

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE  
AND WE ENERGIES FOR  
THE PURCHASE OF WATER AT WHOLESALE**

This Agreement, made as of the \_\_\_\_ day of \_\_\_\_\_, 2003 by and between the City of Milwaukee, operating as a water public utility ("Milwaukee") and Wisconsin Gas Company (d/b/a We Energies Water Services), operating as a water public utility ("We Energies").

Whereas, We Energies desires to continue the purchase of water from Milwaukee at wholesale for service to the City of Mequon and Village of Thiensville; and

Whereas, under current law, Milwaukee has an obligation to provide adequate water supply to We Energies 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 rates with the Commission; and

Whereas, The Milwaukee Water Works has constructed facilities to ensure that We Energies 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, We Energies desires to be assured that Milwaukee continues to have the facilities necessary to provide We Energies with 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 paragraph II (i) of this agreement, unlimited, uninterrupted service of standard quality water as follows:

Location	Elevation (NGVD) (Center of Intersection)	Minimum Hydraulic Grade (NGVD)	Estimated Maximum Flow Rate (MGD)
N. 76 <sup>th</sup> St and County Line Road	682	867	2.16 MGD (1,500 GPM)
N. 107 <sup>th</sup> St and County Line Road	734	896	2.16 MGD (1,500 GPM)

This does not apply 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) GPM – gallons per minute
- (d) MGD – million gallons per day
- (e) Commission – Public Service Commission of the State of Wisconsin
- (f) Emergency – A situation caused by an act of God or circumstances beyond the control of the Milwaukee Water Works which results in the Milwaukee Water Works not meeting the requirements of service as contained in this Agreement.
- (g) Basic Service Area – Area to be served with water. The boundary of the Basic Service Area is set out in the map attached as Appendix A.
- (h) Enlarged Service Area – Area which may be served either in portions or its entirety with water. The boundary of the Enlarged Service Area is set out in the map attached as Appendix B.
- (i) Standard Quality Water - Water that meets the standards of federal and state agencies having authority to establish water quality standards that uniformly apply to Milwaukee and its customers and as those standards may be amended from time to time.

II. We Energies 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. We Energies shall be subject to reasonable restrictions that are uniformly imposed by Milwaukee throughout its service area and on its other retail and 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 We Energies shall be those established by the Commission.
- (c) We Energies shall assist in the process to ensure that permits are granted at standard fees within the boundaries of the service area that are necessary to effectuate Milwaukee's construction, maintenance, alteration or operation with respect to service under this Agreement subject to applicable city codes, state statutes and administrative rules. We Energies will assist in the process to ensure that Milwaukee-owned Water Works facilities located in the service area will not be taxed.
- (d) We Energies shall obtain all of its water from Milwaukee for distribution in the Basic Service Area shown in Appendix A except as provided in Section II (j).

- (e) We Energies 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 provided in paragraph II (b).
1. We Energies shall furnish and install master wholesale water meter pits, or other enclosures, complete with meter settings but without meters. Meters shall be supplied by Milwaukee and paid for at cost by We Energies. Milwaukee shall be responsible for the cost to install the meters.
  2. Milwaukee shall install and maintain demand-metering facilities.
- (f) We Energies shall limit water service as follows:
1. The area to be served for wholesale purposes under this Agreement shall be as outlined in Sections I(g) and I(h). No water purchased by We Energies under this agreement may be resold or exchanged on a wholesale or retail basis outside these service areas without the permission of Milwaukee. No water purchased by We Energies under this agreement may allow We Energies to sell or exchange well water or ground water on a wholesale or retail basis to any other municipality in existence as of the date of this agreement or to any properties therein with the exception of emergency service. We Energies shall provide annually to Milwaukee, on or before July 1 each year, a summary of the number and geographical distribution of customers served.
  2. Water service provided under the term of this agreement to undeveloped or unimproved properties (existing as of November 16, 1998, the date of the original agreement) shall be limited to twenty percent (20%) of total service connections. In counting the number of service connections to undeveloped or unimproved properties, a standard residential size connection shall count as one (1), and larger size connections shall be converted to the standard residential equivalent and be counted accordingly. (Example: 3" pipe has four (4) times the capacity of one and one-half inch (1.5") pipe (based on cross-sectional area), therefore a three (3") connection would count for four residential equivalents). We Energies shall provide annually to Milwaukee, on or before July 1 each year, a summary of these service connections.
  3. In the event that prudent management, public safety and good operation require a readjustment of the boundaries of the service areas 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.

