitowoc"** means the City of Manitowoc, Wisconsin and the Manitowoc Public Utilities, managed by the Manitowoc Public Utilities Commission.
- 1.31 **"Membership Committee"** means the Membership Committee of the Authority established as provided in the Authority Formation Agreement. [Section 1.31 as originally adopted was ~~f~~Amended by the Third Amendment to Contract effective 9/22/08; and deleted by the Fourth Amendment to Contract effective 1/5/10.]
- 1.32 *[Amended by the Third Amendment to Contract effective 9/22/08; and deleted by the Fourth Amendment to Contract effective 1/5/10.]*
- 1.33 **"Operation Costs"** means all expenses and costs, other than Fixed Costs, incurred by the Authority in providing or preparing to provide Potable Water to Authority Customers (including, without limitation, operation and maintenance expenses, administration and general expenses, working capital, regulatory costs, insurance premiums, and any contractual costs of supply) and the accumulation of reserves and other funds related to payment of said costs. Upon the adoption of a Bond Resolution by the Authority in connection with the sale of Bonds, Operation Costs payable under this Contract shall in any month at least be equal to the amount required to be deposited in that month into the operation and maintenance fund or account created under the Bond Resolution and the amount (together with the amount of Fixed Costs for that month and any other amounts available therefore) required to satisfy any debt service coverage requirement under any Bond Resolution.

- 1.34 **"Party"** means the Authority or any one of the [AuthorityCharter](#) Customers. Parties means two or such Parties.
- 1.35 **"Points of Connection"** means the points where Potable Water leaves the Unit System of one Authority Customer and enters the Unit System of another Authority Customer. A "Point of Connection" is one such point.
- 1.36 **"Points of Delivery"** means the points where the Potable Water delivered by the Authority to Authority Customers leaves the Authority's Waterworks System and enters the Authority Customers' Unit Systems. A "Point of Delivery" is one such point.
- 1.37 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 1.38 **"Potable Water"** means treated Lake Water, a combination of treated Lake Water and groundwater, or groundwater.
- 1.39 **"Prudent Utility Practice"** shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of the facts (including, but not limited to, any practices, methods and acts engaged in or approved by a significant portion of the water utility industry prior thereto) known at the time the decision was made, could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. In applying the standard of Prudent Utility Practice to any matter under this Contract, equitable consideration shall be given to the circumstances, requirements and obligations of each of the Parties, and there shall be taken into account the fact that the Authority and the [AuthorityCharter](#) Customers are all political subdivisions and municipal corporations of the State of Wisconsin with prescribed statutory powers, duties and responsibilities. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. Prudent Utility Practice includes due regard for manufacturers' warranties and the requirements of Governmental Authorities which have jurisdiction.
- 1.40 **"PSC"** means the Public Service Commission of Wisconsin.
- 1.41 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 1.42 **"Security Fund Account"** means the account created and maintained by the Authority to hold the Security Fund Payments made by each [AuthorityCharter](#) Customer.
- 1.43 **"Security Fund Payment"** means the costs each [AuthorityCharter](#) Customer shall pay in accordance with Section 6.6 to be held in a Security Fund Account and to be used in accordance with subsection 6.10 in the event an [AuthorityCharter](#) Customer defaults in its payment of Aggregate Costs.

- 1.44 **"Subsequent Contract"** means a contract which provides for a Subsequent Customer to purchase Potable Water from the Authority (other than in an emergency) and which contract shall further contain the provisions set forth in Article 12.
- 1.45 **"Subsequent Customer"** means a customer of the Authority's Waterworks System which is not a Charter Customer and which is served pursuant to a Subsequent Contract.
- 1.46 **"Third Party Water Supplier"** means a municipality, including but not limited to Manitowoc, or a public or private entity which contracts with the Authority to provide a water supply to the Authority. The term "Third Party Water Supplier" includes any water commission, parent, or subsidiary of such municipality or private entity. *[Revised by Second Amendment to Contract effective 11/14/07]*
- 1.47 **"Third Party Water Supply Contract"** means a contract between the Authority and the Third Party Water Supplier under which: (a) the Third Party Water Supplier sells water to the Authority on a temporary or permanent basis, and the Authority purchases water from the Third Party Water Supplier for distribution to Authority Customers; or (b) the Third Party Water Supplier provides facilities or services for use by the Authority in its provision of water to Authority Customers.
- 1.48 **"Third Party Water Supplier's Customer"** means a customer who receives water from the Third Party Water Supplier's Waterworks System either on a retail or wholesale basis.
- 1.49 **"Third Party Water Supplier's Waterworks System"** means all the Third Party Water Supplier's land, easements, rights-of-way over lands and waters, intake, pumping, storage and treatment facilities, mains and pipelines, and all other facilities, now or in the future acquired by purchase, lease, contract, or otherwise, or constructed by the Third Party Water Supplier, and used for the purposes of providing and transmitting Potable Water to the Third Party Water Supplier's Customers.
- 1.50 **"Town Signatory"** means a town which enters into this Contract for the purpose of fulfilling the obligations of an ~~Authority-Charter~~ Authority Customer which is a town sanitary district located in whole or in part within the corporate limits of the town.
- 1.51 **"Trustee"** means the trustee provided in the Bond Resolution.
- 1.52 **"Unit System"** means the waterworks system or systems or combined waterworks and sewerage system or systems (if such systems are combined for financing and accounting purposes) from time to time of an Authority Customer. A totally separate nonpotable waterworks system of an Authority Customer shall be excluded from the definition of "Unit System" under this Contract.

2 **Water Supply**

- 2.1 **Authority's Purpose to Provide Water Supply.** The Authority was formed for the purpose of jointly developing, financing constructing, operating, maintaining, and administrating a joint water system which will provide Potable Water to the [AuthorityCharter](#) Customers. The Authority will decide the best manner in which to provide Potable Water to the [AuthorityCharter](#) Customers taking into consideration the short-term costs of various water supply options, the long-term costs of these options, the short-term and long-term risks involved with the various options, and the ability to influence or control future decision-making so as to control future costs and risks.
- 2.2 **Construction of Water Supply Facilities.** To accomplish the Authority's objective as stated in Section 2.1, the Authority will construct the Authority's Waterworks System to provide Potable Water to the [AuthorityCharter](#) Customers, and the Authority may construct or pay for other capital facilities required to be constructed or paid for under a Third Party Water Supply Contract. The Authority will issue Bonds prior to the time the Authority will provide Potable Water to [AuthorityCharter](#) Customers to finance the construction of the Authority's Waterworks System and any other capital costs that the Authority may be required to pay under a Third Party Water Supply Contract. In order to make payments on these Bonds before the Authority begins to provide Potable Water to [AuthorityCharter](#) Customers, this Contract obligates Charter Customers to pay Fixed Costs beginning no later than January 1, 2005. An [AuthorityCharter](#) Customer's obligation to pay Fixed Costs is addressed in Section 6.3 of this Contract. *[Revised by Second Amendment to Contract effective 11/14/07]*
- 2.3 *[Deleted by the Seventh Amendment to Contract effective May 22, 2017]*
- 2.4 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 2.5 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 2.6 **Provision of Potable Water** *[Revised by Second Amendment to Contract effective 11/14/07]*
- 2.6.1 *[Deleted by Second Amendment to Contract effective 11/14/07]*
- 2.6.2 **Negotiation of a Third Party Water Supply Contract.** The Authority may negotiate an acceptable contract with a Third Party Water Supplier for the provision of Potable Water, or for certain services or the use of certain facilities. The Authority's costs under a Third Party Water Supply Contract shall be treated as Operation Costs, unless the Authority issues Bonds for certain costs, in which case those costs for which Bonds are issued shall be treated as Fixed Costs.
- 2.6.3 **Construction of an Independent Waterworks System.** If the Authority is unable to negotiate an acceptable contract with a Third Party Water Supplier, the Authority shall build an independent Authority's Waterworks System capable of meeting the [AuthorityCharter](#) Customers' Full Water Requirement.

- 2.7 **Provision of Full Water Requirements; Agreement to Purchase and Sell.** Once the Authority's Waterworks System is able to provide the [AuthorityCharter](#) Customers' Full Water Requirements on a yearly basis, (subject to the provisions of Sections 2.8 through 2.11, and 9.1 of this Contract), the Authority shall provide and sell to each [AuthorityCharter](#) Customer and each [AuthorityCharter](#) Customer shall take and purchase from the Authority the amount of Potable Water necessary from time to time to serve the [AuthorityCharter](#) Customer's Full Water Requirements. Except as provided in Sections 2.11 and 9.1, the [AuthorityCharter](#) Customer shall not obtain water from a source other than the Authority.
- 2.8 **Limits on Authority's Obligations.** The Authority's obligation to each [AuthorityCharter](#) Customer to deliver Potable Water under Section 2.7 shall be limited to a maximum rate of Potable Water for any one hour equal to 1.8 times such [AuthorityCharter](#) Customer's Average Day Demand divided by 24. *[Revised by Fifth Amendment to Contract effective 9/24/12]*
- 2.9 **Certain Limits on Supply and Authority's Power to Contract.** The Authority shall use its best efforts, in accordance with Prudent Utility Practice, to furnish Potable Water to the [AuthorityCharter](#) Customers, but its obligation shall be limited by (i) the amount of Potable Water from time to time available to the Authority; (ii) contracts between the Authority and its other Authority Customers; (iii) the capacity of the Authority's Waterworks System; and (iv) ordinary transmission loss, including standard metering error, between the Authority's source of supply and the Points of Delivery. The Authority shall not enter into contracts with Subsequent Customers that would cause the Authority to be obligated to sell Potable Water in excess of the least of (i) Authority's Waterworks System capacity, or (ii) an amount which would decrease the amount of Potable Water then being supplied or is then anticipated to be supplied within the next three years to [current Authoritythe Charter](#) Customers.
- 2.10 **Emergency or Maintenance Shut-Off.** The Authority undertakes to use reasonable care and diligence to provide a constant supply of Potable Water, but reserves the right at any time temporarily to turn off the Potable Water in its mains for emergency and maintenance purposes. The Authority shall give to the [AuthorityCharter](#) Customers notice not less than forty-eight (48) hours in advance of any such turn-off, except that in emergencies it shall give notice which is reasonable under the particular circumstances.
- 2.11 **Curtailement; Emergency Use of Other Sources.** If it becomes necessary for the Authority to limit its delivery of Potable Water to its [AuthorityCharter](#) Customers for any reason, each [AuthorityCharter](#) Customer shall be entitled to the fullest extent possible to receive during such period of curtailement its pro rata share of Potable Water available. If Potable Water is provided in accordance with Section 2.7, each [AuthorityCharter](#) Customer's pro rata share of Potable Water shall be determined by the ratio of its current Estimated Annual Water Requirement to the sum of the current Estimated Annual Water Requirements of all [AuthorityCharter](#) Customers entitled to Potable Water during such period of curtailement. Each [AuthorityCharter](#) Customer may serve its customers in cases of emergency, or when the Authority for whatever reason is unable to meet such

~~Authority Charter~~ Customer's Full Water Requirements, from any source including wells owned by such ~~Authority Charter~~ Customer and maintained for emergency use.

- 2.12 **Water Quality.** The Authority shall supply each ~~Authority Charter~~ Customer with Potable Water of a quality commensurate with that furnished other ~~Authority Charter~~ Customers, and meeting state and federal water quality standards. The Authority bears no responsibility for the contamination of Potable Water or deterioration of water quality occurring beyond the Points of Delivery to the ~~Authority Charter~~ Customers. *[Revised by Second Amendment to Contract effective 11/14/07]*
- 2.13 **Amendment of Exhibit B-1.** Exhibit B-1 may be amended under this Section, not more than once every three years, by a two-thirds vote of the Authority's Board of Directors, provided the Executive Committee, if one exists, first recommends adoption of the proposed amendment to the Authority's Board of Directors. An amendment under this Section may adjust each individual Charter Customer's share of the total Annual Water Requirement of the Authority listed on Exhibit B-1 to equal the amount calculated by (i) dividing the individual Charter Customer's Annual Water Usage for the most recent three complete calendar years by the Annual Water Usage for all Charter Customers for the most recent three complete calendar years; and (ii) multiplying that quotient by the total Annual Water Requirement of the Authority which shall remain at 2,212.468 million gallons unless amended in accordance with Section 16. Section 16 does not apply to an amendment made in accordance with this Section 2.13. *[Created by Sixth Amendment to Contract effective 5/28/14]*

3 **Storage, Delivery, and Distribution**

- 3.1 **Storage.** At the time Potable Water is first delivered to it pursuant to Section 2.7, each ~~Authority Charter~~ Customer ~~with an Average Day Demand equal to or greater than 210,000 gallons per day~~ shall be required to have water storage capacity in its Unit System in an amount no less than its current Average Day Demand. ~~An Authority Charter Customer with an Average Day Demand less than 210,000 gallons per day shall be required to obtain, construct or acquire water storage capacity in its Unit System in an amount no less than its current Average Day Demand prior to the time its current Average Day Demand equals or exceeds 210,000 gallons per day.~~ Each ~~Authority Charter~~ Customer with water storage capacity in its Unit System shall be required to maintain water storage capacity in its Unit System in an amount no less than its current Average Day Demand. *[Amended by the First Amendment to Central Brown County Water Authority Water Purchase and Sale Contract effective December 20, 2004]*
- 3.2 **Points of Delivery.** The Points of Delivery where Potable Water delivered hereunder leaves the Authority's Waterworks System and enters a Unit System will be one foot downstream from the Authority's meter. The number and location of connections to each ~~Authority Charter~~ Customer's system are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors, provided the Membership Committee first recommends adoption of the proposed amendment to the Authority's Board of Directors. *[Revised by Fifth Amendment to Contract effective 9/24/12]*

3.3 **Points of Connection.** The Points of Connection where Potable Water moves from one Authority Customer's Unit System to another Authority Customer's Unit System will be one foot downstream from the Authority's meter. The number and location of the Points of Connection are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors, provided the Membership Committee first recommends adoption of the proposed amendment to the Authority's Board of Directors.
[Revised by Fifth Amendment to Contract effective 9/24/12]

3.4 **Back-Flows, Pressure.** Each Authority~~Charter~~ Customer shall receive its supply of Potable Water downstream of the Authority's meter at pressures that will vary from time to time. Each Point of Delivery shall have pressure increasing/reducing facilities. Each Authority~~Charter~~ Customer is responsible for the siting, installation, operation, maintenance and replacement of the pressure increasing/reducing facilities needed to convey water from the Authority's Waterworks System into the Unit System. The Authority ~~may~~ shall pay or reimburse ~~an Authority each Charter~~ Customer for reasonable costs of design and initial installation of such facilities, and of buildings needed to house such facilities; provided, that Authority~~Charter~~ Customers shall provide appropriate sites for these facilities without reimbursement. The Authority shall also pay or reimburse each Authority~~Charter~~ Customer for the electrical costs incurred in the operation of such facilities. Future modifications of such facilities shall be the responsibility of the Authority~~Charter~~ Customer.

Initial construction and future modification of plans and specifications of the pressure increasing/reducing facilities shall be submitted to the Authority for review and approval, which shall not be unreasonably withheld.

Each Authority~~Charter~~ Customer's operation of its pressure increasing/reducing facilities shall not cause surges or back-flows into the Authority's Waterworks System nor shall the operation of the Customer's pressure increasing/reducing facilities cause the Authority's Waterworks System pressure to drop below 20 psi. The Authority shall not be responsible for any damage to the Unit System caused by design, operation or maintenance of the Authority~~Charter~~ Customer's connection facilities to the Authority's Waterworks System.

[Revised by Fifth Amendment to Contract effective 9/24/12]

3.5 **Authority~~Charter~~ Customer to Maintain Water Quality and Unit System and to Prevent Waste.** Each Authority~~Charter~~ Customer agrees to operate its Unit System from the Points of Delivery on to the consumer in such a manner as at no time to place the Authority and the Authority's Waterworks System in jeopardy of failing to meet the regulations of any Governmental Authority having jurisdiction over the operation of public water supplies. Each Authority~~Charter~~ Customer also agrees to notify the Authority as promptly as possible of all emergency and other conditions which may directly or indirectly affect the quantity or quality of the Potable Water received hereunder or the Authority's Waterworks System.

