

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

This Agreement, made as of the ____ day of _____, 2008 by and between the City of Milwaukee, operating as a water public utility ("Milwaukee") and the Village of Menomonee Falls, operating as a water public utility ("Menomonee Falls").

Whereas, Menomonee Falls 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 Menomonee Falls at rates approved by the Public Service Commission of Wisconsin ("Commission"); and

Whereas, the Milwaukee Water Works has constructed facilities to ensure that Menomonee Falls 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, Menomonee Falls desires to be assured that Milwaukee continues to have the facilities necessary to provide Menomonee Falls 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)
West Bradley Road and North 124 th Street	785	866	7.14
West Silver Spring Road and North 124 th Street	755	836	2.60

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) 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.
- (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 that uniformly apply to Milwaukee and its customers and as those standards may be amended from time to time.

II. Menomonee Falls 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. Menomonee Falls 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 Menomonee Falls shall be those established by the Commission.
- (c) Menomonee Falls shall grant permits 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. Menomonee Falls will not tax Milwaukee-owned Water Works facilities located in the service area.
- (d) Menomonee Falls shall obtain all of its water from Milwaukee for distribution in the Service Area except for areas served by Menomonee Falls from another water supplier as of the date of signing of this agreement, and except as provided in Sections II (j) and II (l).
- (e) Menomonee Falls 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. Menomonee Falls 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 Menomonee Falls. Milwaukee shall be responsible for the cost to install the meters. Menomonee Falls shall grant access to Milwaukee Water Works for meter testing and maintenance activities.

2. Milwaukee Water Works shall be permitted to install and maintain demand-metering facilities at the Menomonee Falls stations in a mutually agreeable location.
3. Menomonee Falls will share with Milwaukee Water Works their electronic signals related to flow and demand and other parameters relevant to the supply of water to Menomonee Falls. Milwaukee shall be responsible for the cost of sharing and receiving these electronic signals for its use.

(f) Menomonee Falls shall limit water service as follows:

1. The area to be served for wholesale purposes under this Agreement shall be as outlined in Section I(e). Except as provided in the intermunicipal agreements between Menomonee Falls and those municipalities or properties identified in Appendix B, no water purchased by Menomonee Falls under this agreement may be resold or exchanged on a wholesale or retail basis in the Menomonee River Basin outside this Service Area without the permission of Milwaukee. Except as provided in the intermunicipal agreements between Menomonee Falls and those municipalities or properties identified in Appendix B, 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 for use in the Menomonee River Basin to any other municipality in existence as of the date of this agreement or to any properties therein with the exception of emergency service. Notwithstanding the previous sentence, in the Fox River Basin, Menomonee Falls shall have the right to sell or exchange well or ground water from the Fox River Basin on a wholesale or retail basis within or outside the corporate limits of the Village without notification to or the approval of Milwaukee. The selling or exchanging of well or groundwater shall not create a need for additional water to be purchased from Milwaukee. If such a need for more water does arise, the agreement shall be renegotiated.
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 the Service Area 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 Section I(e). Milwaukee reserves the option, however, of providing water service to the enlarged area.

- (g) Menomonee Falls 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 Menomonee Falls 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 larger than 16 inches in diameter to the Menomonee Falls 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 Menomonee Falls under this paragraph and respond in writing within 30 days of the date the plans and specifications are submitted. The written response will identify objections or concerns regarding the proposed improvements.
- (i) Milwaukee may place restrictions upon the use of water by Menomonee Falls 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 Menomonee Falls 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 Area, Menomonee Falls 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. In an emergency during which Menomonee Falls is unable to provide water supply to its customers, Menomonee Falls may obtain emergency water service from any other source but only for the specific period of time that Menomonee Falls is unable to provide that supply.
- (k) Menomonee Falls agrees to defend and hold harmless Milwaukee from any claims or causes of action of whatever

nature arising from Menomonee Falls' negligence, intentional actions, or breach of the expressed warranties and covenants contained in this Agreement or any liabilities which may be incurred by the City of Milwaukee arising from an action challenging the authority of the City of Milwaukee to make this agreement. The indemnity provisions of the Agreement shall survive its termination and shall continue in full force and effect.

- (l) Menomonee Falls owns and maintains certain groundwater wells that are in the service area. The Wisconsin Dept. of Natural Resources (DNR) classifies these wells as standby wells. Menomonee Falls utilizes these standby wells as backups in case of an emergency. Emergencies include a catastrophic fire, a significant or complete interruption in supply from the Milwaukee Water Works, or some other event that falls with Section II(j). The wells are not used to supplement the supply of drinking water in the Village. To keep these standby wells viable and operational, Menomonee Falls may routinely operate these wells. The parties understand that, as a result of this operation of these standby wells, water from these wells may blend with water in the Village reservoirs.

III. Milwaukee agrees as follows:

- (a) To provide Adequate Water Service to Menomonee Falls. 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 Menomonee Falls as provided for in this Agreement, except for work identified under Section II (e)1 of this Agreement as being the responsibility of Menomonee Falls. 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, security, SCADA and flow monitoring 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. There are no warranties provided that extends beyond the above description.
- (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, intentional actions, or breach of the expressed warranties contained in this Agreement or any liabilities which may be incurred by Menomonee Falls 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 Menomonee Falls the meter data signal and information provided by the demand metering facilities to be provided by Milwaukee pursuant to Section II (e) 2 above.
- (h) Milwaukee will provide to Menomonee Falls, within 10 days of filing, a copy of its application to the Commission for adjustment of its water rates.

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 Board of Trustees of Menomonee Falls, and after execution by both parties, Milwaukee shall file a copy of the Agreement with the Commission. Approval of the governing bodies of both communities 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 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 Menomonee Falls. The cost of arbitration shall be equally shared and paid by Milwaukee and Menomonee Falls.

- (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 Menomonee Falls:
Menomonee Falls Water Utility
Attention: Director of Utilities
W156 N8480 Pilgrim Road
Menomonee Falls WI 53051

If to Milwaukee:
Milwaukee Water Works
Attn: Superintendent
841 N. Broadway Rm 409
Milwaukee WI 53202

IN THE PRESENCE OF:

CITY OF MILWAUKEE, operating as a
Public Water Utility

Mayor

City Clerk

COUNTERSIGNED:

City Comptroller

IN THE PRESENCE OF:

MENOMONEE FALLS, operating
as a Public Water Utility

Village President

COUNTERSIGNED:

Village Clerk

Village Attorney