4. In the event that the service areas shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger 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 Sections I(g) and I(h). Milwaukee reserves the option, however, of providing water service to the enlarged area.
- (g) We Energies 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 areas, 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 We Energies water distribution system with the exception of items Milwaukee is responsible for in Section II (e) 1 and II (e) 2.
- (h) All plans and specifications for metering stations, re-pumping stations, storage facilities and all other major distribution improvements or extensions 16 inches or larger to the We Energies distribution system must conform to the standards prescribed by the Wisconsin Department of Natural Resources. Copies of such plans shall be provided to Milwaukee prior to the time contracts are awarded or materials are purchased
- (i) Milwaukee may place restrictions upon the use of water by We Energies as a result of an occurrence that is an Emergency or is related to a breakdown of Milwaukee's facilities. Any restriction so placed will be done in a manner consistent with the restrictions placed upon similarly situated customers. Milwaukee shall give We Energies as much prior notice as is reasonably possible of any such restrictions.
- (j) Whenever Milwaukee does not supply adequate water service or if demand is in excess of agreed upon demands in the service areas, We Energies 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.
- (k) We Energies agrees to defend and hold harmless Milwaukee from any claims or causes of action of whatever nature arising from We Energies' negligence, intentional actions, or breach of the expressed warranties and covenants contained in this Agreement or any liabilities which may be incurred by Milwaukee arising from the making of 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 We Energies.
- (b) Milwaukee 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 We Energies as provided for in this Agreement, except for work identified under Section II (e)1 of this Agreement as being the responsibility of We Energies.
- (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 We Energies authority to install flow control, security, SCADA and flow monitoring equipment at interconnection points between the two systems, namely Milwaukee and We Energies.
- (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. There are no warranties provided that extend beyond the above description.
- (f) Milwaukee agrees to defend and hold harmless We Energies from any claims or causes of action of whatever nature arising from Milwaukee's negligence, intentional actions, or breach of the expressed warranties contained in this Agreement or any liabilities which may be incurred by We Energies arising from the making of this Agreement. The indemnity provisions of this Agreement shall survive its termination and shall continue in full force and effect.
- (g) Milwaukee will simultaneously furnish We Energies the meter data signal and information provided by the demand metering facilities to be provided by Milwaukee pursuant to Section II (e) 2 above. This will be provided prior to any demand billings to We Energies.
- (h) Milwaukee will provide to We Energies, within 10 days of filing, a copy of its application to the Commission for adjustment of its water rates.

IV. Milwaukee and We Energies hereby mutually agree:

- (a) That this Agreement is subject to the approval of the Common Council of Milwaukee and We Energies, and after execution by both parties, Milwaukee shall file a copy of the Agreement with the Commission. Approval of the Common Council of Milwaukee 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 ten years from and after the effective date of this Agreement and shall automatically renew for subsequent ten-year periods. Any party wishing to not renew this Agreement at the conclusion of the initial term, or any ten-year term, must submit a written notice of non-renewal at least 24 months prior to the date the Agreement would otherwise automatically renew. The party to whom a notice of non-renewal is submitted shall acknowledge receipt of the notice in writing within 30 days of the date of the notice.
- (e) Termination of this Agreement at any time other than renewal requires the mutual consent of both parties. A party shall give or withhold its consent in writing within ninety (90) days of being formally requested to give its consent.
- (f) The parties agree to act in good faith and use due diligence in meeting their respective obligations under this Agreement.
- (g) This Agreement may be executed in counterparts, which together shall constitute a single contract.
- (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. A party shall give or withhold its consent in writing within ninety (90) days of being formally requested to give its consent. Upon mutual consent of both parties to proceed, 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 material requested by the arbitrator. The decision of the arbitrator shall be binding upon Milwaukee and We Energies. The cost of arbitration shall be equally shared and paid by Milwaukee and We Energies.
- (i) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto, but neither this Agreement nor any of the rights, interest, or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party.