4 **Measuring Equipment.**

- 4.1 **Authority to Supply Equipment, Official Record.** The Authority shall furnish, install, own, operate, maintain, repair and replace, at its own expense, at the Points of Delivery, the necessary equipment and devices for properly measuring the quantity of Potable Water delivered by the Authority to Authority Customers, and transferred between Authority Customers under this Contract. Such measuring equipment and devices shall be of a type meeting the standards of the American Water Works Association. The Authority shall install the equipment in above-ground structures located at sites selected by each [Authority Charter](#) Customer, respectively, for Potable Water delivered to it. Such sites shall be subject to review and approval by the Authority, which shall not be unreasonably withheld. The Authority shall pay the cost of constructing any new above-ground structures or remodeling any existing above-ground structures to the extent necessary to house the Authority's equipment. The above-ground structures shall be owned, maintained, repaired and replaced by Authority Customers. The Authority's meters and other equipment installed in the above-ground structure shall remain the property of the Authority. An [Authority Charter](#) Customer shall grant to the Authority, at no cost, an easement in each respective site sufficient to enable the Authority to install, use, operate and maintain the Authority's equipment during the term of this Contract. The Authority and each [Authority Charter](#) Customer shall have access to such structures and equipment for examination and inspection at all reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Authority. For the purpose of this Contract, the official record of readings of the meter or meters shall be the journal or other record book of the Authority in its office in which the records of the employees or agents of the Authority who take the readings are or may be transcribed. Upon written request of an [Authority Charter](#) Customer, the Authority will give the [Authority Charter](#) Customer a copy of such journal or record book, or permit the [Authority Charter](#) Customer to have access thereto in the office of the Authority during regular business hours. *[Revised by Second Amendment to Contract effective 11/14/07; and by Fifth Amendment to Contract effective 9/24/12]*
- 4.2 **Calibration.** At least once in each Fiscal Year, the Authority shall calibrate its meters used to measure Potable Water under this Contract. The Authority shall give the [Authority Charter](#) Customer notice, not less than two (2) working days prior to the time of the calibration (which shall be conducted during normal working hours), so that the [Authority Charter](#) Customer may have a representative present during the calibration. If a representative is not present, the calibration and any necessary adjustment may proceed in the absence of a representative. If any check meters as hereinafter provided for have been installed, such meters shall be calibrated by the [Authority Charter](#) Customer. The [Authority Charter](#) Customer shall give the Authority notice, not less than two (2) working days prior to the time of the calibration (which shall be conducted during normal working hours), so that the Authority may have a representative present during the calibration. If an Authority representative is not present, the calibration and any necessary adjustment may proceed in the absence of a representative.

- 4.3 **Check Meters.** An ~~Authority Charter~~ Customer may, at its option and its own expense, install and operate a check meter to check each meter installed by the Authority, but the measurement of Potable Water for the purpose of this Contract shall be solely by the Authority's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be installed as near to the Authority's meters as practicable, be of standard make, and be subject at all reasonable times to inspection and examination by any employee or agent of the Authority, but the calibration and adjustment thereof shall be made only by such ~~Authority Charter~~ Customer, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water under this Contract, in which case the calibration and adjustment thereof shall be made by a certified independent contractor in the presence of the Authority and the ~~Authority Charter~~ Customer, with like effects as if such check meter or meters had been furnished and installed by the Authority. The cost of the certified independent contractor shall be shared equally by the Authority and the ~~Authority Charter~~ Customer.
- 4.4 **Variations between Meters; Reconciliation.** Notwithstanding the foregoing, if the Authority or any ~~Authority Charter~~ Customer at any time observes a variation between an Authority meter and a check meter, if any such check meter shall have been installed, or any other evidence of meter malfunctions, such Party shall promptly notify the other and the Authority and such ~~Authority Charter~~ Customer shall then cooperate to procure an immediate calibration test and adjustment of such meter to accuracy and shall jointly observe any such adjustment. The Party who discovers such variation shall give the other Party notice not less than two (2) working days prior to the time of all tests of meters (which tests shall be conducted during normal working hours) so that the other Party may conveniently have a representative present. If said representative is not present at the time set in the notice, calibration and adjustment may proceed in the absence of a representative. If, upon any test, the percentage of inaccuracy of any meter is found to be in excess of two percent (2%), registration thereof shall be corrected by agreement of the Authority and such ~~Authority Charter~~ Customer based upon the best data available, for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (½) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any meters are out of service or out of repair so that the amount of Potable Water supplied under this Contract cannot be ascertained or computed from the reading thereof, the Potable Water delivered during the period such meters are out of service or out of repair shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of Potable Water supplied during such period shall be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculations, or (ii) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by considering deliveries during preceding periods under similar conditions when the meter or meters were registering accurately.
- 4.5 **Removal of Authority Meters.** Within six (6) months after the termination of this Contract without renewal, the Authority shall at its own expense remove metering

equipment from and restore the property of each ~~Authority Charter~~ Customer to which such termination without renewal applies. If the Authority fails to do so, the ~~Authority Charter~~ Customer affected may elect to enforce its right to removal and restoration or to take title to such equipment. *[Revised by Fifth Amendment to Contract effective 9/24/12]*

5 **Measurement.**

5.1 **Unit of Measurement.** The unit of measurement for Potable Water hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the Authority and affected ~~Authority Charter~~ Customer otherwise agree, be so calibrated. In the event that it should become necessary, or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one (1) cubic foot.

5.2 **Measurement of Water Use.** Except where otherwise specifically provided, an ~~Authority Charter~~ Customer's actual water use for billing purposes shall be calculated as follows:

- (a) Volume of water measured by the meter readings at the Points of Delivery entering an ~~Authority Charter~~ Customer's service area;
- (b) Less the volume of water measured by the meter readings at the Points of Connection where water is leaving the ~~Authority Charter~~ Customer's service area and entering the service area of another Authority Customer;
- (c) Plus the volume of water measured by the meter readings at the Points of Connection where water is entering the ~~Authority Charter~~ Customer's service area from the service area of another Authority Customer;
- (d) *[Deleted by Second Amendment to Contract effective 11/14/07]*
- (e) Plus the volume of water withdrawn from any wells located within the ~~Authority Charter~~ Customer's service area as measured by the meter readings at the well. *[Revised by Second Amendment to Contract effective 11/14/07]*

6 **Prices and Terms of Payment.**

6.1 **Budget.**

6.1.1 *[Deleted by Sixth Amendment to Contract effective 5/28/14.]*

6.1.2 **Development of Budget.** ~~By September 1 Not less than one hundred and twenty (120) days~~ prior to the beginning of each Fiscal Year, the Authority shall prepare and send to the ~~Authority Charter~~ Customers a tentative budget. Each budget shall include, among such other items as the Authority may choose, (a) the Estimated Annual Water

Requirement for each Authority Charter Customer for the Fiscal Year established as set forth in Section 1.21; (b) an estimate of Operation Costs in a stated price per 1000 gallons for the Fiscal Year calculated in accordance with Section 6.2; (c) an estimate of Fixed Costs ~~in a stated price per 1000 gallons~~ for each Authority Customer for the Fiscal Year calculated in accordance with Section 6.3; and (d) an estimate of monthly Security Fund Payments to be payable by each Authority Charter Customer calculated in accordance with Section 6.6. The Authority will hold a hearing on the tentative budget, at which the Authority Charter Customers may be heard, and shall give the Authority Charter Customers not less than 21 days notice of the hearing. The Authority shall adopt the tentative budget, as submitted or as changed after the hearing, by a majority vote of the Authority. *[Revised by Third Amendment to Contract effective 9/22/08; and revised by Fourth Amendment to Contract effective 1/5/10. Heading revised by Sixth Amendment to Contract effective 5/28/14.]*

6.1.3 Amendment of the Budget. The Authority has the authority to amend the budget.

6.1.4 Amendment of Operation Costs. The price of Operation Costs per 1000 gallons for the Fiscal Year shall not exceed the amount set forth in the approved budget unless the Authority first amends the budget. However, before the budget may be amended to increase the price of Operation Costs, the Authority shall hold a hearing on such higher amount, at which the Authority Charter Customers may be heard, and shall give the Authority Charter Customers not less than 21 days notice of such hearing. *[Revised by Sixth Amendment to Contract effective 5/28/14.]*

6.1.5 *[Created by Third Amendment to Contract effective 9/22/08; and deleted by Fourth Amendment to Contract effective 1/5/10.]*

6.1.6 *[Created by Third Amendment to Contract effective 9/22/08; and deleted by Fourth Amendment to Contract effective 1/5/10.]*

6.2 **Operation Costs.**

6.2.1 Calculation of Price for Operation Costs. Prior to each Fiscal Year, the Authority shall, in accordance with Section 6.1, calculate a price per 1000 gallons of water for Operation Costs for the upcoming Fiscal Year. The price per 1000 gallons for Operation Costs shall be calculated by (i) estimating total Operation Costs for the upcoming Fiscal Year; and (ii) dividing such Operation Costs by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons. The price per 1000 gallons for Operation Costs calculated under this Section may be adjusted by the Authority in accordance with subsection 6.2.5. *[Revised by Fourth Amendment to Contract effective 1/5/10; and Sixth Amendment to Contract effective 5/28/14.]*

6.2.2 Customers' Monthly Payment of Operation Costs. Each Charter Customer shall pay a share of Operation Costs for each month equal to the then current price per 1000 gallons for Operation Costs times the Customer's Estimated Annual Water Requirement divided by 12. *[Amended by the First Amendment to Central Brown County Water Authority*

Water Purchase and Sale Contract effective December 20, 2004; revised by the Fourth Amendment to Contract effective 1/5/10.]

- 6.2.3 End of Year Adjustment. This subsection applies only if the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is equal to or greater than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or rebate for the previous Fiscal Year based on the Charter Customer's Annual Water Usage during that Fiscal Year. The amount of the adjustment charge or rebate for each specific Charter Customer for a given year shall be determined as follows:

STEP ONE: For each Charter Customer, determine how much that Charter Customer should pay in Operation Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage in that year. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for the previous Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Operation Costs for the year.

STEP TWO: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Operation Costs for the previous Fiscal Year pursuant to subsection 6.2.2.

STEP THREE: For each Charter Customer, subtract the figure determined under STEP TWO from the figure determined under STEP ONE. This number is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year. If this number is less than zero, the Charter Customer owes no additional money to the Authority and the Charter Customer is entitled to a rebate from the Authority.

The Authority shall bill each Charter Customer for such additional Operation Costs by March 1, and the Charter Customer shall pay the Authority for such additional Operation Costs by April 1. The Authority shall issue rebates by April 15. *[Revised by the Fourth Amendment to Contract effective 1/5/10.]*

- 6.2.4 Adjustment Where Total Annual Water Usage Declines. This subsection applies only if the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is less than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or rebate for the previous Fiscal Year. The amount of the adjustment charge or rebate for each specific Charter Customer shall be determined as follows:

STEP ONE: For purposes of this subsection 6.2.4 only, the term Operation Costs means the lesser of estimated Operation Costs for the previous Fiscal Year and actual Operations Costs for the previous Fiscal Year. Operation Costs include any contributions to operating reserves.

STEP TWO: Calculate the price per 1000 gallons for Operation Costs in accordance with the methodology set forth in subsection 6.2.1 using Operation Costs determined under STEP ONE and the Annual Water Usage of all Charter Customers combined in the previous Fiscal Year divided by 1000.

STEP THREE: For each Charter Customer, determine how much that Charter Customer should pay in Operation Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for that Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Operation Costs for the year calculated in STEP TWO.

STEP FOUR: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Operation Costs for the previous Fiscal Year pursuant to subsection 6.2.2.

STEP FIVE: For each Charter Customer, subtract the figure determined under STEP FOUR from the figure determined under STEP THREE. If this figure is greater than zero, this is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year. If this number is less than zero, this is the amount of money the Authority must rebate to the Charter Customer for Operation Costs for the previous Fiscal Year.

The Authority shall bill each Charter Customer for such additional Operation Costs by March 1, and the Charter Customer shall pay the Authority for such additional Operation Costs by April 1. The Authority shall issue rebates by April 15. *[Revised and recreated by the Fourth Amendment to Contract effective 1/5/10.]*

6.2.5 Adjustment if Subsequent Customers Purchase Water. The Authority in its discretion may, but need not, reduce the price for Operation Costs calculated pursuant to subsection 6.2.1, if one or more Subsequent Customers are purchasing water from the Authority. The purpose of any reduction is to reflect the fact that without a reduction the Authority may otherwise over collect for Operation Costs because the price for Operation Costs calculated pursuant to subsection 6.2.1 is calculated based upon the total Minimum Water Requirements of all Authority Customers without any adjustment, and Subsequent Customers then pay more than this price for Operation Costs in accordance with Section 12.4. In no event, however, shall the Authority reduce the price for Operation Costs by an amount which would result in the collection of less than the estimated total Operation Costs for the Fiscal Year.

6.2.6 ~~Treatment of Excess Operation Costs Revenues. If the Authority collects Operation Costs revenues in excess of actual Operation Costs, the Authority shall use such excess funds to offset, in whole or in part, any increase in the price per 1000 gallons for Operation Costs in future years, unless the Authority determines by at least a two-thirds affirmative vote under Section 7.1 to do otherwise.~~

6.3 **Fixed Costs.**

- 6.3.1 Calculation of Price for Fixed Costs. Prior to each Fiscal Year, the Authority shall annually, in accordance with Section 6.1, calculate a price per 1000 gallons of water for Fixed Costs for the upcoming Fiscal Year by (i) estimating total Fixed Costs for the upcoming Fiscal Year; and (ii) dividing such Fixed Costs by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons. The price per 1000 gallons for Fixed Costs calculated under this Section may be adjusted by the Authority in accordance with subsection 6.3.5. *[Revised by the Fourth Amendment to Contract effective 1/5/10; and the Sixth Amendment to Contract effective 5/28/14, and the Seventh Amendment to Contract effective May 22, 2017.]*
- 6.3.2 Customers' Monthly Payment of Fixed Costs. Each Charter Customer shall pay a share of Fixed Costs for each month equal to the then current price per 1000 gallons for Fixed Costs times the Customer's Estimated Annual Water Requirement divided by 12. *[Amended by the First Amendment to Central Brown County Water Authority Water Purchase and Sale Contract effective December 20, 2004; and revised by the Fourth Amendment to Contract effective 1/5/10.]*
- 6.3.3 End of Year Adjustment. This subsection applies only if the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is equal to or greater than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or rebate for the previous Fiscal Year based on the Charter Customer's Annual Water Usage during that Fiscal Year. The amount of the adjustment charge or rebate for each specific Charter Customer for a given year shall be determined as follows:

STEP ONE: For each Charter Customer, determine how much that Charter Customer should pay in Fixed Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage in that year. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for the previous Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Fixed Costs for the year.

STEP TWO: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Fixed Costs for the previous Fiscal Year pursuant to subsection 6.3.2.

STEP THREE: For each Charter Customer, subtract the figure determined under STEP TWO from the figure determined under STEP ONE. This number is the additional amount of money the Charter Customer must pay the Authority for Fixed Costs for the previous Fiscal Year. If this number is less than zero, the Charter Customer owes no additional money to the Authority and the Charter Customer is entitled to a rebate from the Authority.

The Authority shall bill each Charter Customer for such additional Fixed Costs by March 1, and the Charter Customer shall pay the Authority for such additional Fixed Costs by

April 1. The Authority shall issue rebates by April 15. *[Revised by the Fourth Amendment to Contract effective 1/5/10.]*

- 6.3.4 Adjustment Where Total Annual Water Usage Declines. This subsection applies only if the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is less than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or rebate for the previous Fiscal Year. The amount of the adjustment charge or rebate for each specific Charter Customer shall be determined as follows:

STEP ONE: Calculate the price per 1000 gallons for Fixed Costs in accordance with the methodology set forth in subsection 6.3.1 using the Annual Water Usage of all Charter Customers combined in the previous Fiscal Year divided by 1000.

STEP TWO: For each Charter Customer, determine how much that Charter Customer should pay in Fixed Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for that Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Fixed Costs for the year calculated in STEP ONE.

