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FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF MILWAUKEE AND THE CITY OF NEW BERLIN FOR THE PURCHASE OF WATER AT WHOLESALE

WHEREAS, an agreement was executed as of the 25th day of June, 2003, by and between the City of Milwaukee, operating as a public utility, (hereinafter referred to as "Milwaukee") and the City of New Berlin, operating as a water utility, (hereinafter referred to as "New Berlin") for the sale of water by Milwaukee to New Berlin at wholesale ("the Agreement"); and

WHEREAS, Milwaukee and New Berlin desire to expand the service area defined in the Agreement to include the Expanded Lake Water Service Area delineated in Appendix B-1 attached to this First Amendment to Agreement Between the City of Milwaukee and the City of New Berlin for the Purchase of Water at Wholesale ("First Amendment"); and

WHEREAS, in partial consideration of Milwaukee's agreement to provide water service to the Expanded Lake Water Service Area, Milwaukee and New Berlin executed an Intergovernmental Cooperation Agreement Between the City of Milwaukee and the City of New Berlin dated _____, 2008 ("Intergovernmental Cooperation Agreement"); and

WHEREAS, the Milwaukee Water Works has facilities to ensure that New Berlin and other wholesale customers receive an adequate supply of water and the Milwaukee Water Works 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 pursuant to the terms of this First Amendment; Now, therefore,

IT IS AGREED, by and between the parties hereto as follows:

1. Appendix A to the Agreement establishing the Estimated Maximum Day Delivery Volume (Million Gallons) is amended and restated and shall be in the form attached to this First Amendment as Appendix A-1.
2. Appendix B to the Agreement establishing the Water Service Area is amended and restated and shall be in the form attached to this First Amendment as Appendix B-1.

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3. Section I(a) of the Agreement is amended to read:

- (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	Elevation (NGVD) (Center of Intersection)	Minimum Hydraulic Grade (NGVD)	Maximum Flow Rate (MGD)
W. Morgan Oak Drive & S. 124 th Street	820.6	901.5	6.50
W. Grange Ave & S. 124 th Street	829.5	910.4	

See Appendix A-1 for Estimated Maximum Day Volumes, which projections have been supplied by New Berlin to Milwaukee.
This does not apply when the requirement of any state or federal governmental agency having jurisdiction may require otherwise.

4. Sections I(f) of the Agreement is amended to read:

- (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-1. The Service Area, composed of the Approved Lake Water Service Area and the Expanded Lake Water Service Area, is within the MMSD Sewer Service Planning Area as defined in the MMSD 2020 Facilities Plan.
1. Approved Lake Water Service Area – Area served with water pursuant to the June 25, 2003 Agreement. The boundary of the Approved Lake Water Service Area is set out in the map attached as Appendix B-1.
 2. Expanded Lake Water Service Area - Area not previously served with water pursuant to the June 25, 2003 Agreement and to be served with water pursuant to this First Amendment. The boundary of the Expanded Lake Water Service Area is set out in the map attached as Appendix B-1.

5. Section II(b) of the Agreement is amended to read:

- (b) The rates or charges for service at wholesale for water supplied to New Berlin shall be those established by the Commission. This First Amendment is conditioned upon Commission approval of the Additional Charges for Excessive Demand for water service in excess of the

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applicable maximum flow rate as set forth in Paragraph 6 of this First Amendment.

6. Additional Charges for Excessive Demand. Whenever New Berlin's demand, within the Service Area, exceeds the applicable maximum flow rate for more than 10 minutes, as measured by the total of all flows through the metering devices measuring water being delivered to New Berlin, additional charges will be imposed by Milwaukee as set forth below. During the first year after the effective date of this First Amendment only, the additional charge for excessive demand will be imposed whenever New Berlin's demand exceeds the applicable maximum flow rate for more than 30 minutes.

For every hour or portion thereof that New Berlin's demand exceeds the applicable maximum flow rate, after the 10-minute grace period allowed above (30-minute grace period during the first year of this First Amendment), the monthly service charge shall be increased by the corresponding dollar amount as set forth in the following table:

Maximum Total Flow Rate Measured Through All Metering Devices (MGD)	Excessive Demand Charge (Per Hour or Portion Thereof)
< 6.50	n/a
6.51 – 7.00	\$10,000
7.01 – 7.50	\$15,000
7.51 – 8.00	\$20,000
8.01 – 8.50	\$25,000
8.51 – 9.00	\$30,000

An additional \$10,000 per hour or portion thereof Excessive Demand Charge will apply for each 0.50 MGD increment above 9.00 MGD. For the purposes of calculating the Excessive Demand Charge, time shall be measured in one-minute intervals. Examples of the calculation of the Excessive Demand Charge are shown in Appendix C to this First Amendment.

- (a) New Berlin agrees to pay these additional charges in accordance with Section II(f) of the Agreement.
- (b) If Milwaukee completes infrastructure improvements, pursuant to Paragraph 14 of this First Amendment, that allow Milwaukee to deliver higher maximum flow rates without adversely affecting Milwaukee's water distribution system, as determined by Milwaukee's hydraulic model or equivalent analysis, the Excessive Demand Charge schedule will be adjusted accordingly by deleting charges for flow rates that do not

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adversely affect Milwaukee's system and also adjusting the corresponding dollar amount of the Excessive Demand Charge accordingly so that the \$10,000 charge shall apply to the first increment of 0.50 MGD in excess of the applicable maximum flow rate.

