

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE
AND THE VILLAGE OF BROWN DEER FOR
THE PURCHASE OF WATER AT WHOLESALE**

This Agreement, made as of the ____ day of _____, 2000 by and between the City of Milwaukee, operating as a water public utility ("Milwaukee") and the Village of Brown Deer, operating as a water public utility ("Brown Deer").

Whereas, Brown Deer desires to continue the purchase of water from Milwaukee at wholesale; and

Whereas, under current law, Milwaukee has an obligation to provide adequate water supply to Brown Deer at rates approved by the Public Service Commission of Wisconsin ("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 tariffs with the Commission; and

Whereas, The Milwaukee Water Works has constructed facilities to ensure that Brown Deer and other wholesale customers receive an adequate supply of water and continues to incur the obligation to maintain those facilities; and

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 the expansion of its facilities and that the facilities when constructed will not be rendered either functionless or partially functionless; and

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

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

I. Definitions

(a) Adequate Water Service – Except as otherwise provided in this agreement, unlimited, uninterrupted service of standard quality water at pressures at or in excess of 35 pounds per square inch measured at the outlet of the water meter when the flow of water does not exceed the rated capacity of the meter, except when the requirement of any state or federal governmental agency having jurisdiction may require otherwise.

(b) CCF – 100 cubic feet of water (748 gallons)

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

(d) Emergency – A situation in which it is beyond the ability of the Milwaukee Water Works to meet the requirements of service as contained in this Agreement.

(e) Service Area – Area to be served with water. The boundary of the Service Area is set out in the map attached as Appendix A.

(f) Standard Quality Water - Water that meets the standards of federal and state agencies having authority to establish water-quality standards, and local standards that assure water quality that is as high or higher than the quality of water that meets the federal or state standards, that uniformly apply to Milwaukee and its customers and as those standards may be amended from time to time.

II. Brown Deer agrees that:

(a) This Agreement shall be subject to applicable rules and

regulations of the Milwaukee Water Works on file with the Commission, as those rules and regulations may be amended from time to time. Brown Deer shall be subject to reasonable restrictions which are uniformly imposed by Milwaukee throughout its service area and on its other wholesale customers, specifically with respect to the above rules and regulations, these restrictions are 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 Brown Deer shall be those approved by the Commission.

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

(d) It will not tax Milwaukee-owned Water Works facilities located in Brown Deer.

(e) It shall obtain all of its water from Milwaukee, except as provided in Paragraph II (l) and except only where Brown Deer is supplying well water to certain of its customers due to the assumption by it of ownership of private water systems.

(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. Brown Deer shall furnish and install meter pits,

or other enclosures, complete with meter settings but without meters. Meters shall be supplied by Milwaukee and paid for at cost by Brown Deer. Milwaukee shall be responsible for the cost to install the meters.

2. Milwaukee Water Works shall install and maintain demand-metering facilities.

(g) It shall limit water service as follows:

1. The area to be served for wholesale purposes under this Agreement shall be the corporate limits of Brown Deer as they existed on the effective date of this Agreement, and delineated on a map attached hereto as Appendix A. It will not sell or exchange water on a wholesale or retail basis outside this service area without the permission of Milwaukee.

2. In the event that prudent management and good operation require a readjustment of the boundaries of the Service Area as distinct from the municipal corporate boundaries, the mutual consent of both parties to this Agreement is necessary as a condition precedent to effecting a readjustment of service-area boundaries subject, however, to such action as the Commission may take in the exercise of its regulatory powers.

3. In the event that Brown Deer shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger of Brown Deer with any other municipal entity or political subdivision, then, and except as may otherwise be 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. Milwaukee reserves the option, however, of providing water service to the enlarged area of Brown Deer.

(h) It shall pay all costs, charges, fees, and all expenses incidental to construction, maintenance, and operation of its own water distribution system located within the Service Area, and all costs, charges, fees, and expenses that may be entailed or incurred in providing any mains or any other distribution facilities from the corporate limits of Milwaukee to the Brown Deer water distribution system excluding, however, any portion of such facilities that are physically located in another municipality other than Brown Deer.