STEP THREE: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Fixed Costs for the previous Fiscal Year pursuant to subsection 6.3.2.

STEP FOUR: For each Charter Customer, subtract the figure determined under STEP THREE from the figure determined under STEP TWO. If this figure is greater than zero, this is the additional amount of money the Charter Customer must pay the Authority for Fixed Costs for the previous Fiscal Year. If this number is less than zero, this is the amount of money the Authority must rebate to the Charter Customer for Fixed Costs for the previous Fiscal Year.

The Authority shall bill each Charter Customer for such additional Fixed Costs by March 1, and the Charter Customer shall pay the Authority for such additional Fixed Costs by April 1. The Authority shall issue rebates by April 15. *[Recreated by the Fourth Amendment to Contract effective 1/5/10.]*

- 6.3.5 Adjustment if Subsequent Customer Purchases Water. The Authority in its discretion may, but need not, proportionately reduce all Charter Customers' monthly shares of Fixed Costs if one or more Subsequent Customers are purchasing water from the Authority. The purpose of any reduction is to reflect the fact that without a reduction the Authority may otherwise over collect for Fixed Costs because Subsequent Customers pay more than the rate for Fixed Costs in accordance with Section 12.4. In no event, however, shall the Authority reduce the shares of Charter Customers by an amount which exceeds the amount that is available due to a higher rate being paid by a Subsequent Customer.

6.3.6 Obligation to Pay Fixed Costs Unconditional and Irrevocable. Each [Authority Charter](#) Customer's obligation to make all payment of Fixed Costs as required hereunder is unconditional and irrevocable, payable without setoff or counterclaim and irrespective of whether Potable Water is ever furnished, made available or delivered to any [Authority Charter](#) Customer or whether the Authority's Waterworks System or any Authority Project is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the supply of Potable Water. The rights of the [Authority Charter](#) Customer in the event of the failure by the Authority to perform its obligations under this Contract are governed by Article 14.

6.3.7 Restricted Use of Fixed Costs. Fixed Costs collected by the Authority in each Fiscal Year shall be used or applied in the following priority order:

- (a) to paying the principal, premium, and interest due on all subsequently issued Bonds in that Fiscal Year;
- (b) to complying with the covenants of any Bond Resolution (including payment into any accounts and funds of amounts required by the Bond Resolution) related to the subsequently issued Bonds
- (c) to paying reasonable capital costs, including capital costs for which Bonds may be issued and such other capital costs as are necessary or desirable to carry out the corporate purposes and powers of the Authority;
- (d) to providing an adequate depreciation fund for the Authority's Waterworks System; and
- (e) to contributing to the Authority's segregated maintenance, repair and replacement fund. *[Created by the Sixth Amendment to Contract effective 5/28/14, and revised by the Seventh Amendment to Contract effective May 22, 2017.]*

6.3.8 Treatment of Excess Fixed Costs Revenues. If after the Authority applies Fixed Costs revenues in accordance with subsection 6.3.7, total funds accumulated in the Authority's segregated maintenance, repair and replacement fund exceeds \$1,500,000, the Authority may, [after first receiving the affirmative recommendation of the Executive Committee,](#) determine by at least a two-thirds affirmative vote under Section 7.1 to refund some or all of the excess Fixed Costs Revenues to Charter Customers. Only Fixed Costs revenues in excess of revenues needed to fully fund the items enumerated in subsection 6.3.7 and to maintain at least \$1,500,000 in the Authority's segregated maintenance, repair and replacement account may be refunded to Charter Customers. Excess Fixed Costs Revenues to be refunded shall be refunded to Charter Customers in proportion to a Charter Customer's Annual Water Usage for the previous Fiscal Year divided by the Annual Water Usage of all Charter Customers combined in the previous Fiscal Year. *[Created by the Sixth Amendment to Contract effective 5/28/14, and revised by the Seventh Amendment to Contract effective May 22, 2017.]*

6.4 Excess Capacity Charge.

6.4.1 Purpose of Excess Capacity Charge. The Authority's costs to construct the Authority's Waterworks System and any other facilities for which Bonds have been issued shall be paid for with a combination of Fixed Costs charges determined in accordance with Section 6.3, and Excess Capacity Charges determined in accordance with this Section. The intent of Excess Capacity Charges is to recover the costs for excess capacity built into the Authority's Waterworks Systems and any other facilities for which Bonds have been issued.

6.4.2 Calculation and Payment of Excess Capacity Charge. At least once every six months, at a date established by the Authority, each ~~Authority Charter~~ Customer shall pay an Excess Capacity Charge to the Authority based upon the number and size of new water meters connected to the ~~Authority Charter~~ Customer's Unit System since the last Excess Capacity Charge was paid to the Authority. For each new water meter connected to the ~~Authority Charter~~ Customer's Unit System since the last Excess Capacity Charge was paid to the Authority, the ~~Authority Charter~~ Customer shall pay a fee equal to \$294.00 multiplied by a factor determined by the size of meter to be installed. The size of the meter, the appropriate factor, and the resulting excess capacity fee is as set forth on Exhibit D. The sum of all excess capacity fees for all new water meters shall equal the Excess Capacity Charge which must be paid by the ~~Authority Charter~~ Customer to the Authority. *[Revised by Second Amendment to Contract effective 11/14/07; and Sixth Amendment to Contract effective 5/28/14.]*

6.4.2.1 No fee shall be collected for a new water meter if that new water meter relates to (a) alterations or expansion of an existing building where no additional or larger water meter connections are requested; (b) the replacement of a building or structure with a new building or structure of the same size and use where no additional or larger water connections are requested and where the use is not changed; or (c) a decrease in meter size.

6.4.2.2 The fee collected for a new water meter may be reduced if the new meter replaces a smaller meter. The fee collected in that case shall equal the fee for the new meter less the fee that would be charged on the size of meter that was replaced. For example, if a water user changes from a 5/8" meter to a 1" meter, the fee to be paid the Authority would equal the charge for a 1" meter less the charge for a 5/8" meter.

6.4.3 Authority's Use of Excess Capacity Charges. The Authority shall apply the Excess Capacity Charges received from ~~Authority Charter~~ Customers to reduce the Authority's Fixed Costs in whatever manner the Authority deems appropriate.

6.5 ~~Development Charge.~~

6.5.1 ~~Purpose of Development Charge. Charter Customers, and the taxpayers and water users within their governmental boundaries as those boundaries existed on December 1, 2003,~~

~~have invested the time and money necessary to enable the Authority to acquire a Potable Water supply. Taxpayers and water users not within the governmental boundaries of the Charter Customers on December 1, 2003, but which are subsequently included within the governmental boundaries of a Charter Customer by annexation or other expansion of governmental boundaries, or which are subsequently served by a Charter Customer pursuant to subsection 9.1.4, did not bear these burdens. The intent of a Development Charge is to recover a contribution towards these costs from the water users that are subsequently included within the governmental boundaries of a Charter Customer after December 1, 2003, or who are subsequently served by a Charter Customer pursuant to subsection 9.1.4. [Revised by Second Amendment to Contract effective 11/14/07]~~

6.5.2 ~~Calculation and Payment of Development Charge. At least once every six months, at a date established by the Authority, each Charter Customer shall pay a Development Charge to the Authority based upon the number and size of new water meters connected to the Charter Customer's Unit System and located in areas outside of the area shown in Exhibit E. For each new water meter which is (i) connected to the Charter Customer's Unit System since the last Excess Capacity Charge was paid to the Authority, and (ii) located in an area outside the area shown in Exhibit E, the Charter Customer shall pay a fee equal to \$50.00 multiplied by a factor determined by the size of meter to be installed, with a maximum fee of \$260.00 per meter. The size of the meter, the appropriate factor, and the resulting development fee for the meter is as set forth in Exhibit D. The sum of all development fees for all new water meters connected in areas outside those shown in Exhibit E shall equal the Development Charge which must be paid by the Charter Customer to the Authority. [Revised by Sixth Amendment to Contract effective 5/28/14.]~~

6.5.3 ~~Authority's Use of Development Charges. The Water Authority shall apply the Development Charges received from Charter Customers to reduce the Authority's Fixed Costs in whatever manner the Authority deems appropriate.~~

6.6 Security Fund Payments.

6.6.1 Creation of Security Fund Account. The Authority shall create and maintain a Security Fund Account for each AuthorityCharter Customer, and each AuthorityCharter Customer shall maintain a balance in its Security Fund Account.

6.6.2 Monthly Security Fund Payments. Prior to each Fiscal Year, the Authority shall, in accordance with this subsection, calculate how much money each AuthorityCharter Customer must pay to and maintain in its Security Fund Account. This amount shall be calculated as follows:

STEP ONE: Determine each AuthorityCharter Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Operation Costs for the upcoming Fiscal Year;

STEP TWO: Determine each Authority Charter Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Fixed Costs for the upcoming Fiscal Year;

STEP THREE: Add the figure from STEP ONE to the figure or figures from STEP TWO, and multiply this sum by two;

STEP FOUR: Subtract from the figure determined in STEP THREE, the balance in the Authority Charter Customer's Security Fund Account;

STEP FIVE: If the figure determined in STEP FOUR is less than zero, no further contribution need be made to the Authority Charter Customer's Security Fund Account for the upcoming Fiscal Year. If the figure determined in STEP FOUR is more than zero, the Authority Charter Customer must make a monthly contribution to the Authority Charter Customer's Security Fund Account during the upcoming Fiscal Year. The amount of the monthly contribution to the Authority Charter Customer's Security Fund Account for the upcoming Fiscal Year shall be as set forth in STEPS SIX, SEVEN and EIGHT;

STEP SIX: For the first year an Authority Charter Customer pays monthly Aggregate Costs, the Authority Charter Customer's monthly contribution to the Authority Charter Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by 24;

STEP SEVEN: For the second year an Authority Charter Customer pays monthly Aggregate Costs, the Authority Charter Customer's monthly contribution to the Authority Charter Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by 18;

STEP EIGHT: For all other years, an Authority Charter Customer's monthly contribution to the Authority Charter Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by 12.

Each Authority Charter Customer's Security Fund Account shall bear interest from the date funds are contributed to the date it is applied as provided in subsection 6.10.1. The interest rate to be paid shall be the rate established by the PSC under PSC 185.361(8), Wisconsin Administrative Code.

[Revised by Sixth Amendment to Contract effective 5/28/14.]

- 6.6.3 Return of Excess Money in Security Fund Account. If at the beginning of any Fiscal Year, the money in an Authority Charter Customer's Security Fund Account exceeds three times the sum of the Authority Charter Customer's estimated monthly share of Operation Costs and monthly share of Fixed Costs for that Fiscal Year, the Authority Charter Customer shall be entitled to have a portion of its Security Fund Account money returned to it. The amount to be returned shall be calculated as follows:

STEP ONE: Determine each [AuthorityCharter](#) Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Operation Costs for the upcoming Fiscal Year;

STEP TWO: Determine each [AuthorityCharter](#) Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Fixed Costs for the upcoming Fiscal Year;

STEP THREE: Add the figure from STEP ONE to the figure [or figures](#) from STEP TWO, and multiply this sum by three;

STEP FOUR: Subtract from the balance in the [AuthorityCharter](#) Customer's Security Fund Account, the figure determined in STEP THREE;

STEP FIVE: If the figure determined in STEP FOUR is less than zero, there is no excess Security Fund Account money to be returned for that Fiscal Year. If the figure determined in STEP FOUR is more than zero, the Authority shall return this amount to the [AuthorityCharter](#) Customer within forty-five (45) days after the beginning of the Fiscal Year.

6.7 **Bills and Due Date.** The Authority shall notify each [AuthorityCharter](#) Customer of such [AuthorityCharter](#) Customer's share of Aggregate Costs for a month on or before the 10th day of the following month. The [AuthorityCharter](#) Customer's share of Aggregate Costs for a month shall be due and payable and must be received at the offices of the Authority on or before the tenth day of the month following the month of the Authority's notification or, if later, within 28 days of the date of notification.

6.8 **Disputed Payments.** If an [AuthorityCharter](#) Customer desires to dispute all or any part of any payments under this Contract, the [AuthorityCharter](#) Customer shall nevertheless pay the full amount of any such payment when due and include with such payment written notification to the Authority that charges are disputed, the grounds for dispute and the amount in dispute.

Upon receipt of notification of dispute, representatives of the Authority shall meet with representatives of the [AuthorityCharter](#) Customer within ten (10) business days to resolve such dispute. No adjustment or relief on account of any disputed charges shall be made unless disputed charges are the subject of such notice within the time specified, or within a reasonable period from the time the [Charter-Authority](#) Customer knew or should have known of the facts giving rise to the dispute.

The Authority and the [AuthorityCharter](#) Customer shall promptly attempt and continue efforts to resolve the dispute using the procedure set forth in Article 26. In the event that it is determined that the [AuthorityCharter](#) Customer shall have overpaid, it shall receive a refund with interest at the rate set out in Section 6.9.

6.9 **Default; Interest on Overdue Payments.** If an [Authority Charter](#) Customer shall fail to make any payment required under this Contract on or before its due date, such [Authority Charter](#) Customer shall be in default, and interest on the amount of such payment shall accrue during the period of non-payment at the higher of:

- (i) the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding plus two percent (2%), or
- (ii) the prime rate from time to time announced by the largest commercial bank, measured in terms of total assets, located and doing banking business in the State of Wisconsin, plus five percent (5%), or
- (iii) twelve percent (12%) per annum from the date such payment becomes due until paid in full with interest as herein specified.

6.10 **Payment of Overdue Amounts.**

6.10.1 Payment from Defaulting Customer's Security Fund Account. In the event an [Authority Charter](#) Customer is in default for failing to make a payment required under this Contract, the Authority shall, within twenty (20) days from the date such payment becomes due, pay such payment from the monies in the defaulting [Authority Charter](#) Customer's Security Fund Account. If insufficient monies are in the [Authority Charter](#) Customer's Security Fund Account to make such payment, the [Authority Charter](#) Customers not in default shall pay a share of the amount so in default in according with subsection 6.10.2.

6.10.2 Payment from Other [Authority Charter](#) Customers' Security Fund Accounts. If an [Authority Charter](#) Customer is in default for failing to make a payment required under this Contract, and if insufficient monies are in the [Authority Charter](#) Customer's Security Fund Account to make such payment under subsection 6.10.1, the [Authority Charter](#) Customers not in default shall be responsible for a share of the amount so in default in accordance with this subsection. Each [Authority Charter](#) Customer agrees to be responsible for a share of the amount so in default to the Authority, which share shall be in the same proportion as such [Authority Charter](#) Customer's share of the Aggregate Costs for the month prior to the month of the default bears to the sum of the shares of Aggregate Costs in that month of all [Authority Charter](#) Customers obligated to make payments under this Section which are not in default. The Authority shall provide each [Authority Charter](#) Customer with a written demand for its share of defaulted Aggregate Costs, or such defaulted payment of shares, and such written demand shall include the Authority's calculations of the amount due by each [Authority Charter](#) Customer. Twenty-one (21) days after the Authority's written notice, the Authority shall pay from an [Authority Charter](#) Customer's Security Fund Account, the [Authority Charter](#) Customer's share of defaulted Aggregate Costs, or such defaulted payment of shares. If insufficient monies are in the [Authority Charter](#) Customer's Security Fund Account, twenty-one (21) days after the Authority's written notice, the [Authority Charter](#) Customer is obligated to make payments under this Section directly to the Authority.

6.10.3 Curing a Default. If an ~~Authority Charter~~ Customer has defaulted in any payment due under this Contract, as a condition of curing such default, the ~~Authority Charter~~ Customer must provide funds to restore to its Security Fund Account, and the Security Fund Account of all other ~~Authority Charter~~ Customers required to pay funds pursuant to subsection 6.10.2, the amount of money which existed in those Security Fund Accounts prior to the ~~Authority Charter~~ Customer's default, plus interest in the amount set forth in Section 6.10.