- (j) 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 We Energies:  
We Energies Water Services  
231 W. Michigan Street, P346  
Milwaukee, WI 53203

If to Milwaukee:  
Milwaukee Water Works  
841 N. Broadway  
Milwaukee, WI 53202

IN THE PRESENCE OF:

CITY OF MILWAUKEE, operating as a  
Water Public Utility

\_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_  
City Comptroller

IN THE PRESENCE OF:

Wisconsin Gas Company

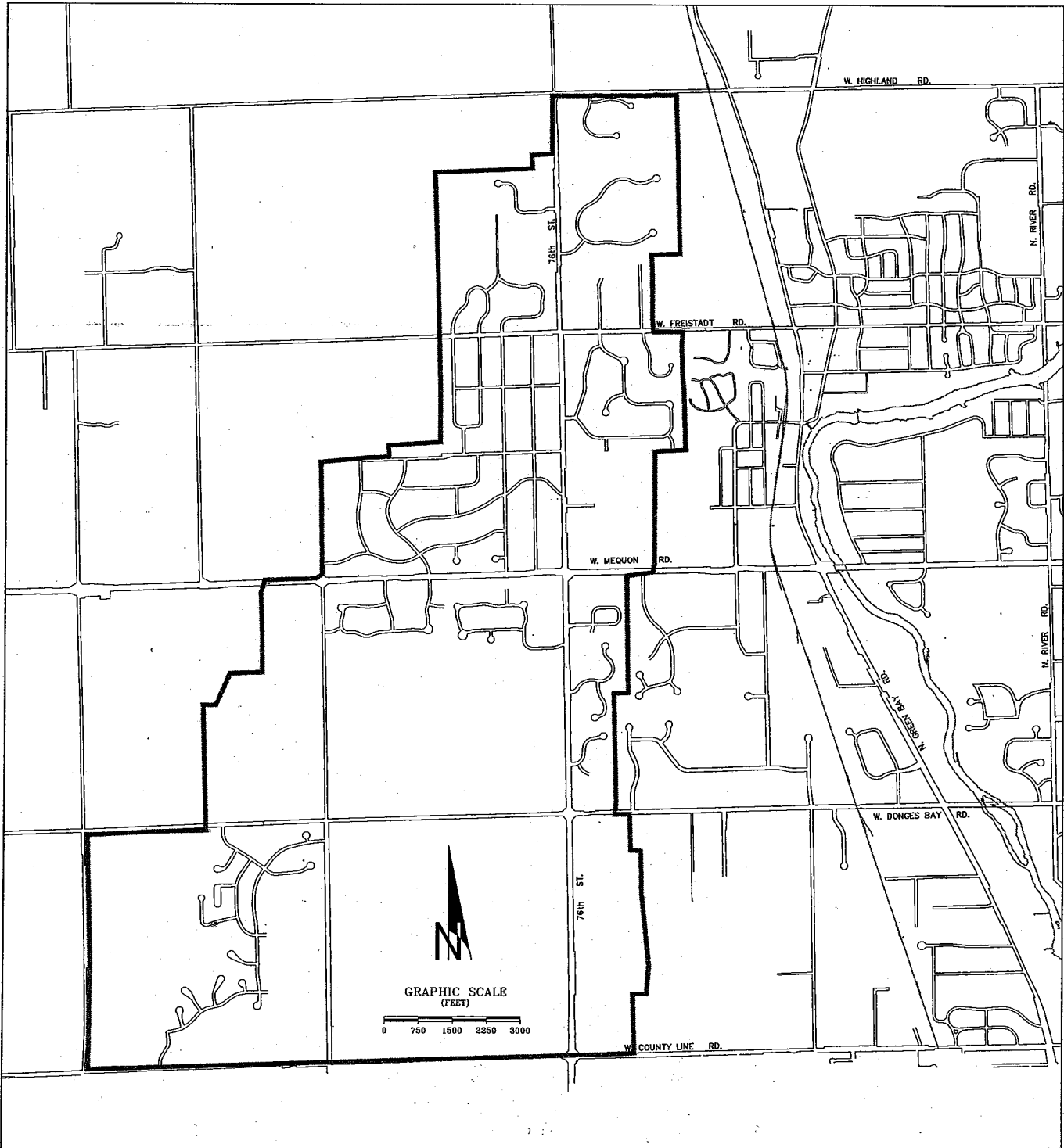
\_\_\_\_\_

\_\_\_\_\_  
General Manager, Water Services

\_\_\_\_\_

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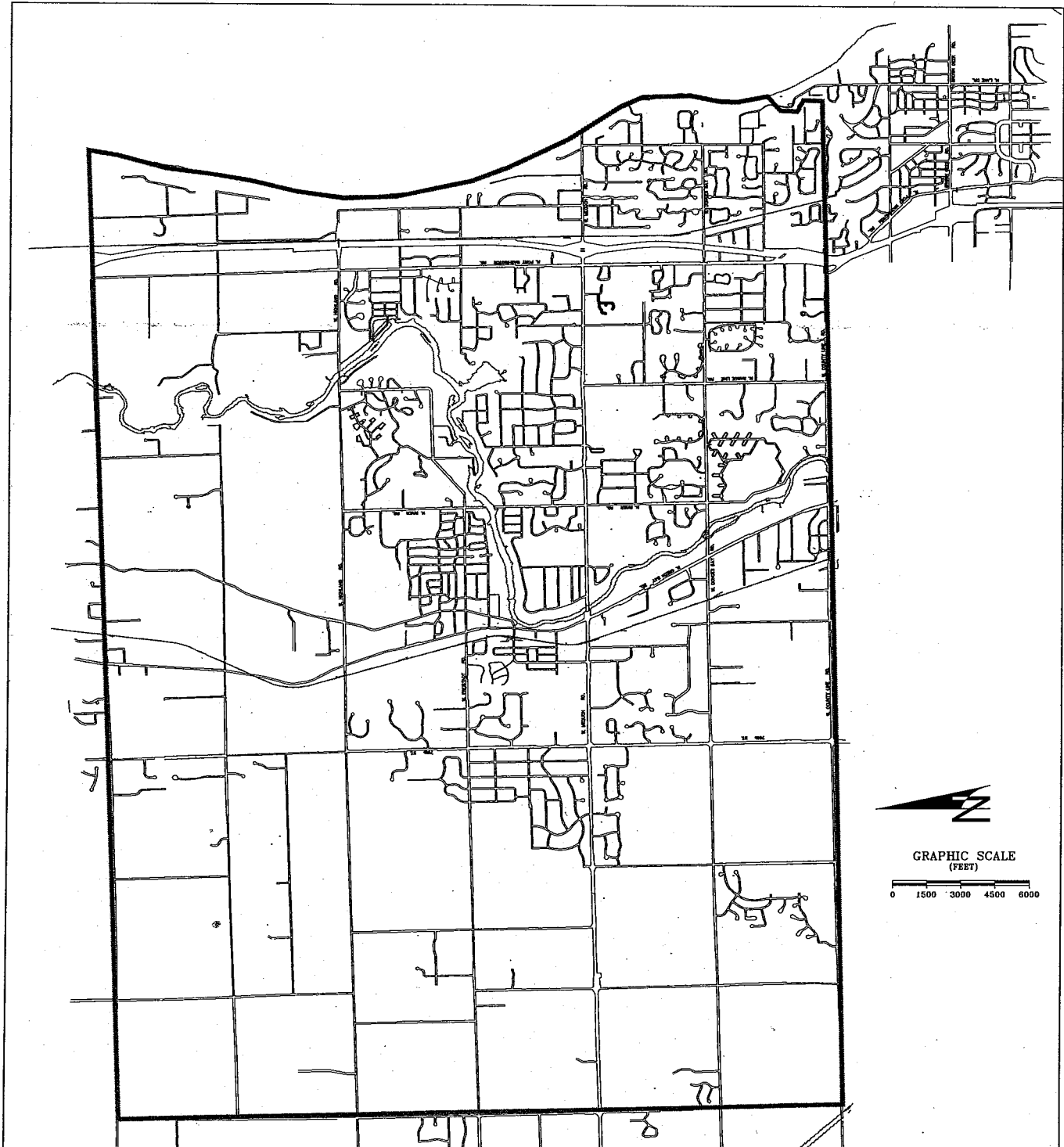
**ATTACHMENT A**  
**BASIC SERVICE AREA**



DATE: 26 SEP 2003



**ATTACHMENT B**  
**ENLARGED SERVICE AREA**



DATE: 26 SEP 2003