

**AGREEMENT BETWEEN THE
CITY OF MILWAUKEE AND
VILLAGE OF MENOMONEE FALLS
FOR
THE PURCHASE OF WATER AT WHOLESALE**

This Agreement, made as of the 10th day of December, 1997, by and between the City of Milwaukee, operating as a water public utility (hereinafter referred to as "Milwaukee") and the Village of Menomonee Falls, operating as a water public utility (hereinafter referred to as "Menomonee Falls").

Witnesseth:

Whereas, Menomonee Falls desires to purchase water from Milwaukee at wholesale; and

Whereas, Milwaukee wishes to provide adequate water supply to Menomonee Falls at rates approved by the Public Service Commission of Wisconsin, hereinafter referred to as the "Commission"; and

Whereas, in the absence of a contract, under current law, Milwaukee has a right to establish the terms and conditions of service through the filing of rates with the Commission; and

Whereas, the Milwaukee Water Works has constructed facilities to assure Menomonee Falls and other wholesale customers receive an adequate supply of water and continues to incur the obligation to maintain said facilities; and

Whereas, Menomonee Falls has current contractual obligations with certain adjacent municipalities and property owners under which Menomonee Falls furnishes to and receives from these municipalities a small portion of its water supply;

Whereas, Milwaukee must be assured that purchasers of large quantities of water will continue to obtain their supply from Milwaukee so that it may prudently plan its expansion of

facilities, and that such facilities when constructed will not be rendered either functionless or partially functionless; and

Whereas, Menomonee Falls desires to be assured that Milwaukee continues to have the facilities necessary to provide to Menomonee Falls adequate water service and a supply of water;

Now, Therefore, in consideration of the mutual covenants hereinafter expressed, it is agreed as follows:

I. "Contract Terms Defined"

(a) Adequate Water Service - Unlimited, uninterrupted service of standard quality water shall be provided as follows:

Location	Hydraulic Grade (USGS Datum)	Associated Maximum Flow rate (MGD)
West Bradley Road and North 124th Street	864.8	Per attached Appendix C
West Silver Spring Road and 124th Street	837.7	Per attached Appendix C

(b) CCF - 100 cubic feet or 748 gallons.

(c) Commodity Charge - Charge for water on a quantity basis.

(d) Emergency - Beyond the ability of the Milwaukee Water Works to meet the requirements of service as expressed herein.

(e) Service Area - Area to be served with water. The boundaries of the service are set out in the map attached as Appendix A.

(f) Standard Quality Water - Water which meets the standards of federal and state agencies having authority to establish water quality standards and local standards which uniformly apply to Milwaukee and its customers and as such standards may be amended from time to time.

II. Menomonee Falls does on its part agree that:

(a) This Agreement shall be subject to applicable rules and regulations of the Milwaukee Water Works which are on file with the Commission and as such rules and regulations may be amended from time to time; Menomonee Falls shall be subject to restrictions which are imposed by Milwaukee uniformly throughout its Service Area and its other wholesale customers and specifically with respect to the rules and regulations aforesaid; such restrictions subject to approval by any state or federal governmental agency having jurisdiction.

(b) The rates or charges for service at wholesale for water supplied to Menomonee Falls shall initially be an all-inclusive rate of \$0.50 per CCF until a rate study is done by the Commission, establishing a schedule of rates.

(c) It shall grant permits at standard fees within boundaries of Menomonee Falls which are necessary to effectuate Milwaukee's construction, maintenance, alteration or operation with respect to service under this contract.

(d) It will not tax Milwaukee owned facilities located in Menomonee Falls.

(e) Subject to the following exceptions set out below, it will obtain all of its water for the Service Area identified in Appendix A from Milwaukee. This obligation is subject to the following exceptions:

1. Except as or subject to the agreements identified in Appendix B between Menomonee Falls and certain municipalities and properties; and

2. Except as provided in Paragraphs II (l) and (m).

(f) It shall pay to Milwaukee in accordance with the billings of Milwaukee, the full and correct amount of such billings to be computed upon the prevailing rates and charges as established by the Commission.