6.10.4 Failure to Cure a Default. In the event a default is not cured within forty-five (45) days from the date such payment becomes due, the Authority, after following any applicable procedural requirements of Section 7.1, may at its option and in its discretion reduce or discontinue delivery of Potable Water to the ~~Authority Charter~~ Customer until the amount due the Authority, and required to cure the default, is paid in full with interest as herein specified. The Authority shall give notice to the ~~Authority Charter~~ Customer not less than twenty (20) days prior to the event of its intention to reduce or discontinue delivery of Potable Water in accordance with this subsection and shall provide the ~~Authority Charter~~ Customer an opportunity for a hearing prior to any reduction or discontinuance. If the Authority reduces or discontinues the delivery of Potable Water under such circumstances, the ~~Authority Charter~~ Customer shall, nevertheless, continue to be liable to pay all charges herein provided for. The rights specified in this subsection shall be in addition to all other rights and remedies available to the Authority at law or in equity for breach of any of the provisions of this Contract.

6.11 **Rates to Charter Customers Same.** No change in the rates or charges under this Contract for any Charter Customer may be made unless the same change is made for all Charter Customers.

6.12 **Limitation on Payments; Service to the ~~Authority Charter~~ Customer; Not Indebtedness of ~~Authority Charter~~ Customers.** Notwithstanding any other provision of this Contract to the contrary, the payments required to be made by each ~~Authority Charter~~ Customer under this Contract shall be required to be made solely from revenues to be derived by such ~~Authority Charter~~ Customer from the operation of its Unit System and from other funds of the ~~Authority Charter~~ Customer that are legally available for such payments and are appropriated for that purpose. The ~~Authority Charter~~ Customer, in recognition of the benefits provided by the anticipated and actual provision of Potable Water from the Authority to the ~~Authority Charter~~ Customer and from the ~~Authority Charter~~ Customer to its inhabitants through its Unit System, covenants that if the ~~Authority Charter~~ Customer is unable to make the payments required by this Contract solely from the revenues to be derived by such ~~Authority Charter~~ Customer's Unit System, the ~~Authority Charter~~ Customer shall make any necessary payments to the Authority out of the current revenues of the ~~Authority Charter~~ Customer collected or in the process of collection (i.e. out of the tax levy of the ~~Authority Charter~~ Customer made by it to raise money to meet its necessary current expenses). Such payment out of the tax levy of the ~~Authority Charter~~ Customer shall be subject to (a) approval of the PSC, or successors to its function, if applicable, (b) yearly appropriations therefore, and (c) applicable levy limitations, if any. Neither this Contract nor any such payment shall be construed as

constituting an obligation of the ~~Authority Charter~~ Customer to make any appropriation over and above the payments owed to the Authority by the ~~Authority Charter~~ Customer. Furthermore, this Contract shall not constitute an indebtedness of any ~~Authority Charter~~ Customer within the meaning of any statutory or constitutional debt limitation.

6.13 **May Use Other Moneys.** Notwithstanding the provisions of Section 6.12, the ~~Authority Charter~~ Customers are not prohibited by this Contract from using other available funds to make the payments required by this Contract.

6.14 **Sole Method for ~~Authority Charter~~ Customers to Enforce Provisions Hereof Against Other Customers.** Each ~~Authority Charter~~ Customer acknowledges that its obligations to make payments hereunder are of benefit to each other ~~Authority Charter~~ Customer ~~and to Subsequent Customers~~ as such other Authority Customers' obligations are of benefit to the ~~Authority Charter~~ Customer. Accordingly, each ~~Authority Charter~~ Customer agrees that, in addition to the Authority, Bondholders, a Trustee or other entities by law entitled to enforce the provisions of this Contract, any three or more Authority Customers acting together may enforce the provisions of this Article, but only if the Authority has not acted to enforce such provisions within 90 days of failure to make a payment hereunder.

6.15 **Beginning of Obligation to Pay.** The Charter Customers' obligations to make payments under this Contract shall begin at a date established by the Authority which shall be no later than January 1, 2005. *[Revised by Second Amendment to Contract effective 11/14/07]*

7 **Procedural and Other Limitations; Further Covenants of the Authority.**

Notwithstanding any other provision of this Contract, the ~~Authority Charter~~ Customers shall have the rights enumerated within this Article and the Authority in its activities shall be obligated in the manner provided in this Article.

7.1 **Procedural Rule.** ~~Any~~No motion, resolution or ordinance concerning the subjects enumerated below shall be adopted by the Authority in accordance with the terms of the Authority Formation Agreement, or if not addressed in the Authority Formation Agreement,~~except~~ by at least a two-thirds affirmative vote of all of the Authority's Directors.

- (i) Approval of individual contracts or expenditures, or a series of contracts or expenditures related to a single Authority Project in an amount in excess of \$250,000;
- (ii) ~~Use of excess Operation Costs revenues in a manner other than that set forth in subsection 6.2.6;~~
- (iii) Refund of excess Fixed Costs revenues in a manner consistent with subsection 6.3.8;
- (iv) Amendment of Exhibit B-1 in accordance with Section 2.13;

- (v) Issuance of Bonds in an amount in excess of \$100,000;
- (vi) Sale of Potable Water to Subsequent Customers;
- (vii) Approval of a contract between the Authority and an Authority Customer;
- (viii) Approval of a contract to operate the Authority's Waterworks System; or
- ~~(ix) Employment of managerial and professional personnel either as employees or consultants to the Authority; or~~
- (x) Disconnection of an Authority Customer's water pursuant to subsection 6.10.4.

[Revised by Sixth Amendment to Contract effective 5/28/14.]

- 7.2 **Lake Water Only.** Without the prior approval of the corporate authorities of any ~~Authority Charter~~ Customer affected, the Authority shall not deliver through the Authority's Waterworks System any water to an ~~an Authority Charter~~ Customer other than Lake Water.
- 7.3 **Covenants to Be Set Out in Bond Ordinance.** Any Bond Resolution passed by the Authority shall contain language to the following effect:
- Any holder or registered owner of a bond in any civil action, mandamus, or other proceeding, may enforce and compel performance of all duties required by law to be performed by the Authority or by any customers of the Authority, including the making of rates and charges, the collecting of sufficient revenue and the application thereof, as provided by applicable law, and including, expressly, all of the terms and provisions of Articles 6, 7 and 16 of the Contract [referring to this Contract], if the nonperformance of such duties would substantially impair the ability of the ~~Authority Charter~~ Customer to make the payments required by the Contracts, or result in the Authority being in default under any Bond Resolution, or adversely affect the rating of any of the Authority's Bonds.
- 7.4 **Emergency Supply.** An ~~Authority Charter~~ Customer may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity.
- 7.5 **Retail Sales.** The Authority shall not engage in the retail sale of water.
- 7.6 **Evidence of Customer Action.** Wherever in this Contract the consent or authorization of an ~~an Authority Charter~~ Customer or a group of ~~Authority Charter~~ Customers are required, that consent may only be evidenced by a resolution or motion passed by the corporate authorities of the ~~Authority Charter~~ Customer.

7.7 **Limitation on Funds.** No funds received by the Authority from Aggregate Costs revenues from ~~Authority Charter~~ Customers may be expended for the planning, construction, operations or maintenance of a waterworks system other than (i) the Authority's Waterworks System specified within this Contract; (2) the Third Party Water Supplier's Waterworks System as specified in a Third Party Water Supply Contract; or (3) an ~~an Authority Charter~~ Customer's Unit System if so specified in a contract between the Authority and an ~~an Authority Charter~~ Customer.

7.8 **No Free Service.** The Authority shall not provide free Potable Water to any Party or any other entity.

8 **Special Conditions and Covenants.**

8.1 **Authority to Build Authority's Waterworks System and Supply Potable Water.** The Authority shall, in accordance with Prudent Utility Practice, reasonably proceed with the construction of the Authority's Waterworks System and any other capital facilities required to be constructed or paid for by the Authority under a Third Party Water Supply Contract so as to be able to perform its obligations hereunder. The Authority will make a diligent effort to have facilities completed to the Point of Delivery so as to furnish Potable Water to the Charter Customers by December 8, 2006, but the Authority does not hereby guarantee delivery by such date. The Authority shall not be liable to any ~~Authority Charter~~ Customer for any damages occasioned by delay in the commencement of such service to any ~~Authority Charter~~ Customer, and all payments provided for under this Contract remain due and payable in accordance with its terms notwithstanding any such delay. After Potable Water is first tendered for delivery to an ~~Authority Charter~~ Customer at any Point of Delivery, the Authority shall, subject to the other terms and conditions of this Contract, continually hold itself ready, willing and able to supply Potable Water to such ~~Authority Charter~~ Customer. The Authority shall also use its best efforts, consistent with its legal obligations to its other Authority Customers and consistent with fair and equitable treatment of all of its Authority Customers, to supply each ~~Authority Charter~~ Customer with such additional amounts of Potable Water as may from time to time be needed by such ~~Authority Charter~~ Customer over and above its Estimated Annual Water Requirement, but the Authority does not hereby guarantee a supply of such additional amounts.

8.2 **Title to Potable Water.** Title to all Potable Water supplied hereunder shall remain in the Authority to the point one foot downstream from the Authority's meters for each Unit System and thereupon shall pass to such ~~Authority Charter~~ Customer. *[Revised by Second Amendment to Contract effective 11/14/07; and by Fifth Amendment to Contract effective 9/24/12]*

8.3 **Authority to Use Best Efforts to Build and Finance Construction.** The Authority shall use its best efforts, in accordance with Prudent Utility Practice, to obtain the necessary permits and contracts for labor and material, and to borrow funds and issue its Bonds therefor in order to acquire, construct and pay for the Authority's Waterworks

System or other capital facilities required to be constructed or paid for by the Authority under a Third Party Water Supply Contract.

- 8.4 **Payments Hereunder an Operation Expense of Unit Systems.** Obtaining water is an essential item of expense of the Unit Systems. To the fullest extent permitted by law, all of the payments to be made by each [AuthorityCharter](#) Customer hereunder shall constitute operating expenses of the Unit Systems and all revenue bond and other borrowing ordinances hereinafter enacted by an [AuthorityCharter](#) Customer with respect to its Unit System (“Unit System Bond Resolutions”) shall expressly provide that such payments constitute operating expenses. In addition, all Unit System Bond Resolutions shall provide that operating expenses (including the payments to be made under this Contract) shall be paid from revenues of the [AuthorityCharter](#) Customer’s Unit System before such revenues are available to pay debt service on revenue bonds or other obligations issued by the [AuthorityCharter](#) Customer payable from revenues of the Unit System (“Unit System Revenue Bonds”). Each [AuthorityCharter](#) Customer shall make all budgetary, emergency and other provisions and appropriations necessary to provide for and authorize the prompt payment by such [AuthorityCharter](#) Customer to the Authority of its shares of Aggregate Costs. The obligations of each [AuthorityCharter](#) Customer under this Contract are further payable from all other accounts of the Unit System of each [AuthorityCharter](#) Customer, respectively, for its shares, in which there are lawfully available funds. If legal action is brought against an [AuthorityCharter](#) Customer challenging the payment of such [AuthorityCharter](#) Customer’s obligations hereunder as an operating expense of its Unit System or the payment of operating expenses prior to payment of debt service on any Unit System Revenue Bonds, the Authority shall, if requested to do so by the [AuthorityCharter](#) Customer, undertake the defense of the legal action at the Authority’s expense.
- 8.5 **Authority Insurance.** The Authority will carry insurance or maintain self-insurance with respect to the Authority’s Waterworks System of the kinds and in the amounts which are customarily carried or maintained by entities operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserve funds shall be used in making good the loss or damage in respect of which they were paid except to the extent no longer deemed useful to or profitable in the operation of the Authority’s Waterworks System, whether by repairing the property damaged or replacing the property destroyed, and provision for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments for settlements, judgments or expenses were advanced.
- 8.6 **Authority to Continue to Serve.** The Authority will use its best efforts to continue serving all the [AuthorityCharter](#) Customers.

8.7 **Authority Covenant to Operate Properly.** The Authority will take steps consistent with Prudent Utility Practice so that the Authority's Waterworks System may at all times be operated properly and advantageously.

9 **Authority Charter Customer Covenants.**

9.1 **Provision of Water to Customers.**

9.1.1 Customers Within Corporate Limits. Except as provided in subsections 9.1.2 through 9.1.4, an Authority Charter Customer may only provide and sell Potable Water from its Unit System to customers that are located within the Authority Charter Customer's corporate limits (e.g. a town sanitary district may sell Potable Water within its district boundaries).

9.1.2 Customers Outside Corporate Limits. Notwithstanding subsection 9.1.1, an Authority Charter Customer may provide and sell Potable Water from its Unit System to customers outside its corporate limits if (a) the customer is provided with retail water from the Authority Charter Customer's Unit System pursuant to and in accordance with a contract existing on the Effective Date of this Contract; (b) the customer is located within the corporate limits of another Authority Customer and the other Authority Customer approves of the sale; or (c) the customer is provided with retail water from the Authority Charter Customer's Unit System pursuant to a written contract and the Authority has consented to such provision of water in accordance with subsection 9.1.4.

9.1.3 Wholesale Sales of Water. An Authority Charter Customer may sell Potable Water from its Unit System, on a wholesale basis, to one or more customers that are located within the Authority Charter Customer's corporate limits. An Authority Charter Customer may also sell Potable Water from its Unit System on a wholesale basis to (a) another Authority Customer pursuant to and in accordance with a contract existing on the Effective Date of this Contract; (b) another Authority Customer with the Authority's consent; (c) a customer, who is not an Authority Customer, provided such customer is provided with wholesale water pursuant to a written contract and the Authority has consented to such provision of water in accordance with subsection 9.1.4; or (d) any other entity on a short-term emergency basis with the Authority's consent. In no other case may an Authority Charter Customer sell Potable Water from its Unit System on a wholesale basis.

9.1.4 Authority Approval of Authority Charter Customer's Contract to Provide Water. An Authority Charter Customer shall request Authority consent for the Authority Charter Customer to provide retail or wholesale water to an entity which is not an Authority Customer. A request for Authority consent shall be in writing and shall at a minimum contain: (1) a map of the area proposed to be served; (2) a list of the properties to be served; (3) an estimate of current and future water usage for the area proposed to be served; and (4) a copy of the written contract between the Authority Charter Customer and the entity pursuant to which water would be provided. The request for Authority consent shall be submitted to the full Authority for approval, and may be approved by a

majority vote of all Authority Directors after first receiving the affirmative recommendation of the Executive Committee. The Authority's consent shall specifically designate the area that may be served by the Authority Charter Customer, and the Authority Charter Customer shall have no right to serve beyond this area without the Authority's consent. The Authority's consent shall be conditioned upon also receiving the Third Party Water Supplier's consent to an Authority Charter Customer's request to provide retail or wholesale water to an entity which is not an Authority Customer if the Third Party Water Supplier's consent is required pursuant to an applicable Third Party Water Supply Contract.

9.2 **Maintain and Operate Unit System.** Each Authority Charter Customer covenants that, in accordance with Prudent Utility Practice, it will: (a) own and maintain its Unit System and all improvements and extensions to its Unit System, (b) operate the same and the business in connection therewith efficiently, and (c) punctually perform all duties with respect to its Unit System as may be required by the Constitution and laws of the State of Wisconsin, by all other applicable laws, and by its own resolutions and ordinances. Each Authority Charter Customer covenants it will not sell, transfer or abandon its Unit System except if required to do so by §§ 66.0235 or 60.79, Stats.

9.3 **Water Supply Capacity Charge Ordinance.** Each Authority Charter Customer shall adopt an ordinance substantially in the form set forth in Exhibit F to collect charges from new water users or water users increasing their usage. Such charges collected from new water users or water users increasing their usage shall be called Water Supply Capacity Charges. This ordinance is intended to collect the money required to be paid to the Authority as Excess Capacity Charges under Section 6.4. The Authority Charter Customer's obligation to pay the Authority the Excess Capacity Charge shall not be based upon the passage or enforceability of this ordinance, and such obligation shall continue even if this ordinance is struck down by a court of law. The Authority Charter Customer agrees that all Water Supply Capacity Charges paid to and collected by it shall be placed in a segregated, interest-bearing account called the Water Supply Capacity Charge Account. Such funds shall be accounted for separately from other general and utility funds. The Authority Charter Customer further agrees that all funds, excluding interest, accumulated in the Water Supply Capacity Charge Account established by it shall be used semi-annually on dates established by the Authority to pay the Excess Capacity Charge owed by the Authority Charter Customer to the Authority. This ordinance shall be adopted by Charter Customers by March 1, 2004.