(i) All plans and specifications for metering stations, repumping stations, storage facilities and all other major improvements to the Brown Deer distribution system must conform to the standards of the American Water Works Association and shall be reviewed by Milwaukee prior to the time contracts are awarded or materials are purchased, to determine whether increased demands caused by the improvements would require capital improvements by the Milwaukee Water Works and whether cost sharing for Milwaukee's improvements is appropriate. Milwaukee shall review all plans and specifications submitted by Brown Deer under this paragraph and respond in writing within 45 days of the date the plans and specifications are submitted. The written response will indicate approval, or identify objections or concerns regarding the proposed improvements.

(j) In the event Brown Deer shall terminate its purchase of water from Milwaukee prior to the expiration date of this Agreement without the consent of the Milwaukee Water Works, Brown Deer shall be liable to Milwaukee and pay to Milwaukee the following damages:

Brown Deer 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 the termination, plus the charge for public fire protection for the period remaining under the contract, but in no case less than one year.

(k) Milwaukee may place restrictions upon the use of water by Brown Deer as a result of an occurrence that is an Emergency related to a breakdown of Milwaukee's facilities, provided the restrictions apply uniformly to all customers. Milwaukee shall give Brown Deer as much prior notice as is reasonably possible of any such restrictions.

(l) Whenever Milwaukee does not supply adequate water service or standard quality water, Brown Deer may obtain emergency water service from any other source, but only for the specific period of time that Milwaukee is unable to provide that supply.

(m) Brown Deer agrees to defend and hold harmless Milwaukee from any claims or causes of action of whatever nature arising from Brown Deer's negligence or breach of the expressed warranties and covenants contained in this Agreement. The indemnity provisions of the 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 Brown Deer.
- (b) It shall pay the costs, charges, fees, and expenses that relate to the construction, maintenance, operation and expansion of its own water system that may be devoted in whole or in part to service of Brown Deer as

provided for in this Agreement, except for work that may be required under Paragraph II (f)1 of this Agreement.

(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 Brown Deer authority to install flow control equipment at interconnection points between the two systems, namely Milwaukee and Brown Deer.

(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 that extend beyond the above description.

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

IV. Milwaukee and Brown Deer hereby mutually agree:

(a) That this Agreement is subject to the approval of the Common Council of Milwaukee and the Village Board of Brown Deer, and, after execution by both parties, Milwaukee shall file a copy of the Agreement with the Commission. Approval of the Common Council of Milwaukee and The Village Board of Brown Deer shall be evidenced by adoption of appropriate resolutions approving this Agreement.

(b) The effective date of this Agreement shall be the date upon which the Commission acknowledges 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 years from and after the effective date of this Agreement and shall automatically renew for subsequent ten-year periods. Any party wishing to terminate this Agreement at the conclusion of a ten-year term must submit a written notice of non-renewal at least 12 months prior to the date the Agreement would otherwise automatically renew. The party to whom a notice to terminate is submitted shall acknowledge receipt of the notice in writing within 30 days of the date of the notice. Neither party may terminate this Agreement at any other time except as provided for in Paragraph II (j) of 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.

(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) 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 the request to arbitrate the dispute, the party receiving the request shall notify

the other party in writing whether proceeding to arbitration is acceptable. Within 15 days of receipt of such agreement to proceed to arbitration, 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 15 business days of the final hearing or the final submission of any material requested by the arbitrator. The decision of the arbitrator shall be binding upon Milwaukee and Brown Deer. The cost of arbitration shall be paid equally by Milwaukee and Brown Deer.

(h) 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:
Village of Brown Deer
%Village Clerk
4800 W. Green Brook Dr.
Brown Deer, WI 53223

If to the City:
Milwaukee Water Works
841 N. Broadway
Room 409
Milwaukee, WI 53202

IN THE PRESENCE OF:

CITY OF MILWAUKEE, operating as a
Water Public Utility

[Signature]

[Signature]
Mayor

Katherine H. Mollica

[Signature]
City Clerk

COUNTERSIGNED:

[Signature]
DEPUTY

[Signature]
City Comptroller

IN THE PRESENCE OF:

VILLAGE OF BROWN DEER, operating
as a Water Public Utility

[Signature]
Village President

[Signature]
Village Clerk