1. Menomonee Falls shall furnish and install meter pits, or other enclosures, complete with meter settings but without meters, which shall be supplied by Milwaukee and paid for at cost by Menomonee Falls.

2. Demand metering facilities shall be furnished, installed and maintained by the Milwaukee water utility.

(g) It shall limit water service as follows:

1. (a) The area to be served for wholesale purposes under this contract shall be delineated on a map attached hereto as Appendix "A."

(b) No water purchased by Menomonee Falls under this agreement may be resold or exchanged after the date of this agreement to any other municipality in existence as of the date of this agreement or any individual properties therein, with the exception of the agreements already entered into by Menomonee Falls as listed in Exhibit B.

(c) No water purchased by Menomonee Falls under this agreement may allow Menomonee Falls to sell or exchange well water or ground water on a wholesale or retail basis to any other municipality in existence as the date of this agreement or

to any properties therein with the exception of the agreements already entered into by Menomonee Falls; as listed in Appendix B, and the Village of Lannon, and emergency service.

2. In the event that prudent management and good operation require a readjustment of the boundaries of the Service Area, the mutual consent of both parties to this Agreement shall be obtained as a condition precedent to effecting a readjustment of Service Area boundaries, subject however to such action as the Commission might take in the exercise of its regulatory powers.

3. In the event that Menomonee Falls shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger of Menomonee Falls with any other municipal entity or political subdivision; then, and except as may otherwise as provided by law, there shall be no duty or obligation under this Agreement on the part of Milwaukee to provide water to any area other than that delineated in Appendix "A." However, Milwaukee reserves the option of providing water service to the enlarged area of Menomonee Falls if the then-prevailing demands can be met by Milwaukee without incurring additional construction costs.

(h) It shall pay all costs, charges, fees and expenses which relate to construction, maintenance, operation and expansion of its own water distribution system located within the corporate limits of Menomonee Falls.

(i) Plans and specifications for major improvements

1. All plans and specifications for repumping stations, storage facilities and water mains for the Menomonee Falls distribution system which are to be installed

in the Service Area by Menomonee Falls, must conform to the standards prescribed by the Department of Natural Resources.

2. All plans and specifications for metering stations, storage facilities and transmission water mains for the Menomonee Falls distribution system which are to be installed in the Service Area by Menomonee Falls shall be submitted for review by Milwaukee prior to the time contracts are awarded or materials are purchased if such improvements would require capital improvements by Milwaukee. If after reviewing these plans and specifications, Milwaukee determines that cost sharing may be appropriate because of the demand caused by the improvements described in the plans submitted by Menomonee Falls, the parties agree to meet in good faith to discuss whether cost sharing is appropriate and, if so, the extent of such cost sharing. Milwaukee shall review all plans and specifications submitted by Menomonee Falls under this paragraph and send any objections or concerns about such plans and specifications in writing to Menomonee Falls within 45 days of the date the plans and specifications are submitted by Menomonee Falls. The failure by Milwaukee to submit any concerns or objections in writing within the 45 day period shall mean Milwaukee has no objections or concerns about such plans and specifications.

(j) In the event Menomonee Falls shall terminate its purchase of water from Milwaukee prior to the expiration date of this Agreement without the consent of Milwaukee, Menomonee Falls shall be liable to Milwaukee for the following damages and shall pay to Milwaukee the following amount as liquidated damages:

Menomonee Falls agrees to pay quarterly to Milwaukee the total amount of demand charge computed on the highest demand recorded during the contract period at rates in

effect at the time of such termination, plus the charge of public fire protection for the period remaining under the contract, but in no case less than one (1) year.

(k) Restrictions may be placed upon the use of water by Menomonee Falls as a result of an occurrence which is an emergency, related to a breakdown of Milwaukee's facilities provided such restrictions apply uniformly to all customers. Milwaukee shall give Menomonee Falls as much prior notice as is reasonably possible of any such restrictions.

(l) Whenever Milwaukee does not supply Adequate Water Service, Menomonee Falls may obtain emergency water service from any other source for the specific period of time in which Milwaukee is unable to provide such supply.

(m) In order to ensure the availability of an adequate water supply in the event of an emergency, Menomonee Falls shall have the right to exercise and use water from each of its wells located in the Service Area on a weekly basis.