9.4 ~~**Water Supply Development Charge Ordinance.** Each Charter Customer shall adopt an ordinance substantially in the form set forth in Exhibit G to collect fees from new water users located outside the areas shown on Exhibit E. Such fees collected from new water users outside the areas shown on Exhibit E shall be called Water Supply Development Charges. This ordinance is intended to collect the money required to be paid to the Authority as Development Charges under Section 6.5. The Charter Customer's obligation to pay the Authority the Development Charges shall not be based upon the passage or enforceability of this ordinance, and such obligation shall continue even if this ordinance is struck down by a court of law. The Charter Customer agrees that all Water~~

~~Supply Development Charges paid to and collected by it shall be placed in a segregated, interest-bearing account called the Water Supply Development Charge Account. Such funds shall be accounted for separately from other general and utility funds. The Charter Customer further agrees that all funds, excluding interest, accumulated in the Water Supply Development Charge Account established by it shall be used semi-annually on dates established by the Authority to pay the Development Charge owed by the Charter Customer to the Authority. This ordinance shall be adopted by March 1, 2004.~~

- 9.5 **Conservation Ordinance.** Each ~~Authority~~ Charter Customer shall adopt a water conservation ordinance substantially in the form set forth in Exhibit H. This ordinance shall be adopted by March 1, 2004.
- 9.6 **No Sewer Without Water.** No ~~Authority~~ Charter Customer shall permit the extension of public sanitary sewerage service to a parcel of property within the ~~Authority~~ Charter Customer's corporate limits unless the extension of public water service to that parcel of property is required at the same time. This prohibition shall not apply if the Wisconsin Department of Natural Resources orders the extension of public sanitary sewerage service to the parcel of property.
- 9.7 **Rate Covenant.** Each ~~Authority~~ Charter Customer covenants that it will promptly seek approval from the PSC, or any Governmental Authority with jurisdiction, to establish, maintain, revise as necessary and collect, rates and charges for customers of its Unit System as shall be required from time to time to produce revenues at least sufficient (i) to meet all of its obligations to the Authority under this Contract, (ii) to pay all other costs of operation and maintenance of its Unit System, (iii) to provide an adequate depreciation fund for its Unit System, (iv) to meet all of its obligations under (including to make all deposits in all funds and accounts required by) the terms of resolutions or ordinances authorizing bonds payable from revenues of its Unit System and (v) to pay the principal of and interest on all bonds of such ~~Authority~~ Charter Customer payable from the revenues of its Unit System. The Authority may not sue to enforce the provisions of this Section as they relate to clauses (iii) through (v) unless it can show that either the ability of the ~~Authority~~ Charter Customer to make the payments set forth in clause (i) is substantially impaired by the inadequacy of said rates and charges or that, as a result, the Authority may be in default under any Bond Resolution or the rating of any of its Bonds may be adversely affected. The rates and charges for customers of a Unit System shall not be required, however, to be sufficient to produce amounts required to make payments under this Contract so long as available amounts sufficient for making such payments for the next six (6) months or the remainder of such ~~Authority~~ Charter Customer's fiscal year, whichever is longer, shall have been set aside in cash or investments in a separate account in its Unit System Fund designated for the purpose of making payments under this Contract.
- 9.8 **Purchased Water Adjustment Clause.** Each ~~Authority~~ Charter Customer covenants that it will promptly seek approval from the PSC to include a purchased water adjustment clause as part of its tariff rates. Each ~~Authority~~ Charter Customer further covenants that if

its responsibility for Aggregate Costs under this Contract increases, it will promptly file a request with the PSC for authority to pass on such higher costs to its ratepayers.

- 9.9 **Segregate Revenues.** Each [Authority Charter](#) Customer covenants that it shall provide for the segregation of all revenues of its Unit System in a revenue fund and provide for the application of the revenues for the purpose of Section 9.7. Moneys of a Unit System of an [Authority Charter](#) Customer which exceed the obligations of such [Authority Charter](#) Customer hereunder may be used for any lawful purposes.
- 9.10 **Accounting and Audit.** Each [Authority Charter](#) Customer covenants that it will make and keep proper books and accounts (separate and apart from all other records and accounts of such [Authority Charter](#) Customer) in which complete entries shall be made of all transactions relating to its Unit System, and, within two hundred ten (210) days following the close of each fiscal year of such [Authority Charter](#) Customer, it will cause the books and accounts of its Unit System to be audited annually by independent certified public accountants, showing the receipts and disbursements on account of its Unit System.
- 9.11 **Maintain Ownership of Unit System and Properties.** Each [Authority Charter](#) Customer covenants that it will continue to own and possess its Unit System and will, in accordance with Prudent Utility Practice and in a manner so as not to cause a default hereunder, dispose of property which is part of its Unit System only to the extent that such property is no longer useful or profitable in the operations of its Unit System.
- 9.12 **Insurance.** Each [Authority Charter](#) Customer covenants that it will carry insurance or maintain self-insurance reserves with respect to its Unit System of the kinds and in the amounts which are customarily carried or maintained by entities operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed of under Section 9.11, whether by repairing the property damaged or replacing the property destroyed, and provision for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments for settlements, judgments or expenses were advanced.
- 9.13 **Budget and Appropriations.** Each [Authority Charter](#) Customer covenants that it will adopt a budget or appropriations ordinance for each fiscal year of such [Authority Charter](#) Customer, or otherwise in accordance with applicable state laws, and provide lawful authority for payment of all sums anticipated to be due to the Authority during such fiscal year.

- 9.14 **Continue to Serve.** Each ~~Authority~~~~Charter~~ Customer covenants that it will use its best efforts to continue serving all customers of its Unit System within its territorial limits which are served as of the date of this Contract.
- 9.15 **Combining or Separating Unit System Accounts.** Each ~~Authority~~~~Charter~~ Customer covenants that it shall not combine its existing separate waterworks system with its separate sewerage system or separate its existing combined waterworks and sewerage system into separate systems unless it meets the following conditions:(i) the ~~Authority~~~~Charter~~ Customer shall provide the Authority with written evidence that the proposed combination or separation will not materially and adversely affect the ~~Authority~~~~Charter~~ Customer's ability to comply with all of the terms, conditions and covenants of this Contract; and (ii) if the Authority shall then determine the proposed combination or separation will not materially and adversely affect the ~~Authority~~~~Charter~~ Customer's ability to comply with all of the terms, conditions and covenants of this Contract, then and only then the Authority shall approve such combination or separation and advise such ~~Authority~~~~Charter~~ Customer in writing.
- 9.16 **Customer Covenants as to Rate of Withdrawal.** Each ~~Authority~~~~Charter~~ Customer covenants that it will take Potable Water at the most uniform and continuous rate of withdrawal practicable.
- 9.17 **Tax Status.**
- 9.17.1 Except as provided in subsection 9.17.3, no ~~Authority~~~~Charter~~ Customer shall use or permit to be used any of the water acquired under this Contract in any manner or for any purpose or take any other action or omit to take any action which could, either alone or in conjunction with any other similar actions by other Authority Customers, result in loss of the exclusion from gross income for federal tax purposes of the interest on any outstanding Bonds or any Bonds which in the future may be issued by the Authority, as that status is governed by the federal income tax laws, as amended from time to time, including but not limited to, Section 141 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction (collectively, the "Tax Laws").
- 9.17.2 The ~~Authority~~~~Charter~~ Customer has no contracts whereby any person, corporation, partnership or other non-governmental entity agrees to purchase water from the ~~Charter~~~~Authority~~ Customer (i) on terms not available to the general public; and (ii) for a period of more than thirty (30) days. The ~~Charter~~~~Authority~~ Customer has no current expectation of entering into any such contracts. At least sixty (60) days prior to entering into any contract whereby any person, corporation, partnership or other non-governmental entity agrees to purchase water from the ~~Charter~~~~Authority~~ Customer on terms not available to the general public for a period of more than thirty (30) days, the ~~Charter~~~~Authority~~ Customer shall notify the Authority of its intent to enter into such contract and provide copies of such contract to the Authority. Within sixty (60) days after receipt of such notice, the Authority shall advise the ~~Charter~~~~Authority~~ Customer as

to whether, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Authority, the entering into of such contract would result in a violation of the covenant in subsection 9.17.1 above. The cost of this opinion shall be borne by the [Charter Authority](#) Customer. Any determination by the Authority that any such contract would violate the covenant set forth in subsection 9.17.1 above shall be made by the Authority based upon this opinion. In the event that allocations are necessary under the Tax Laws to determine whether entering into any such contract violates the covenant set forth in subsection 9.17.1 above, the Authority shall make such allocations, in its sole discretion, after receipt of an opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Authority and paid for by the [Charter Authority](#) Customer.

9.17.3 Notwithstanding subsection 9.17.1 above, the [Charter Authority](#) Customer may enter into a contract determined by the Authority pursuant to subsection 9.17.2 to violate subsection 9.17.1 if, but only if, the [Charter Authority](#) Customer enters into a supplement to this Contract in form and substance satisfactory to the Authority providing that the [Charter Authority](#) Customer will bear and pay any and all increased costs allocated to it resulting from the issuance by the Authority of Bonds, the interest on which is not excludable from gross income for federal income tax purposes (“Taxable Bonds”). The Authority in its sole discretion, after receipt of an opinion of counsel of recognized standing in the field of municipal bonds selected by the Authority, shall allocate on a reasonable basis the increased interest costs associated with such Taxable Bonds to the Authority Customers which have entered into any such contracts pursuant to this subsection 9.17.3. In the event that such an allocation is made, the Authority shall bill the [Charter Authority](#) Customer therefor as a surcharge on its water bill. Any such supplement shall contain such other terms and provisions as the Authority deems reasonably necessary in order to preserve the tax-exempt status of any Bonds not intended by the Authority to be Taxable Bonds, including, without limitation, a requirement that the [Charter Authority](#) Customer pass on to the non-exempt user the additional costs allocated to the [Charter Authority](#) Customer.

9.18 **Opinions as to Validity.**

9.18.1 Upon the execution and delivery of this Contract [by an Authority Customer](#), the [Charter Authority](#) Customer shall furnish the Authority with an opinion by an attorney or firm of attorneys to the effect that (i) the [Charter Authority](#) Customer is a political subdivision and municipal corporation of the State of Wisconsin and is fully authorized and empowered under the laws of the State of Wisconsin to enter into this Contract and to perform its obligations hereunder, (ii) based upon the attorney’s knowledge and due investigation, no consent, order, waiver or any other action by any person, board or body, public or private, is required as of the date of execution of this Contract by the [Charter Authority](#) Customer for the [Charter Authority](#) Customer to enter into this Contract and to perform its obligations hereunder, (iii) based upon the attorney’s knowledge and due investigation, there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority pending or threatened against or affecting the [Charter Authority](#) Customer or its Unit System which seeks to prohibit, restrain or enjoin

the ~~Charter~~Authority Customer from entering into or complying with its obligations contained in this Contract, including payment obligations to the Authority, or in any way affects or questions the validity or enforceability of this Contract, or in any way might materially adversely affect the ~~Charter~~Authority Customer's ability to carry out the transactions contemplated by this Contract, (iv) this Contract has been duly and validly authorized, executed and delivered by the ~~Charter~~Authority Customer and constitutes a legal, valid and binding obligation of the ~~Charter~~Authority Customer enforceable against it in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to the rights and remedies of creditors, and (v) the execution and delivery of this Contract and compliance by the ~~Charter~~Authority Customer with its terms will not conflict with, or constitute on the part of the ~~Charter~~Authority Customer a breach of or a default under, any existing statute, law, governmental rule, regulation (other than any provision of the Internal Revenue Code or regulation promulgated thereunder), decree, resolution, ordinance, charter or order, or any agreement, indenture, mortgage, lease or instrument to which the ~~Charter~~Authority Customer is subject or by which it is or its properties are or may be bound.

9.18.2 Upon the execution and delivery of this Contract, the Authority shall furnish the ~~Charter~~Authority Customer with an opinion by an attorney or firm of attorneys to the effect that (i) the Authority is a political subdivision and body public and corporate of the State of Wisconsin and is fully authorized and empowered under the laws of the State of Wisconsin to enter into this Contract and to perform its obligations hereunder, (ii) based upon the attorney's knowledge and due investigation, no consent, order, waiver or any other action by any person, board or body, public or private, is required as of the date of execution of this Contract by the Authority for the Authority to enter into this Contract and to perform its obligations hereunder, (iii) based upon the attorney's knowledge and due investigation, there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority pending or, to the best of such counsel's knowledge, threatened against or affecting the Authority which seeks to prohibit, restrain or enjoin the Authority from entering into or complying with its obligations contained in this Contract or in any way affects or questions the validity or enforceability of this Contract, or in any way might materially adversely affect the Authority's ability to carry out the transactions contemplated by this Contract, (iv) this Contract has been duly and validly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against it in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to the rights and remedies of creditors, and (v) the execution and delivery of this Contract and compliance by the Authority with its terms will not conflict with or constitute on the part of the Authority a breach of or a default under any existing statute, law, governmental rule, regulation, decree, resolution, ordinance, charter or order, or any agreement, indenture, mortgage, lease or instrument to which the Authority is subject or by which it is or its properties are or may be bound.

9.19 **Town Sanitary District Covenant.** Each [Charter Authority](#) Customer which is a town sanitary district covenants that it will not request a town board to add territory, and each Town Signatory covenants that it will not approve additions of territory to any [Charter Authority](#) Customer which is a town sanitary district, except as follows: (i) within the corporate limits of the town in which a majority of its customers reside, or (ii) within any other town provided that after the expansion the town sanitary district has fewer than 15% of its total customers in the other town, and has less than 15% of its total property equalized value in the other town.

10 **Capacity and Future Capacity.**

10.1 **Availability of Capacity.** Capacity from the Authority's Waterworks System shall be available to Authority Customers on a first-come, first-served basis. The Authority shall not reserve capacity for any Authority Customer.

10.2 **Additional Capacity in Authority's Waterworks System.**

10.2.1 The Authority's Waterworks System has initially been designed to provide each Charter Customer with enough water to meet its expected water needs through the year 2030. Nevertheless, the Authority and the Charter Customers anticipate that in the future the Authority may determine that additional facilities must be constructed to augment the initial capacity of the Authority's Waterworks System. This may occur because of the addition of Subsequent Customers, unanticipated growth in an [Charter Authority](#) Customer, or other events.

10.2.2 Additional facilities to augment the initial capacity of the Authority's Waterworks System shall be constructed by the Authority when the Authority determines such additional capacity is needed.

10.2.3 If the Authority determines that additional facilities must be constructed to augment the initial capacity of the Authority's Waterworks System, the cost to construct the additional capacity is to be paid for as Fixed Costs in accordance with Section 6.3.

10.3 **Additional Capacity from Third Party Water Supplier.**

10.3.1 A Third Party Water Supply Contract may require the Authority to construct and/or pay for capital facilities that will be used to provide the Authority with Potable Water. Such capital facilities may be owned by the Authority, by the Third Party Water Supplier, or by the Authority and Third Party Water Supplier jointly. To the extent reasonable and in accordance with Prudent Utility Practice, such capital facilities shall be designed to provide the Authority with sufficient Potable Water to meet each Charter Customer's expected water needs through the year 2030.

10.3.2 To the extent a Third Party Water Supply Contract requires the Authority to construct and/or pay for additional capital facilities to augment the initial capacity provided to the Authority, the Authority shall construct and/or pay for such additional capital facilities to

the extent required. If additional facilities must be constructed and/or paid for by the Authority to augment the initial capacity provided to the Authority, the cost to construct the additional capacity is to be paid for as Fixed Costs in accordance with Section 6.3.

10.4 **Notification of Water Demands.** The Authority may, at any time, request in writing that each Authority Customer notify the Authority of its expected water demands for a specified year. The Authority Customer shall respond to this request in writing within three months. The Authority may use this information to determine when additional capacity must be built or obtained by contract, and how much additional capacity must be built or obtained.

11 **Deleted**

[Deleted by the Seventh Amendment to Contract effective May 22, 2017.]

