

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE
AND THE CITY OF NEW BERLIN 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 the City of New Berlin, operating as a water public utility ("New Berlin").

Whereas, New Berlin desires to purchase water from Milwaukee at wholesale; and

Whereas, Milwaukee wishes to provide adequate water supply to New Berlin 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 facilities to ensure that New Berlin 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, New Berlin desires to be assured that Milwaukee continues to have the facilities necessary to provide New Berlin 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 (j) of this agreement, unlimited, uninterrupted service of standard quality water as follows:

Location (Ctr of Intersection)	Minimum Hydraulic Grade (NGVD)	Estimated Maximum Flow Rate (MGD)
W. Howard Avenue & S. 124 th Street	896.8	2.87
W. Grange Avenue & S, 124 th Street	923.7	1.91

See Appendix A for Estimated Maximum Day Volumes.

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) Commission – Public Service Commission of the State of Wisconsin

- (d) Commodity Charge – Charge for water on a quantity basis.
- (e) 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.
- (f) Service Area – Area to be served with water. The boundary of the Service Area is set out in the map attached as Appendix B.
- (g) 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. New Berlin 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. New Berlin shall be subject to reasonable restrictions which 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 New Berlin shall initially be an all-inclusive rate of \$0.73 per Ccf until a rate study is performed by the Commission, establishing an adjusted schedule of rates. In the event Milwaukee is granted an adjustment of its rates for other customers before sufficient data is available for the Commission to establish a schedule of rates for New Berlin, the all-inclusive rate stated in this agreement will be adjusted in the same proportion as the average adjustment of rates for other wholesale customers of Milwaukee.
- (c) New Berlin shall grant permits at standard fees within the boundaries of New Berlin 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.
- (d) New Berlin will not tax Milwaukee-owned Water Works facilities located in New Berlin.
- (e) New Berlin shall obtain all of its water from Milwaukee for distribution in that area within the Service Area east of the road currently named North Sunnyslope Road with an option to serve the entire service area, except as provided in Paragraph II (k).
- (f) New Berlin 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) and as subsequently established by the Commission.

1. New Berlin 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 New Berlin. Milwaukee shall be responsible for the cost to install the meters.
2. Milwaukee Water Works shall install and maintain demand-metering facilities.

(g) New Berlin shall limit water service as follows:

1. The area to be served for wholesale purposes under this Agreement shall be delineated on a map attached hereto as Appendix "B". No water purchased by New Berlin under this agreement may be resold or exchanged on a wholesale or retail basis outside this service area without the permission of Milwaukee. No water purchased by New Berlin under this agreement may allow New Berlin 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.
2. In the event that prudent management, public safety 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 New Berlin shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger of New Berlin 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 B. Milwaukee reserves the option, however, of providing water service to the enlarged area of New Berlin.

(h) New Berlin 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 New Berlin water

distribution system with the exception of items Milwaukee is responsible for in Section II (f) 1 and II (f) 2.

- (i) All plans and specifications for metering stations, re-pumping stations, storage facilities and all other major improvements to the New Berlin distribution system must conform to the standards prescribed by the Wisconsin Department of Natural Resources 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 expenditures by the Milwaukee Water Works and whether cost sharing for Milwaukee's improvements is appropriate. Milwaukee shall review all plans and specifications submitted by New Berlin 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) Milwaukee may place restrictions upon the use of water by New Berlin 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 New Berlin as much prior notice as is reasonably possible of any such restrictions.
- (k) Whenever Milwaukee does not supply adequate water service or if demand is in excess of agreed upon demands in the Service Area, New Berlin may obtain emergency water service from any other source or use water from each of its wells located in the Service Area, but only for the specific period of time that Milwaukee is unable to provide that supply.
- (l) New Berlin shall have the right to routinely exercise each of its wells located in the Service Area. Nothing herein shall limit New Berlin's use of wells located within the Service Area to supply areas located outside the Service Area, but within New Berlin.
- (m) New Berlin agrees to defend and hold harmless Milwaukee from any claims or causes of action of whatever nature arising from New Berlin's 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 New Berlin.
- (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 New Berlin as provided for in this Agreement, except for work identified under Paragraph II (f)1 of this Agreement as being the responsibility of New Berlin.

- (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 New Berlin authority to install flow control, security, SCADA and flow monitoring equipment at interconnection points between the two systems, namely Milwaukee and New Berlin.
- (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 extends beyond the above description.
- (f) Milwaukee agrees to defend and hold harmless New Berlin 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 New Berlin 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 New Berlin the meter data signal and information provided by the demand metering facilities to be provided by Milwaukee pursuant to paragraph II (f) 2 above. This will be provided prior to any demand billings to New Berlin.
- (h) Milwaukee will provide to New Berlin, within 10 days of filing, a copy of its application to the Commission for adjustment of its water rates.

IV. Milwaukee and New Berlin hereby mutually agree:

- (a) That this Agreement is subject to the approval of the Common Councils of Milwaukee and New Berlin, 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 Common Council of New Berlin 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 an initial period of twenty 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 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 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 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 New Berlin. The cost of arbitration shall be equally shared and paid by Milwaukee and New Berlin.
- (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:

<p>If to New Berlin: City of New Berlin Treasurer/Comptroller's Office 3805 S. Casper Dr. New Berlin, WI 53151</p>	<p>If to Milwaukee: Milwaukee Water Works 841 N. Broadway Room 409 Milwaukee, WI 53202</p>
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IN THE PRESENCE OF:

CITY OF MILWAUKEE, operating as a
Water Public Utility

Mayor

City Clerk

COUNTERSIGNED:

City Comptroller

IN THE PRESENCE OF:

CITY OF NEW BERLIN, operating
as a Water Public Utility

Mayor

City Clerk

APPENDIX A

Estimated Required Maximum Day Delivery Volumes Supplied by Milwaukee to New Berlin

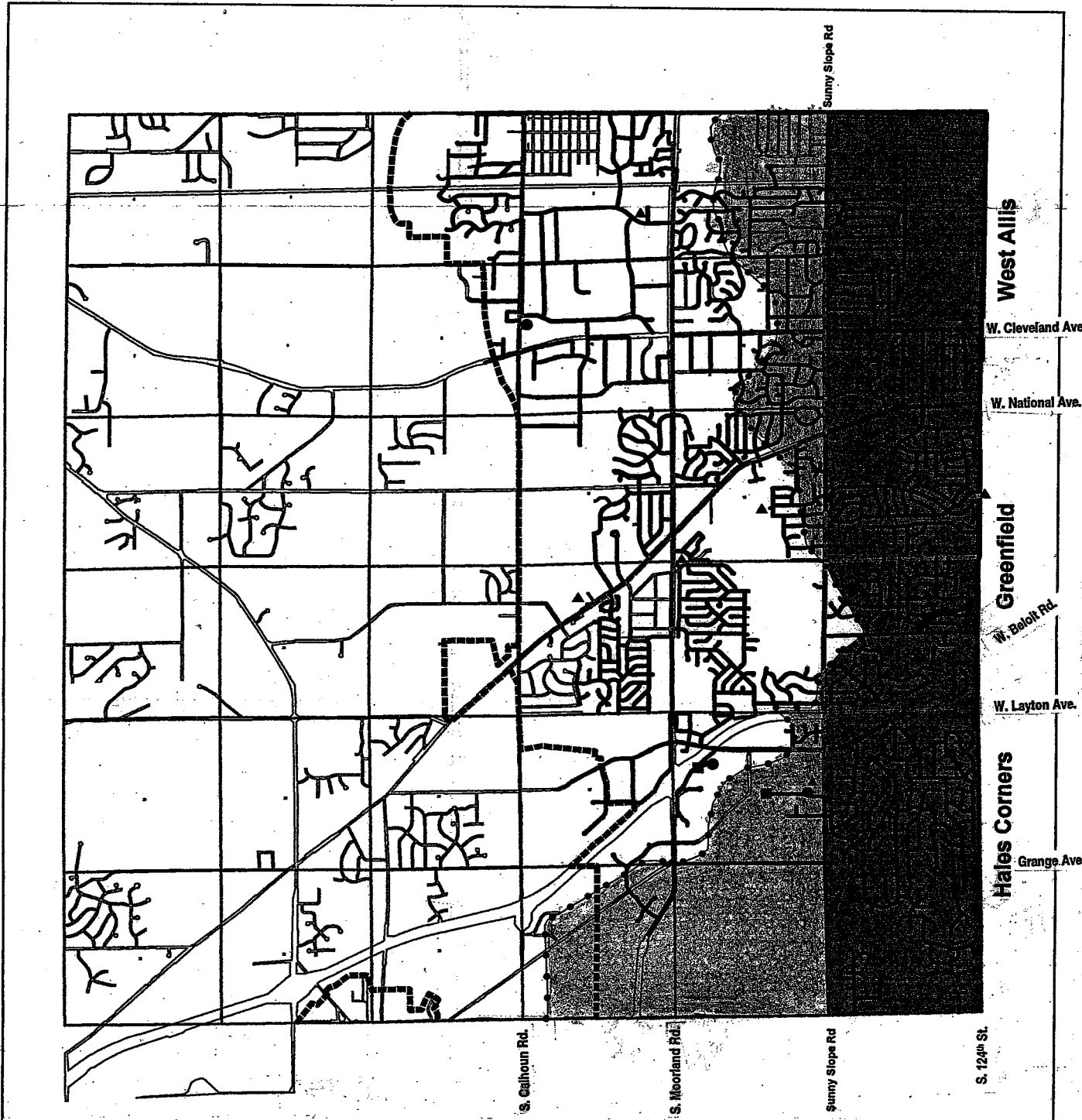
Estimated Maximum Day Delivery Volume (Million Gallons)

<u>Year</u>	<u>W. Howard Av. and S. 124th St.</u>	<u>W. Grange Av. and S. 124th St</u>	<u>Total</u>
2003	2.38	1.59	3.97
2004	2.42	1.61	4.03
2005	2.46	1.64	4.10
2006	2.50	1.67	4.17
2007	2.54	1.69	4.23
2008	2.58	1.72	4.30
2009	2.62	1.75	4.37
2010	2.66	1.78	4.44
2011	2.70	1.80	4.50
2012	2.75	1.83	4.58
2013	2.79	1.86	4.65
2014	2.83	1.88	4.71
2015 and Beyond	2.87	1.91	4.78

NOTE: The column entitled "Total" identifies the maximum day volume required by New Berlin. The columns entitled "W. Howard Av. and S. 124th St." and "W. Grange Av. and S. 124th St." identify the anticipated volumes to be delivered to each of the connection points.

APPENDIX B

Milwaukee Water Service Option City of New Berlin, Wisconsin



Legend

Pipe Diameters	--- Section Lines
— 6 inches	— ROW Lines
— 8 inches	● Existing Elevated Storage
— 10 inches	■ Existing Well and Pumpstation
— 12 inches	▲ Existing Well, Pumpstation, and Reservoir
— 16 inches	■ Proposed Initial Milwaukee Water Service Area
— Unknown	■ MMSD Limits (2010)
	■ Subcontinental Divide and Milwaukee Water Service Area Western Limit By Agreement