(m) Menomonee Falls agrees to defend and hold harmless Milwaukee from any claims or causes of action of whatever nature arising from Menomonee Falls' negligence or breach of the expressed warranties contained within this Agreement. The indemnity provisions of this Agreement shall survive its termination and shall continue in full force and effect.

III. Milwaukee agrees as follows:

(a) To provide Adequate Water Service to Menomonee Falls.

(b) It shall pay the costs, charges, fees and expenses which relate to the construction, maintenance, operation and expansion of its own water system which may be devoted in whole or in part to service of Menomonee Falls as provided for herein, except as to meter pits or other enclosures.

(c) Milwaukee shall pay all costs and expenses incurred as a result of testing metering devices and appurtenances with respect thereto.

(d) Except as otherwise provided in this Agreement, Milwaukee does hereby grant to Menomonee Falls authority to install flow control equipment at interconnection points between the two systems, namely Milwaukee and Menomonee Falls.

(e) Milwaukee warrants that all water purchased or delivered under this Agreement has been treated in accordance with and meets all applicable state and federal regulations and local standards. There are no warranties provided which extend beyond the description on the face hereof.

(f) Milwaukee agrees to defend and hold harmless Menomonee Falls from any claims or causes of action of whatever nature arising from Milwaukee's negligence or breach of the expressed warranties contained within this Agreement. The indemnity provisions of this Agreement shall survive its termination and shall continue in full force and effect.

(g) Milwaukee shall simultaneously furnish to the Menomonee Falls Water Utility the meter data signal and information provided by the demand metering facilities to be provided by Milwaukee pursuant to paragraph II(f)2 above. The demand metering signal data and information will be made available to Menomonee Falls within a reasonable time after such facilities are installed by Milwaukee, but in any event, prior to the time when demand charges would be applicable.

IV. Milwaukee and Menomonee Falls hereby mutually agree:

(a) That this Agreement is subject to the approval of the Common Council of Milwaukee and the Village Board of Menomonee Falls and Milwaukee shall file a copy of the

Agreement with the Public Service Commission. Approval of the Common Council of Milwaukee and the Village Board of Menomonee Falls shall be evidenced by adoption of appropriate resolutions which approve this Agreement.

(b) The effective date of this Agreement shall be the date upon which the Commission approves the Agreement in such manner as the Commission shall deem appropriate.

(c) This Agreement shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

(d) This Agreement shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Agreement. Any party wishing to renew this Agreement must make a written request to renew the Agreement at least eighteen (18) months prior to the date the Agreement is to terminate. The party to whom a request to renew is made shall give or withhold its consent in writing within 30 days of the date of the renewal request.

(e) The parties agree to act in good faith and use due diligence in meeting their respective obligations under this Agreement.

(f) This Agreement may be executed in counterparts, which together shall constitute a single contract.

(g) Neither party may terminate this Agreement without the written consent of the other party. A party shall give or withhold its consent in writing within 30 days of being formally requested to give its consent.

(h) If the parties are unable to resolve a dispute over the terms and conditions of this agreement, either party may request in writing that the matter be submitted for determination by an arbitrator. Within 15 days of receipt of such a request, the parties shall

appoint one arbitrator. If the parties cannot agree on the arbitrator, the arbitrator shall be selected by a judge in a court of competent jurisdiction. The arbitrator may hold such hearings and require such briefs as the arbitrator determines to be necessary. The arbitrator shall issue a written decision within fifteen (15) business days of the final hearing or the final submission of any materials requested by the arbitrator. The decision of the arbitrator shall be binding upon the Milwaukee and the Menomonee Falls. The cost of arbitration shall be paid by the Menomonee Falls and the Milwaukee equally.

(i) All notices, requests, demands, and other communications under this agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the Village, to:

Village of Menomonee Falls
c/o Village Clerk
W156 N8480 Pilgrim Road
Menomonee Falls, WI 53051

If to the City, to:

Milwaukee Water Works
841 N. Broadway; Room 409
Milwaukee, WI 53202

IN PRESENCE OF:

CITY OF MILWAUKEE, operating as a
Water Public Utility

Michael Dawson

John O. ...
Mayor

Katherine H. ...