12 **Subsequent and Other Contracts.**

12.1 **No Contract with Rate More Favorable.** The Authority shall not supply Potable Water except pursuant to a written contract. Any Subsequent Contract entered into by the Authority shall require a Subsequent Customer to pay the additional costs, rates and charges set forth in Sections 12.2 to 12.4, and to abide by the requirements set forth in Section 12.5. By requiring a Subsequent Customer to pay these additional costs, rates and charges, it is the intent of the Authority to recognize that the Charter Customers, solely, enable the Authority to obtain Potable Water for Authority Customers, that units of local government need to be induced to become Charter Customers and that this provision is an express inducement to become a Charter Customer. In no case shall a Subsequent Contract provide rates, charges or terms lower or more favorable to the Subsequent Customer than those provided in this Contract for Charter Customers.

12.2 **Payment of Infrastructure Costs Required in Subsequent Contract.**

12.2.1 Every Subsequent Contract shall require the Subsequent Customer to pay all costs, including but not limited to, infrastructure, real estate, administrative and legal costs, necessary to supply water to the Subsequent Customer. Such infrastructure costs shall include, but not be limited to, the cost of extending water distribution mains from the Authority's existing distribution system to the Subsequent Customer, and the cost of all connection points needed to serve the Subsequent Customer. The Authority shall contract for the design and construction of the infrastructure facilities necessary to supply water to the Subsequent Customer. The Subsequent Customer shall agree in the Subsequent Contract to pay for all costs necessary to supply water to the Subsequent Customer, including the cost of such work and facilities. The facilities, at all times, shall be owned by the Authority.

12.2.2 The Subsequent Customer shall pay the Authority for the costs under subsection 12.2.1 by either (a) making a direct cash payment to the Authority within thirty days after the Authority notifies the Subsequent Customer of the amount due; or (b) paying the Authority such costs over time by amortizing such costs and adding them to the

wholesale water rate paid by the Subsequent Customer; or (c) some combination of (a) and (b) above. If costs are to be amortized and included in rates, the length of time over which costs may be amortized may not exceed the remaining term of the Authority's Bonds, or the term of the Subsequent Contract, whichever is shorter. Interest on the costs amortized shall accrue during the period of amortization at the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding plus two percent (2%).

- 12.2.3 In order to partially satisfy its obligation to provide the local facilities necessary to connect its distribution system to the Authority's existing distribution system, a Subsequent Customer may enter into an agreement with a Charter Customer which allows the Subsequent Customer to use the Charter Customer's Unit System as a means of transporting water from the Authority's Waterworks System to the Subsequent Customer.

12.3 **Payment of ~~Development Charge and~~ Excess Capacity Charge.**

- 12.3.1 ~~Development Charge. Every Subsequent Contract shall require the Subsequent Customer to pay to the Authority a Development Charge to recognize that Charter Customers invested the time and money necessary to enable the Authority to acquire a Potable Water supply, and that the Subsequent Customers did not bear these burdens which were borne solely by the Charter Customers. A Subsequent Customer's Development Charge shall be determined based upon the number and sizes of water meters served by the Subsequent Customer. For each water meter served, the Subsequent Customer shall pay a charge equal to \$50.00 multiplied by a factor determined by the size of the water meter, with a maximum fee of \$260.00 per meter. The size of the meter, the appropriate factor, and the resulting development charge for that meter is as set forth in Exhibit D. A Subsequent Customer's total Development Charge shall equal the sum of all charges on all water meters served by the Subsequent Customer, plus interest. Interest shall accrue on this amount from December 1, 2003 until the date of the Subsequent Contract. The rate of interest shall equal the sum of the weighted average effective interest rate on all series of Bonds of the Authority any of which are outstanding on the date of the Subsequent Contract plus two percent (2%). [Revised by Second Amendment to Contract effective 11/14/07]~~

- 12.3.2 Excess Capacity Charge. Every Subsequent Contract shall require the Subsequent Customer to pay to the Authority an Excess Capacity Charge to recover Fixed Costs from the Subsequent Customer for excess capacity built into the Authority's Waterworks System and any other facilities paid for with Bonds. A Subsequent Customer's Excess Capacity Charge shall be determined based upon the number and sizes of water meters served by the Subsequent Customer. For each water meter served, the Subsequent Customer shall pay a charge equal to \$294.00 multiplied by a factor determined by the size of the water meter. The size of the meter, the appropriate factor, and the resulting excess capacity charge for that meter is as set forth in Exhibit D. A Subsequent Customer's total Excess Capacity Charge shall equal the sum of all charges on all water meters served by the Subsequent Customer, plus interest. Interest shall accrue on this

amount from December 1, 2003 until the date of the Subsequent Contract. The rate of interest shall equal the sum of the weighted average effective interest rate on all series of Bonds of the Authority any of which are outstanding on the date of the Subsequent Contract plus two percent (2%). *[Revised by Second Amendment to Contract effective 11/14/07]*

12.3.3 **Payment of Charges.** The Subsequent Customer shall pay the Authority for the costs under subsections 12.3.1 and 12.3.2 by either (a) making a direct cash payment to the Authority within thirty days after the Authority notifies the Subsequent Customer of the amount due; or (b) paying the Authority such costs over time by amortizing such costs and adding them to the wholesale water rate paid by the Subsequent Customer; or (c) some combination of (a) and (b) above. If costs are to be amortized and included in rates, the length of time over which costs may be amortized may not exceed the remaining term of the Authority's Bonds, or the term of the Subsequent Contract, whichever is shorter. Interest on the costs amortized shall accrue during the period of amortization at the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding plus two percent (2%).

12.4 **Water Rate and Charge Differential Required by Subsequent Contract.**

12.4.1 Every Subsequent Contract shall provide that the Operation Costs rate that the Subsequent Customer pays for water shall equal (a) the rate that the Subsequent Customer would pay in accordance with Section 6.2; plus (b) a capital risk factor equal to the rate that the Subsequent Customer would pay in accordance with Section 6.2 multiplied by the sum of the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding plus two percent (2%). The requirement to pay the additional capital risk factor may be waived by the Authority for a Subsequent Customer if that Subsequent Customer provides other consideration to the Authority.

12.4.2 Every Subsequent Contract shall provide that the monthly Fixed Costs payment that the Subsequent Customer pays for water shall equal (a) the monthly payment that the Subsequent Customer would pay in accordance with Section 6.3; plus (b) a capital risk factor equal to the rate that the Subsequent Customer would pay in accordance with Section 6.3 multiplied by the sum of the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding plus two percent (2%). The requirement to pay the additional capital risk factor may be waived by the Authority for a Subsequent Customer if that Subsequent Customer provides other consideration to the Authority.

12.5 **Other Terms in Subsequent Contract.** Except as provided in Sections 12.2 to 12.4, a Subsequent Contract shall require a Subsequent Customer to meet the same requirements and satisfy the same obligations as a Charter Customer under this Contract.

12.6 **Service To Customers Only.** The Authority shall not provide a supply of Potable Water to any person except to (a) a Charter Customer, (b) a Subsequent Customer, or (c) a Customer who contracts for short-term emergency water use.

12.7 **Limitation on Quantity of Water.** The Authority shall not enter into contracts with Subsequent Customers that would cause the Authority to be obligated to sell Potable Water in excess of amounts set forth in Sections 2.7 through 2.11.

12.8 ~~**Hobart Exception.** Notwithstanding the provisions of Sections 12.1 to 12.4, if the Village of Hobart becomes a Subsequent Customer, the Authority shall not require the Village of Hobart to pay the additional costs, rates and charges set forth in Sections 12.2 to 12.4, with the exception that the Village of Hobart shall be required to pay for the cost of an appropriate meter and meter station as specified by the Authority. In no case, however, shall the Subsequent Contract with the Village of Hobart provide rates, charges or terms lower or more favorable to the Village of Hobart than those provided in this Contract for Charter Customers. [Added by Second Amendment to Contract effective 11/14/07]~~

13 **Force Majeure.**

In case by reason of Force Majeure any Party hereto shall be rendered unable wholly or in part to carry out its obligation under this Contract, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of Governmental Authorities, or of any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Authority to deliver Potable Water hereunder, or of any ~~Authority~~ ~~Charter~~ Customer to receive Potable Water hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of the Party having the difficulty. No Force Majeure which renders any of the Parties unable to perform under this Contract shall relieve an ~~Authority~~ ~~Charter~~ Customer of its obligation to make payments to the Authority as required under Article 6.

14 **Defaults.**

14.1 **Authority Defaults.** Failure by the Authority to continue to deliver Potable Water to any [AuthorityCharter](#) Customer after Potable Water is first delivered under Section 2.7 of this Contract or failure of the Authority to perform any other obligation under this Contract and the continuation of that failure to perform for thirty (30) days after written notice from such [AuthorityCharter](#) Customer to the Authority of such failure shall be a default of the Authority under this Contract, unless any such failure is excused pursuant to Article 13 of this Contract. If the Authority defaults under this Contract, the [AuthorityCharter](#) Customer or [AuthorityCharter](#) Customers affected may follow the dispute resolution procedure set forth in Article 26, which allows the [AuthorityCharter](#) Customer to bring an action against the Authority, which may be an action for money damages, or for mandamus and specific performance of the Authority's obligations, or for any other available remedy to the extent allowed by law. Election of any remedy shall not be a waiver of any other remedy. This Section is intended by the Parties to this Contract to waive their respective statutory right to any further notice under Section 893.80, Wisconsin Statutes, to the extent such section is applicable.

14.2 **Customer Defaults.** Failure by the [AuthorityCharter](#) Customer to pay for Potable Water as required by this Contract shall be an immediate default under this Contract. Failure by the [AuthorityCharter](#) Customer to perform any other obligation under this Contract and the continuation of that failure to perform for thirty (30) days after written notice from Authority to such [AuthorityCharter](#) Customer of such failure shall also be a default of the [AuthorityCharter](#) Customer under this Contract, unless any such failure is excused pursuant to Article 13 of this Contract. If the [AuthorityCharter](#) Customer defaults under this Contract, the Authority has the option of (a) proceeding in accordance with Section 6.10 if the [AuthorityCharter](#) Customer has failed to pay for Potable Water; (b) immediately bringing an action against the [AuthorityCharter](#) Customer, which may be an action for money damages, or for mandamus and specific performance of the [AuthorityCharter](#) Customer's obligations, or for any other available remedy; or (c) following the dispute resolution procedure set forth in Article 26. Election of any remedy shall not be a waiver of any other remedy. If the Authority elects to immediately bring an action against the [AuthorityCharter](#) Customer, the Authority, in the event it prevails in the action, shall have the right to recover its reasonable litigation expenses, including reasonable attorneys' fees, from the [AuthorityCharter](#) Customer. This Section is intended by the Parties to this Contract to waive their respective statutory right to any further notice under Section 893.80, Wisconsin Statutes, to the extent such section is applicable.

15 **[AuthorityCharter](#) Customer's Obligation Unconditional.**

The [AuthorityCharter](#) Customers shall have no right to terminate, cancel or rescind this Contract, no right to terminate its purchase of Potable Water under this Contract, no right to withhold from the Authority or the Trustee who is an assignee of the Authority pursuant to Article 17 of this Contract payments due or to become due under this Contract, no right to recover from the Authority or such Trustee amounts previously paid under this Contract unless paid in error or contrary to the provisions of this Contract or law, no right of reduction or set-off against the amounts due or to become due under this

Contract to the Authority or such Trustee, and no lien on any amounts in any fund established by the Authority or such Trustee for any reason or on account of the existence or occurrence of any event, condition or contingency, whether foreseen or unforeseen or foreseeable or unforeseeable by the [Authority Charter](#) Customers or the Authority or any other person -- including by way of illustration and not limitation, by reason of the fact that the Authority's Waterworks System in whole or in part is not completed, operable or operating; the output of the Authority's Waterworks System in whole or in part is suspended, interrupted, interfered with, reduced or curtailed; any Authority Customer does not perform in whole or in part under this Contract or any other agreement or instrument -- it being the intent hereof that the [Authority Charter](#) Customers shall be absolutely and unconditionally obligated to make all payments hereunder, subject to Section 6.12 hereof. The Authority will issue its Bonds in specific reliance on the limitations set forth in this Article with respect to the rights of the [Authority Charter](#) Customers.

16 **Modification of this Contract.**

Except for revisions and adjustments otherwise expressly provided for by the terms of this Contract, this Contract may not be changed or modified unless the consent of the Authority and of three-fourths of the Charter Customers shall have been obtained. Such modification may be requested by any Party, in which event a joint meeting of representatives of all governing bodies shall be called by the Authority and held not more than sixty (60) days after such request is made and at least thirty (30) days after the giving of notice of such meeting. At the joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification made under this Section 16 may materially impair or adversely affect the ability or obligation of any [Authority Charter](#) Customer under the Contract to make payments to the Authority at the times, in the amounts, and with the priority required in order for the Authority timely to meet its obligations under this Contract, any Third Party Water Supply Contract, other water purchase or sale contracts of the Authority and each Bond Resolution, including without limitation the making of all deposits in various funds and accounts created under each Bond Resolution; or materially impair or adversely affect the ability of the holders of the Bonds or the Trustee, under the Contract or the Bond Resolutions, to enforce the terms of the Contract. No such change or modification shall be effective which would cause a violation of any provisions of any Bond Resolution or any ordinance authorizing bonds of any [Authority Charter](#) Customer. *[Amended by the First Amendment to Central Brown County Water Authority Water Purchase and Sale Contract effective December 20, 2004; and Sixth Amendment to Contract effective 5/28/14, and the Seventh Amendment to Contract effective May 22, 2017.]*

17 **Non-Assignability.**

Except to the extent hereinafter provided, no Party shall assign or transfer this Contract or any rights or interests herein without the written consent of three-fourths of the Charter Customers and the Authority. The right to receive all payments which are required to be made by the [Authority Charter](#) Customers to the Authority in accordance with the

provisions of this Contract may be assigned by the Authority to any Trustee as provided in the Bond Resolution to secure the payment of the principal of, premium, if any, and interest on the Bonds as those amounts come due, subject to the application of those payments as may be provided in the Bond Resolution. The [Authority Charter](#) Customers will, upon notice of assignment to any such Trustee, make all payments directly to such Trustee. The rights of the Authority to enforce the provisions of this Contract may be assigned to such Trustee and, in such event, the Trustee will have the right to enforce this Contract at law or in equity with or without the further consent or participation of the Authority. The Authority may also retain the right to enforce this Contract.

18 **Cooperation In Construction of Authority Water Supply.**

The [Authority Charter](#) Customers shall cooperate with the Authority in the construction and acquisition of the Authority's Waterworks System and in the construction of any capital facilities required pursuant to any Third Party Water Supply Contract. Each [Authority Charter](#) Customer shall grant without charge to the Authority any reasonably required construction easements and any easements necessary for portions of the Authority's Waterworks System to be located on such [Authority Charter](#) Customer's property, provided the Authority agrees to restore the easement property in a reasonable manner after construction. Each [Authority Charter](#) Customer shall grant the Authority access to its property to the extent reasonably necessary to construct and install the Points of Delivery. *[Revised by Second Amendment to Contract effective 11/14/07]*

19 **Mutual Cooperation in Issuance of Obligations.**

Each [Authority Charter](#) Customer shall cooperate with the Authority in the issuance of the Bonds, and the Authority shall cooperate with each [Authority Charter](#) Customer in the issuance of the [Authority Charter](#) Customer's general obligation bonds or revenue bonds of its Unit System. In such connection, each [Authority Charter](#) Customer and the Authority will comply with all reasonable requests of each other and will, upon request, do as follows:

- (i) Make available general and financial information about itself, including any information requested by the Authority to meet its continuing disclosure requirements under SEC Section 15(c)(2)(12);
- (ii) Consent to publication and distribution of its financial information;
- (iii) Certify that general and financial information about it is accurate, does not contain an untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements in that information, in light of the circumstances under which they were made, not misleading;
- (iv) Make available certified copies of official proceedings;

- (v) Provide reasonable certifications to be used in a transcript of closing documents; and
- (vi) Provide and pay for reasonably requested opinions of counsel as to the validity of its actions taken with respect to and the binding effect of this Contract, title to its Unit System or the Authority's Waterworks System, as applicable, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions.

In addition, each [AuthorityCharter](#) Customer shall provide the Authority with copies of all future bond resolutions.

20 **Regulatory Bodies.**

The Parties through this Contract seek to exercise and maintain all rights granted to them under and through the Constitution and laws of the State of Wisconsin. This Contract shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by any Governmental Authority having lawful jurisdiction, or any authorized representative or agency or any of them; provided however, that this clause shall not be construed as waiving the right of either Party to challenge the validity of such rule, regulation, or law on any basis, including the impairment of this Contract.

21 **Authority Cooperative Arrangements With Other Water Suppliers.**

Notwithstanding any of the provisions of this Contract, the Authority is not prohibited by this Contract from entering into cooperative arrangements with other suppliers of water to provide water to each other to meet their water needs in times of emergencies.

22 **Notices and Evidence of Actions.**

All notices or communications provided for herein shall be in writing and shall be delivered to the [AuthorityCharter](#) Customers affected or the Authority either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

Any action hereunder to be taken by the Authority or any [AuthorityCharter](#) Customer may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of such [AuthorityCharter](#) Customer or the Secretary of the Authority.

23 **Severability.**

Should any part, term, or provision of this Contract be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

24 **Effective Date and Term.**

24.1 *[Deleted by Second Amendment to Contract effective 11/14/07]*

24.2 **Effective Date.** This Contract is effective as of November 24, 2003. *[Revised by Second Amendment to Contract effective 11/14/07]*

24.3 *[Deleted by Second Amendment to Contract effective 11/14/07]*

24.4 *[Deleted by Second Amendment to Contract effective 11/14/07]*

24.5 **Termination Date.** If this Contract is effective as provided in Section 24.2, this Contract shall continue in force and effect until the later of January 1, 2040 or the date on which all Bonds of the Authority are repaid. The [Authority Charter](#) Customers and the Authority agree to begin negotiation of a succeeding Water Purchase and Sale Contract not later than five (5) years prior to the end of the term of this Contract.

25 **Governing Law.**

This Contract and the rights of the Parties hereunder shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. All actions involving breach of this Contract shall be venued in Brown County, Wisconsin.

26 **Dispute Resolution.**

26.1 **Dispute Resolution.** A dispute or controversy between [Authority Charter](#) Customers and the Authority regarding any matter relating to this Contract shall be resolved in accordance with this Article except to the extent that Section 14.2 provides otherwise.

26.2 **Notice of Dispute and Initial Meeting.** If a dispute or controversy exists between [Authority Charter](#) Customers and the Authority, regarding any matter relating to this Contract, any Party involved in the dispute may send a written notice to the other Party involved in the dispute asking for a meeting to discuss resolution of the dispute. The written notice shall identify the nature of the dispute, and shall be delivered to the other Parties in accordance with Article 22 of this Contract. Within 30 days of the date written notice is delivered, a meeting between the Parties involved in the dispute or controversy shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy. This Section is intended by the Parties to this Contract to waive their respective statutory right to any further notice under Section 893.80, Wisconsin Statutes, to the extent such section is applicable.

26.3 **Mediation.** If the Parties have not succeeded in resolving the dispute or controversy at the initial meeting, or if the Parties have not held an initial meeting within thirty (30) days after the date of delivery of the written notice as required by Article 22 of this Contract, the Parties shall proceed to mediation in accordance with this Section. The Parties shall jointly appoint a mutually acceptable neutral person not affiliated with either

of them (the "Mediator") to conduct the mediation. If the Parties are unable to agree upon the selection of a Mediator within twenty (20) days after the initial meeting, or if no initial meeting was held, within fifty (50) days after the delivery of the written notice required by Article 22, the Brown County Circuit Court shall select the Mediator. The fees of the Mediator shall be shared equally by the Parties involved in the dispute or controversy.

In consultation with the Parties, the Mediator will select or devise the mediation procedure to be held in Brown County, Wisconsin, by which the Parties will attempt to resolve the dispute or controversy. In consultation with the Parties, the Mediator will also select a date and time for the mediation and a date by which the mediation will be completed.

The Parties involved in the dispute shall participate in good faith in the mediation to its conclusion as designated by the Mediator. If the Parties are not successful in resolving the dispute or controversy through the mediation, then the Parties may agree in writing to resolve the dispute by arbitration under Section 26.4 of this Contract, or if no agreement to arbitrate has been reached by the Parties, the dispute may be resolved by litigation.

26.4 Binding Arbitration. In the event the procedures of Sections 26.2 and 26.3 do not resolve a dispute, the Parties involved in the dispute may agree in writing to have the dispute resolved by binding arbitration. If the Parties reach such an agreement, the dispute shall be resolved under this Section, and arbitration shall be the exclusive remedy of the Parties. The procedures and requirements set forth in subsections 26.4.1 to 26.4.6 shall apply to any arbitration hereunder.

26.4.1 Each Party shall prepare a statement of the facts or circumstances causing the controversy and the resolution, determination or relief sought by the Party.

26.4.2 The arbitration shall be conducted before a panel of three arbitrators (or if the Parties agree, by a single arbitrator).

26.4.2.1 If two Parties are involved in a dispute, each Party shall choose and pay for an arbitrator, and the two arbitrators selected shall choose a third arbitrator whose fees shall be evenly divided between the two disputing Parties.

26.4.2.2 If there are more than two Parties to the dispute, each Party shall submit the name of an arbitrator, and two arbitrators shall be chosen from the submitted names by lot. The two arbitrators selected shall choose the third arbitrator. The cost of all three arbitrators shall be divided evenly among all the Parties involved in the arbitration.

26.4.2.3 If the two arbitrators selected are unable to agree upon the selection of a third arbitrator, the two arbitrators shall be discharged, and the Brown County Circuit Court shall select three arbitrators to conduct the arbitration.

- 26.4.2.4 All arbitrators selected shall be competent by virtue of education and experience in the particular matter subject to arbitration.
- 26.4.2.5 All arbitrators are to be selected within twenty (20) days after the date of the written agreement to proceed to arbitration.
- 26.4.3 A conference shall be held with the arbitrators to attempt to stipulate as many facts as possible and to clarify and narrow the issues to be submitted to arbitration.
- 26.4.4 The arbitration shall be conducted in accordance with Chapter 788, Wis. Stats. The Parties may use discovery to the same extent allowed by the Wisconsin Rules of Civil Procedure and Evidence in effect at the time.
- 26.4.5 The arbitrators shall have no authority, power or jurisdiction to decide the validity of the Contract, or to alter, amend, change, modify, add to or subtract from any of the provisions of this Contract or to decide any issues other than the issues or controversies set forth in the notice or notices instituting the arbitration.
- 26.4.6 The decision or award of the arbitrators shall be final and binding upon the Parties and the Parties shall do such acts as the arbitrators' decision or award may require of them. In accordance with Chapter 788, Wis. Stats., judgment upon any award rendered by the arbitrators may be entered in Brown County Circuit Court and execution issued thereon. This provision shall survive the termination of this Contract.
- 26.5 **Recovery of Litigation Expenses.** If the dispute proceeds to litigation rather than arbitration, the prevailing Party shall have the right to recover from the other Party its reasonable litigation expenses, including reasonable attorneys' fees.
- 27 **Successors.** This Contract shall benefit and be binding upon the successors of the Authority and the ~~Authority~~ [Authority Charter](#) Customers.
- 28 **Execution in Counterparts.**

This Contract may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the Parties hereto as long as each of the Parties hereto has signed one or more of such counterparts.

29 **Town Sanitary Districts and Town Signatories.**

29.1 **Town Signatory Required.** A town in which a town sanitary district is located which is an ~~Authority Charter~~ Customer must agree to fulfill the obligations and responsibilities of such ~~Authority Charter~~ Customer under this Contract before the residents and lands within that portion of the town within the town sanitary district may receive Potable Water. A town which signs this Contract for the purpose of agreeing to fulfill the town sanitary district's obligations and responsibilities shall be a Town Signatory. If a town does not sign this Contract as a Town Signatory, the residents and lands within that town shall not be entitled to receive Potable Water from the Authority.

29.2 **Town Sanitary District Located in Multiple Towns.**

29.2.1 If an ~~Authority Charter~~ Customer is a town sanitary district located in two or more towns, each town in which the town sanitary district is located and which desires to have water service provided to the residents and lands within the portion of the town within the town sanitary district must sign this Contract as a Town Signatory, and thereby agree to fulfill the Town Signatory's proportionate share of the obligations of the ~~Authority Charter~~ Customer.

29.2.2 If territory is added to an ~~Authority Charter~~ Customer which is a town sanitary district in a town which has not signed this Contract as a Town Signatory, the residents and lands within that town shall not be entitled to receive Potable Water from the Authority unless and until such town signs this Contract as a Town Signatory.

29.2.3 If two or more Town Signatories have agreed to fulfill the obligations of one ~~Authority Charter~~ Customer to the Authority, each Town Signatory's proportionate share of the obligation shall be determined by comparing the equalized full value of the taxable property located in the Town Signatory which is also located in the ~~Authority Charter~~ Customer, to the equalized full value of the taxable property located in all areas of the ~~Authority Charter~~ Customer.

29.3 **Terms of Town Obligation.** Each Town Signatory executes this Contract in consideration of the benefit provided to the Town Signatory by the provision of water service to certain areas and inhabitants of the Town Signatory by the ~~Authority Charter~~ Customer which is a town sanitary district located in whole or in part within the Town Signatory's corporate limits. The Town Signatory agrees to fulfill its proportionate share of the obligations and responsibilities under this Contract of the ~~Authority Charter~~ Customer which is a town sanitary district relating to the area of the ~~Authority Charter~~ Customer that is within the Town Signatory's corporate limits. To fulfill its obligation under this Contract, the Town Signatory covenants that if the ~~Authority Charter~~ Customer which is a town sanitary district located within the Town Signatory's corporate limits fails to fulfill its obligations and responsibilities under this Contract, the Town Signatory shall fulfill its proportionate share of such obligations and responsibilities by making any necessary payments to the Authority out of the current revenues of the Town Signatory collected or in the process of collection (i.e. out of the tax levy of the Town Signatory

made by it to raise money to meet its necessary current expenses). Such payment out of the tax levy of the Town Signatory shall be subject to (a) approval of the PSC, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any. Neither this Contract nor any such payment shall be construed as constituting an obligation of the Town Signatory to make any appropriation over and above the payments owed to the Authority by the ~~Authority Charter~~ Customer which is the town sanitary district located within the Town Signatory's corporate limits. Furthermore, this Contract shall not constitute an indebtedness of any ~~Authority Charter~~ Customer within the meaning of any statutory or constitutional debt limitation.

29.4 **Town Signatory's Covenants.**

29.4.1 **Expansion of Town Sanitary District.** Each Town Signatory covenants that it will not: (1) allow the ~~Authority Charter~~ Customer which is a town sanitary district located in whole or in part within the Town Signatory's corporate limits to expand other than as set forth in Section 9.20; or (2) dissolve the ~~Authority Charter~~ Customer which is a town sanitary district located within the Town Signatory's corporate limits unless a Town Signatory assumes all the obligations and responsibilities of the ~~Authority Charter~~ Customer under this Contract.

29.4.2 **Adoption of Ordinances.** If an ~~Authority Charter~~ Customer which is a town sanitary district is unable to adopt and enforce the ordinances required pursuant to Sections 9.3, 9.4, and 9.5 of this Contract, each Town Signatory covenants that it will adopt and enforce such ordinances.

29.5 **Cooperation by Town Signatory.** Each Town Signatory agrees to cooperate with the Authority in the construction and acquisition of the Authority's Waterworks System and in the construction of any capital facilities required pursuant to any Third Party Water Supply Contract. Each Town Signatory shall grant without charge to the Authority any reasonably required construction easements and any easements necessary for portions of the Authority's Waterworks System to be located on the Town Signatory's property, provided the Authority agrees to restore the easement property in a reasonable manner after construction. Each Town Signatory shall grant the Authority access to its property to the extent reasonably necessary to construct and install the Points of Delivery.
[Revised by Second Amendment to Contract effective 11/14/07]

29.6 **Town Signatory's Opinion as to Validity.** Each Town Signatory shall furnish the Authority with an opinion which meets the requirements of subsection 9.18.1 except for this purpose the term "~~Authority Charter~~ Customer" in subsection 9.18.1 shall be replaced with the term "Town Signatory."

30 **Interpretation.**

30.1 **Drafted Jointly by the Parties.** This Contract shall be interpreted as though jointly drafted by the Parties.

- 30.2 **Headings, Title and Captions.** The headings, titles or captions contained in this Contract have been inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Contract or the intent of any provision hereof.
- 30.3 **Exhibits.** Exhibits A through I attached hereto are, by this reference, incorporated herein. In case of any conflict between an Exhibit to the Contract and the text of this Contract, the text of this Contract shall control.
- 30.4 **Interpretation of Terms.** Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Contract shall have the meanings specified in Article 1; (b) the singular shall include the plural and the masculine shall include the feminine and neuter; and (c) references to “Articles,” “Sections” or “Exhibits” shall be to the numbered articles, sections and exhibits of this Contract.
- 30.5 **Days and Dates.** Any reference herein to “day” or “days” shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal holiday, then the notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal holiday.
- 30.6 **References to Other Agreements.** All references herein to any contract or other agreement shall be to such contract or other agreement as amended, supplemented, or modified to the date of reference.
- 30.7 **References to Laws.** Unless otherwise explicitly provided in this Contract, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time hereafter.

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized officers and representatives set their hands and affixed their seals on the date set forth below their name.

EXHIBIT A

SAMPLE PAGE W-10 FROM ANNUAL REPORT TO BE FILED WITH THE PSC

EXHIBIT B

**MINIMUM WATER USAGE AMOUNT FOR
ESTIMATED ANNUAL WATER REQUIREMENT**

<u>Charter CustomerMember</u> <u>in Million Gallons Per Year</u>	<u>Annual Water Requirement</u>
Village of Allouez	544.109
Village of Bellevue	372.184
City of De Pere	908.021
Village of Howard	576.056
Town of Lawrence	15.314
Ledgeview Sanitary District No. 2	68.749
<u>Authority Total</u>	2,484.433

[Revised by Second Amendment to Contract effective 11/14/07]

EXHIBIT B-1

**MINIMUM WATER USAGE AMOUNT FOR
ESTIMATED ANNUAL WATER REQUIREMENT**

<u>Charter Customer in Million Gallons Per Year</u>	<u>Annual Water Requirement</u>
Village of Allouez	355.882
Village of Bellevue	360.553
City of De Pere	717.800
Village of Howard	585.424
Town of Lawrence	53.118
Ledgeview Sanitary District No. 2	139.691
<u>Authority Total</u>	2,212.468

[Created by Sixth Amendment to Contract effective 5/28/14]

EXHIBIT C

MAP SHOWING POINTS OF DELIVERY AND POINTS OF CONNECTION

EXHIBIT D

EXCESS CAPACITY CHARGE AND DEVELOPMENT CHARGE

Meter Size (Inches)	Factor	Excess Capacity Charge	Development Charge
Under 1"	1	\$294.00	\$50.00
1"	1.6	\$470.00	\$80.00
1.5"	3	\$882.00	\$150.00
2"	5.2	\$1,528.00	\$260.00
3"	9.6	\$2,822.00	\$260.00
4"	16.4	\$4,822.00	\$260.00
6"	30	\$8,820.00	\$260.00
8"	52	\$15,288.00	\$260.00
10"	78	\$22,982.00	\$260.00
12"	132	\$38,808.00	\$260.00

[Revised by Second Amendment to Contract effective 11/14/07]

EXHIBIT E

**MAP OF CHARTER CUSTOMERS' GOVERNMENTAL BOUNDARIES
EXISTING ON THE DATE OF THIS AGREEMENT**

EXHIBIT F

DRAFT

WATER SUPPLY CAPACITY CHARGE ORDINANCE
_____, WISCONSIN

WHEREAS, Named Government is a member of the Central Brown County Water Authority (“Water Authority”); and

WHEREAS, the Water Authority is a joint local water authority formed pursuant to §66.0823, Wis. Stats., and an Agreement Establishing the Central Brown County Water Authority effective as of January 19, 1999; and