Ronald ...
City Clerk

COUNTERSIGNED:

Carolyn A. ...

DEPUTY Antonia ...
City Comptroller *OK*

IN PRESENCE OF:

VILLAGE OF MENOMONEE FALLS,
operating as a Water Public Utility

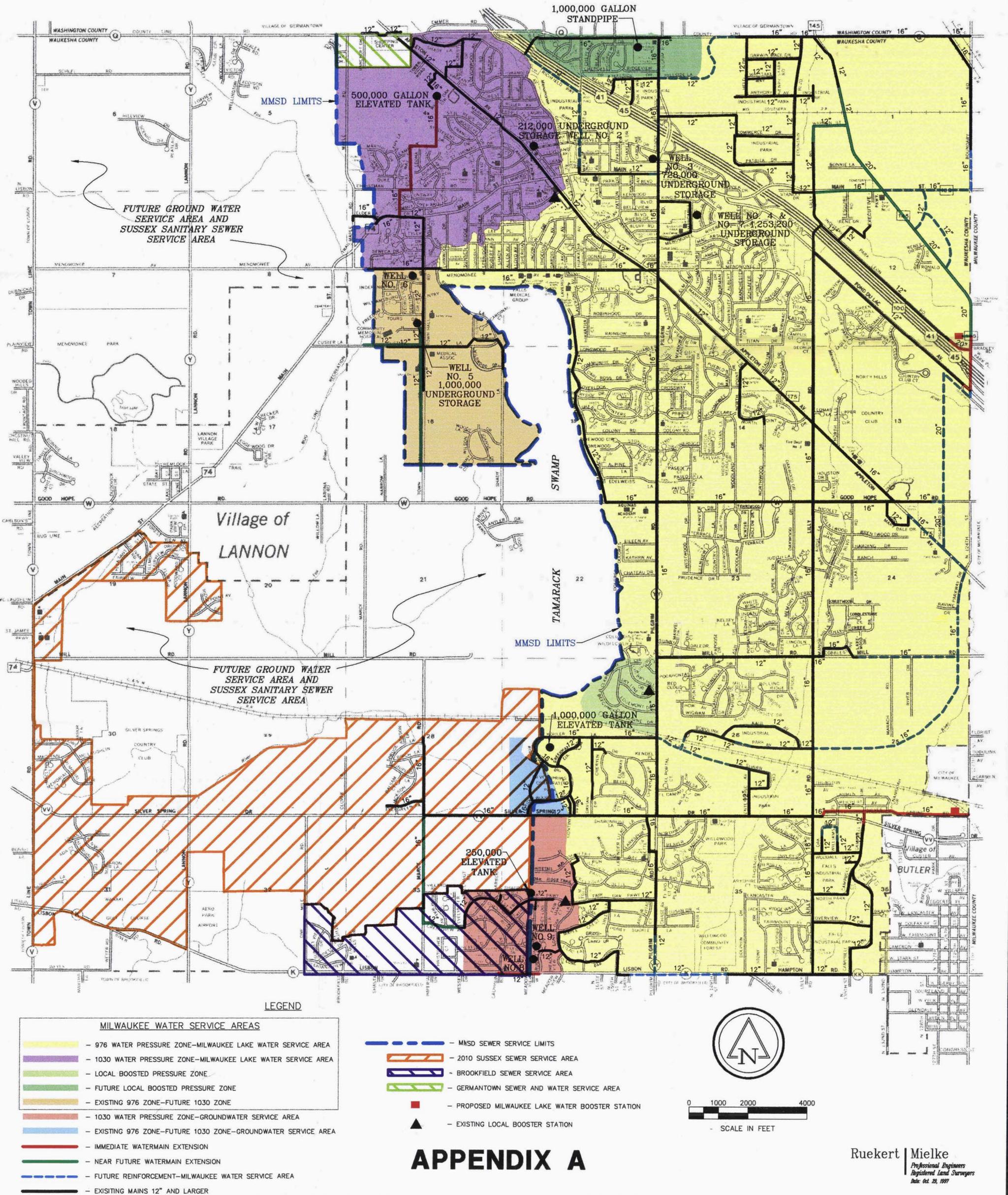
Jan F. ...
Paul ...

Joseph ...
Village President

Richard A. ...
Village Clerk

APPROVED AS TO FORM
AND EXECUTION THIS 18
DAY OF Dec 1997
Riff ...

MILWAUKEE WATER SERVICE AREAS VILLAGE OF MENOMONEE FALLS WAUKESHA COUNTY, WISCONSIN



APPENDIX B

VILLAGE INTERMUNICIPAL AGREEMENTS

<u>Other Parties to Agreement</u>	<u>Date</u>	<u>Service Furnished or Received by Menomonee Falls</u>
City of Brookfield	7-27-81	Receive Sanitary Sewer
City of Brookfield, Village of Butler, Charles W. Aring, Jr.	9-4-84	Furnish Sanitary Sewer
City of Brookfield	1-10-87	Furnish Water Service
Village of Butler		Receive Water Service
Village of Butler		Receive Sanitary Sewer
Village of Butler	3-5-86	Furnish Sanitary Sewer Service
Village of Butler	4-7-86	Receive Sanitary Sewer and Water Service
City of Mequon	6-17-89	Furnish Water Service
City of Milwaukee	9-29-74	Permission given to Menomonee Falls to construct and maintain sewer in Good Hope Road; and to permit adjacent Milwaukee Properties to connect.
City of Milwaukee, Waste Management of Wisconsin, Inc.	4-7-86	Menomonee Falls to furnish water service to Waste Management Property located in the City of Milwaukee.
City of Milwaukee, Shoreline Support Corporation	11-16-89	Menomonee Falls to furnish water service to Shoreline Support Corporation Property located in the City of Milwaukee.
Village of Germantown	2-6-84	Furnish Sanitary Sewer
Village of Germantown	2-6-84	Furnish Water Service
Village of Germantown	10-6-86	Receive Sanitary Sewer
Village of Germantown	10-6-86	Receive Water Service

<u>Other Parties to Agreement</u>	<u>Date</u>	<u>Service Furnished or Received by Menomonee Falls</u>
R-K Associates of Waukesha Limited Partnership	3-17-87	Property in Menomonee Falls to receive Sanitary Sewer and water services under 10-6-86 agreements with Village of Germantown.
Village of Germantown	4-18-88	Receive Water Service
Village of Germantown	4-18-88	Receive Sanitary Sewer
Tri City Bankshares Corp.	7-22-88	Property in Menomonee Falls to receive Sanitary Sewer and water services under 4-18-88 agreements with Village of Germantown.
Village of Germantown	5-16-88	Furnish Water Service
Village of Germantown	5-16-88	Furnish Sanitary Sewer
Village of Germantown	2-14-89	Furnish Sanitary Sewer
Village of Germantown	2-14-89	Furnish Water Service
Village of Germantown	10-10-89	Furnish Water Service
Village of Germantown	3-11-92	Receive Sanitary Sewer and Water Service

APPENDIX C

**REQUIRED MAXIMUM DAY DELIVERY VOLUMES
SUPPLIED BY MILWAUKEE TO MENOMONEE FALLS**

MAXIMUM DAY DELIVERY VOLUME (MILLION GALLONS)

Year	West Silver Spring Road and North 124th Street	West Bradley Road and North 124th Street	Total
1997	2.18	4.36	6.54
1998	2.27	4.54	6.81
1999	2.36	4.72	7.08
2000	2.45	4.89	7.34
2001	2.54	5.07	7.61
2002	2.60	5.28	7.88
2003	2.60	5.54	8.14
2004	2.60	5.81	8.41
2005	2.60	6.08	8.68
2006	2.60	6.34	8.94
2007	2.60	6.61	9.21
2008	2.60	6.89	9.49
2009 and beyond	2.60	7.14	9.74

NOTE: The column entitled "Total" identifies the maximum day volume required by Menomonee Falls. The columns entitled "West Silver Spring Road and North 124th Street" & "West Bradley Road and North 124th Street" identify the anticipated volumes to be delivered to each of the connection points.