WHEREAS, the City of De Pere, the Villages of Allouez, Bellevue, and Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2 are all members of the Water Authority (jointly referred to hereafter as “Water Authority Members”, and individually referred to as “Water Authority Member”); and

WHEREAS, the Water Authority has built or is building water supply facilities for the purpose of providing water supply to Water Authority Members, including the Named Government; and

WHEREAS, the Water Authority has sized or will size such water supply facilities beyond what is currently needed in order to account for the projected increased water needs of Water Authority Members; and

WHEREAS, the Water Authority has determined to charge its Water Authority Members for this additional capacity built into the Water Authority’s water supply facilities by imposing a charge on each Water Authority Member for new or larger connections to the Water Authority Member’s water system; and

WHEREAS, this water supply capacity charge is set out in the Water Purchase and Sale Contract between the Central Brown County Water Authority and Water Authority Members dated _____; and

WHEREAS, Named Government believes it is fair and equitable that the new and expanding users that connect to the Named Government’s water system and cause the Named Government to incur these water supply capacity charges imposed by the Water Authority, pay these water supply capacity charges;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Named Government of _____, Wisconsin that:

1. SHORT TITLE. This Ordinance shall be known and may be cited as the NAMED GOVERNMENT’S WATER SUPPLY CAPACITY CHARGE ORDINANCE.
2. INTRODUCTION AND PURPOSE. The purpose of this Ordinance is to establish a mechanism to recover the costs imposed on the Named Government by the Water Authority to fund the additional capacity built into the Water Authority’s water supply facilities to handle future growth. To fund this additional capacity, the Water Authority charges the Named Government for new or increased connections to the Named Government’s water system. The purpose of this Ordinance is to pass those charges on to the propertyowner seeking the new or increased connection since that propertyowner is directly responsible for the costs imposed on the Named Government by the Water Authority.
3. PERMIT. Each person, corporation, partnership, public agency, or other entity (hereinafter referred to as “a water user”) shall obtain a permit from the Named Government before installing a new water meter. Named Government shall determine the size of the water meter necessary or appropriate to provide service to the water user.
4. WATER SUPPLY CAPACITY CHARGE. Except as provided in Section 6 of this Ordinance, each water user who obtains a permit under Section 3 shall pay a Water Supply Capacity Charge to Named Government at the time of the application for the permit. Such Water Supply Capacity Charge shall be calculated as set forth in Sections 5 and 7 of this Ordinance, and shall equal the charge imposed by the Water Authority on the Named Government.
5. SCHEDULE OF WATER SUPPLY CAPACITY CHARGES. Except as provided in Sections 6 and 7, the amount of the Water Supply Capacity Charge shall be based upon the size of the meter to be installed. The Water Supply Capacity Charge shall equal \$294.00 multiplied by a factor determined by the size of meter to be installed. The size of the meter, the appropriate factor, and the resulting Water Supply Capacity Charge is set forth on the following table:

<u>Meter Size (Inches)</u>	<u>Factor</u>	Water Supply Capacity Charge
Under 1"	1	\$294.00
1"	1.6	\$470.00
1.5"	3	\$882.00
2"	5.2	\$1,528.00
3"	9.6	\$2,822.00
4"	16.4	\$4,822.00
6"	30	\$8,820.00
8"	52	\$15,288.00
10"	78	\$22,932.00
12"	132	\$38,808.00

6. EXEMPTIONS FROM WATER SUPPLY CAPACITY CHARGES. A water user who obtains a permit pursuant to Section 3 may apply for an exemption from paying Water Supply Capacity Charges if the permit relates to (a) alterations or expansion of an existing building where no additional or larger water meter connections are requested; (b) the replacement of a building or structure with a new building or structure of the same size and use where no additional or larger water connections are requested and where the use is not changed; or (c) a decrease in meter size. Any claim for an exemption must be made no later than the time of application for a permit for a new water meter or a change in water meter size. Any claim not so made shall be deemed waived.
7. CREDIT AGAINST WATER SUPPLY CAPACITY CHARGES FOR INCREASING EXISTING METER SIZE. A current water user who obtains a permit under Section 3 to increase its meter size shall be eligible for a credit toward the Water Supply Capacity Charge imposed under Section 5. Such credit shall equal an amount equal to the amount of a Water Supply Capacity Charge calculated on the size of the meter to be replaced. For example, if water user applies for a permit to change from a 5/8" meter to a 1" meter, the Water Supply Capacity Charge to the water user would equal the charge for a 1" meter less the charge for a 5/8" meter. In no case shall a credit exceed the amount of the Water Supply Capacity Charge.

8. RESPONSIBILITY FOR PAYMENT OF WATER SUPPLY CAPACITY CHARGES. All required Water Supply Capacity Charges, unless expressly excepted in Section 6 of this Ordinance, shall be paid in full prior to issuance of a permit under Section 3. Payment of the Water Supply Capacity Charge is the responsibility of the propertyowner of record at the time a permit under Section 3 of this Ordinance is requested.
9. COLLECTION OF WATER SUPPLY CAPACITY CHARGES. Water Supply Capacity Charges paid to and collected by the Named Government shall be placed in a segregated, interest-bearing account called the Water Supply Capacity Charge Account. Such funds shall be accounted for separately from other Named Government general and utility funds.
10. PAYMENT OF WATER SUPPLY CAPACITY CHARGES TO WATER AUTHORITY. All funds, excluding interest, accumulated in the Water Supply Capacity Charge Account established by the Named Government shall be turned over to the Water Authority semi-annually on dates established by the Water Authority. The Water Authority shall use the funds to reduce fixed costs of the Water Authority. Any interest income earned by the monies in the Water Supply Capacity Charge Account need not be turned over to the Water Authority, but may be used by the Named Government to help pay administrative costs of implementing this Ordinance.
11. WAIVER. Named Government may waive the collection of a Water Supply Capacity Charge from any propertyowner if the Named Government itself agrees to be responsible for the payment of such charge.
12. SEVERABILITY. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
13. EFFECTIVE DATE. This Ordinance shall take effect on _____, 2003.

Adopted thisdate.....

Regular city ordinance information and signatures.

[Revised by Second Amendment to Contract effective 11/14/07]

EXHIBIT G

DRAFT

~~WATER SUPPLY DEVELOPMENT CHARGE ORDINANCE~~

~~WHEREAS, _____ (“Named Government”) is a member of the Central Brown County Water Authority (“Water Authority”); and~~

~~WHEREAS, the Water Authority is a joint local water authority formed pursuant to §66.0823, Wis. Stats., and an Agreement Establishing the Central Brown County Water Authority effective as of January 19, 1999; and~~

~~WHEREAS, the City of De Pere, the Villages of Allouez, Bellevue, and Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2 are all members of the Water Authority (jointly referred to hereafter as “Water Authority Members”, and individually referred to as “Water Authority Member”); and~~

~~WHEREAS, the Water Authority has built or is building water supply facilities for the purpose of providing water supply to Water Authority Members, including the Named Government; and~~

~~WHEREAS, each Water Authority Member has invested substantial time, effort, money, and other resources over many years to enable the Water Authority to acquire a water supply for Water Authority Members; and~~

~~WHEREAS, these costs have been borne by the property taxpayers who lived within the local governmental boundaries of the Water Authority Members as those boundaries existed on December 1, 2003; and~~

~~WHEREAS, propertyowners whose property is later annexed or added to the boundaries of a Water Authority Member did not bear the formation and development costs for the Water Authority; and~~

~~WHEREAS, the Water Authority has determined that these propertyowners whose property is later annexed or added to the boundaries of a Water Authority Member should contribute to the formation and development costs for the Water Authority; and~~

~~WHEREAS, the Water Authority has determined to charge its Water Authority Members for these development costs by imposing a development charge on each Water Authority Member for new connections to the Water Authority Member’s water system; and~~

~~WHEREAS, this water supply development charge is set out in the Water Purchase and Sale Contract between the Central Brown County Water Authority and Water Authority Members dated _____; and~~

~~WHEREAS, Named Government believes it is fair and equitable that the new users that cause the Named Government to incur these water supply development charges imposed by the Water Authority, pay these water supply development charges;~~

~~NOW THEREFORE, BE IT ORDAINED by the Governing Board of the Named Government of _____, Wisconsin that:~~

- ~~1. SHORT TITLE. This Ordinance shall be known and may be cited as the THE NAMED GOVERNMENT'S WATER SUPPLY DEVELOPMENT CHARGE ORDINANCE.~~
- ~~2. INTRODUCTION AND PURPOSE. The purpose of this Ordinance is to establish a mechanism to recover the development costs imposed on the Named Government by the Water Authority. The Water Authority charges the Named Government for new connections to the Named Government's water system in areas outside the Named Government's boundaries as they existed on December 1, 2003. The purpose of this Ordinance is to pass those charges on to the propertyowner seeking the new connection since that propertyowner is directly responsible for the costs imposed on the Named Government by the Water Authority.~~
- ~~3. PERMIT. Each person, corporation, partnership, public agency, or other entity (hereinafter referred to as "a water user") shall obtain a permit from the Named Government before installing a new water meter. Named Government shall determine the size of the water meter necessary or appropriate to provide service to the water user.~~
- ~~4. WATER SUPPLY DEVELOPMENT CHARGE. If the new water meter is for a new connection to the Named Government's water system in an area that was annexed or added to the Named Government's boundaries since December 1, 2003, the water user who obtains a permit under Section 3 shall pay a Water Supply Development Charge to Named Government at the time of the application for the permit. Such Water Supply Development Charge shall be calculated as set forth in Section 5 of this Ordinance, and shall equal the charge imposed by the Water Authority on the Named Government.~~
- ~~5. SCHEDULE OF WATER SUPPLY DEVELOPMENT CHARGES. The amount of the Water Supply Development Charge shall be based upon the size of the meter to be installed. The Water Supply Development Charge shall equal \$50.00 multiplied by a factor determined by the size of meter to be installed, with a maximum charge of \$260.00 per meter. The size of the meter, the appropriate factor, and the resulting Water Supply Development Charge is set forth on the following table:~~

<u>Water Supply Meter Size (Inches)</u>	<u>Factor</u>	<u>Development Charge</u>
Under 1"	1.0	\$50.00
1"	1.6	\$80.00
1.5"	3.0	\$150.00
2" or greater	5.2	\$260.00

6. ~~RESPONSIBILITY FOR PAYMENT OF WATER SUPPLY DEVELOPMENT CHARGES.~~ All required Water Supply Development Charges shall be paid in full prior to issuance of a permit under Section 3. Payment of the Water Supply Development Charge is the responsibility of the propertyowner of record at the time a permit under Section 3 of this Ordinance is requested.
7. ~~COLLECTION OF WATER SUPPLY DEVELOPMENT CHARGES.~~ Water Supply Development Charges paid to and collected by the Named Government shall be placed in a segregated, interest bearing account called the Water Supply Development Charge Account. Such funds shall be accounted for separately from other Named Government general and utility funds.
8. ~~PAYMENT OF WATER SUPPLY DEVELOPMENT CHARGES TO WATER AUTHORITY.~~ All funds, excluding interest, accumulated in the Water Supply Development Charge Account established by the Named Government shall be turned over to the Water Authority semi-annually on dates established by the Water Authority. The Water Authority shall use the funds to reduce the fixed costs of the Water Authority. Any interest income earned by the monies in the Water Supply Development Charge Account need not be turned over to the Water Authority, but may be used by the Named Government to help pay administrative costs of implementing this Ordinance.
9. ~~WAIVER.~~ Named Government may waive the collection of a Water Supply Development Charge from any propertyowner if the Named Government itself agrees to be responsible for the payment of such charge.
10. ~~SEVERABILITY.~~ If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
11. ~~EFFECTIVE DATE.~~ This Ordinance shall take effect on _____, 2003.

Adopted this _____date_____.

*Regular city ordinance information and signatures.
[Revised by Second Amendment to Contract effective 11/14/07]*

EXHIBIT H

DRAFT

WATER CONSERVATION ORDINANCE

BE IT ORDAINED by the Governing Body of the Named Government that:

1. **INTRODUCTION AND PURPOSE.** This ordinance is enacted in cooperation with the Central Brown County Water Authority (“Water Authority”) and its member communities -- Allouez, Bellevue, DePere, Howard, Lawrence, and Ledgeview -- to support the implementation of a water conservation and management plan. The goal of this conservation and management plan is to preserve the water resources of the region and to extend the value and life of the infrastructure assets used in supplying water, without jeopardizing public health, safety and welfare.
2. **PUBLIC EDUCATION.** Named Government shall at least once a year provide to its customers information regarding water conservation methods. Information may be provided by community newsletter, local newspaper, radio, television, new homeowners and business information packets, or information provided to students and teachers through school newsletters. The information provided shall include: (a) information on water consumption and use by customers; (b) tips on water conservation; (c) recommended lawn length and mowing practices; (d) recommended lawn care water amounts; (e) information on use of automatic sprinkler systems; (f) when to water for best results; (g) information on flow control on hoses; (h) information on the impact of water usage on the environment and public water systems; (i) information on in-house water fixture reductions (i.e. showerhead, reduced toilet flush, laundry etc.); and (j) information on the impact to the public if conservation methods are not used. This information may be provided in conjunction with the Water Authority and other Water Authority members.
3. **DETERMINATION OF WATER SHORTAGE.** A water shortage shall be deemed to exist when the Water Authority advises Named Government and the other member communities that the Water Authority may not be able to supply sufficient potable water to meet the current or expected level of customer demand. The Water Authority shall declare a Stage I Water Shortage if (*conditions to be determined by the Authority*). The Water Authority shall declare a Stage II Water Shortage if (*conditions to be determined by the Authority*). The Water Authority may also declare a Stage I or Stage II Water Shortage if any other circumstances, including service losses caused by equipment failure, human error, weather, or other natural disaster, constrains the Water Authority’s water supply to less than the current level of customer demand.

4. DECLARATION OF WATER SHORTAGE. In the event of a water shortage as determined in Section 3, the Water Authority shall issue a public declaration of the water shortage. Upon such declaration, Named Government shall place in effect the restrictive provisions hereinafter authorized. Named Government shall inform the public about the water use restrictions and the reasons for those restrictions. Information shall be provided in the same manner as set forth in Section 2.

5. MANDATORY CONSERVATION DURING STAGE I WATER SHORTAGE. In the event the Water Authority declares a Stage I Water Shortage, it shall be unlawful for any person, firm, or corporation to use or permit the use of potable water within Named Government for any of the purposes hereinafter set forth until the Water Authority, by public declaration, has declared the Stage I Water Shortage to be lifted.
 - a. Watering of lawns is restricted to the following: House numbers ending in an even number may water on even numbered days of the month. House numbers ending in an odd number may water on the odd days of the month. However, all watering must be done between the hours of 6 p.m. to midnight. Watering of trees, shrubs and flowers may be done at any time using a hand held hose.

6. MANDATORY CONSERVATION DURING STAGE II WATER SHORTAGE. In the event the Water Authority declares a Stage II Water Shortage, it shall be unlawful for any person, firm, or corporation to use or permit the use of potable water within Named Government for any of the purposes hereinafter set forth until the Water Authority, by public proclamation, has declared the Stage II Water Shortage to be lifted.
 - a. No outside use of water is allowed. Outside use is referred to but not limited to the following: (i) no watering of lawn, flowers or shrubs; and (ii) no washing of vehicles, recreational equipment, driveways, decks, porches or structures.

7. PENALTIES.

Violation of Water Conservation plan Phase II.
First offense – verbal/written warning.
Second offense - \$50.00 forfeiture.
Third offense - \$100.00 forfeiture.
Continued violations - \$100.00 forfeiture for each day violation continues.

Violation of the Water Conservation Plan Phase III
First offense - \$50.00 forfeiture.
Second offense - \$100.00 forfeiture.
Third offense - \$200.00 forfeiture.
Continued violations - \$200.00 forfeiture for each day violation continues.

8. SEVERABILITY. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such

portions shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

9. EFFECTIVE DATE. This Ordinance shall take effect on _____, 2003.

Adopted thisdate.....

Regular city ordinance information and signatures.

[Revised by Second Amendment to Contract effective 11/14/07]

[Exhibit I - Deleted by Second Amendment to Contract effective 11/14/07]