- (c) The additional charges set forth above shall not apply in the following circumstances:
 - (1) Where excessive demand is due to a water main break if Milwaukee is notified by New Berlin within 48 hours after New Berlin becomes aware of the main break. To qualify for this exception, however, New Berlin must reduce its hourly demand to less than the applicable maximum rate within four hours of the time it becomes informed of the main break.
 - (2) Where excessive demand is due to use of water for fire-protection service if Milwaukee is notified by New Berlin within 48 hours of the fire-protection service.
 - (3) Where excessive demand is due to an act of God or other catastrophic event beyond the reasonable control of New Berlin if Milwaukee is notified by New Berlin within 48 hours of the act of God or catastrophic event. To qualify for this exception, however, New Berlin must reduce its hourly demand to less than the applicable maximum rate within four hours of the end of the event.

The 48-hour notification period is exclusive of Saturdays, Sundays, and legal holidays.

7. Section II(e) of the Agreement is amended to read:

- (e) New Berlin shall obtain all of its water from Milwaukee for distribution in the Service Area defined in Appendix B-1 except as provided in Paragraph II (k).

8. Section II(k) of the Agreement is amended to read:

- (k) Whenever Milwaukee does not supply adequate water service as a result of an Emergency, 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. Whenever demand is in excess of agreed-upon demands in the Service Area, New Berlin may use water from each of its wells located in the Service Area.

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9. Section II(g)1 of the Agreement is amended to read:

1. The area to be served for wholesale purposes under this First Amendment shall be delineated on a map attached hereto as Appendix B-1. No water purchased by New Berlin under this First Amendment may be resold or exchanged on a wholesale or retail basis outside the Service Area without the permission of Milwaukee. No water purchased by New Berlin under this First Amendment 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.

10. Section II(g)3 of the Agreement is amended to read:

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 First Amendment on the part of Milwaukee to provide water to any area other than that delineated in Appendix B-1. Milwaukee reserves the option, however, of providing water service to the enlarged area of New Berlin.

11. Section II(g) of the Agreement is amended to add Sections II(g)4-6 as follows:

4. New Berlin agrees to operate its facilities in a reasonable manner which is consistent with the performance and service needs of both Milwaukee and New Berlin, including but not limited to tank operation and hydrant flushing.
5. New Berlin shall comply with all applicable water conservation and efficiency measures required by the Wisconsin Department of Natural Resources pursuant to Wisconsin Statute Section 281.344(8)(d).
6. No water service shall be provided to customers in New Berlin who are not also connected to a sanitary sewer tributary to the Milwaukee Metropolitan Sewerage District.

12. Section II(h) of the Agreement is amended to read:

- (h) New Berlin shall pay all costs, charges, fees, and all expenses incidental to construction, maintenance, and operation of its own water distribution

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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 limits of Milwaukee's distribution system 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.

13. Milwaukee and New Berlin agree to meet and confer every five years, or more frequently if requested by one of the parties, to reassess the water service demands and related infrastructure needs to meet those demands.
14. Milwaukee acknowledges that New Berlin is not responsible for any capital costs for water system improvements within Milwaukee County necessary to allow New Berlin to reach the maximum flow rate of 6.50 MGD. If the applicable maximum flow rate is exceeded more than two times in a rolling 12-month period, Milwaukee shall determine, in its sole discretion and based on Milwaukee's hydraulic model or equivalent analysis, whether infrastructure improvements to the Milwaukee distribution system are necessary to serve New Berlin, and Milwaukee's other customers, at adequate pressure. If New Berlin begins to approach the maximum flow rate, New Berlin may request additional capacity from Milwaukee. Milwaukee has no obligation to grant such request. If Milwaukee determines in its sole discretion that infrastructure improvements are necessary, New Berlin agrees to pay its proportionate share of the costs of the infrastructure improvements, as determined by Milwaukee after consultation with New Berlin. Factors in Milwaukee's determination of New Berlin's proportionate share of the costs of the infrastructure improvements shall include but are not limited to: the extent to which water service to New Berlin negatively impacts Milwaukee's provision of water service to its other wholesale and retail customers; the benefits of the infrastructure improvements to Milwaukee and other existing and future customers; the remaining useful life of the infrastructure that is being replaced or upgraded; the extent to which the improvements will require Milwaukee to adjust its capital improvement planning and resource allocation; and the extent to which the work is required in order to comply with existing and future state or federal regulations. Milwaukee's cost-sharing allocation shall be final, provided that New Berlin may seek review by the Public Service Commission, under Wis. Stat. §§ 196.26 and 196.40, of the reasonableness of Milwaukee's cost-sharing allocation.
15. Section III(b) of the Agreement is amended to read:
 - (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 and

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except for costs under Paragraph 14 of the First Amendment determined by Milwaukee to be the responsibility of New Berlin.

16. This First Amendment 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 this First Amendment 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 First Amendment.
17. This First Amendment shall remain in full force and effect for the entire Service Area for a period of 20 years from and after the effective date of this First Amendment and is subject to the renewal provisions of Section IV (d) of the Agreement.
18. The effective date of this First Amendment shall be the date upon which the Commission approves this First Amendment or after receipt by Milwaukee of the Regional Benefit Payment described in Article I(A) of the Intergovernmental Cooperation Agreement, whichever date is later. The parties expressly agree that this First Amendment is conditioned upon Commission approval of the Additional Charges for Excessive Demand for water service in excess of the applicable maximum flow rate as set forth in Paragraph 6 of this First Amendment.
19. These changes constitute the entire amendment to the Agreement. All other covenants, provisions, terms, and conditions of the Agreement shall remain in force until further amended by mutual agreement of the parties.

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Dated this ____ day of _____, 2008.

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

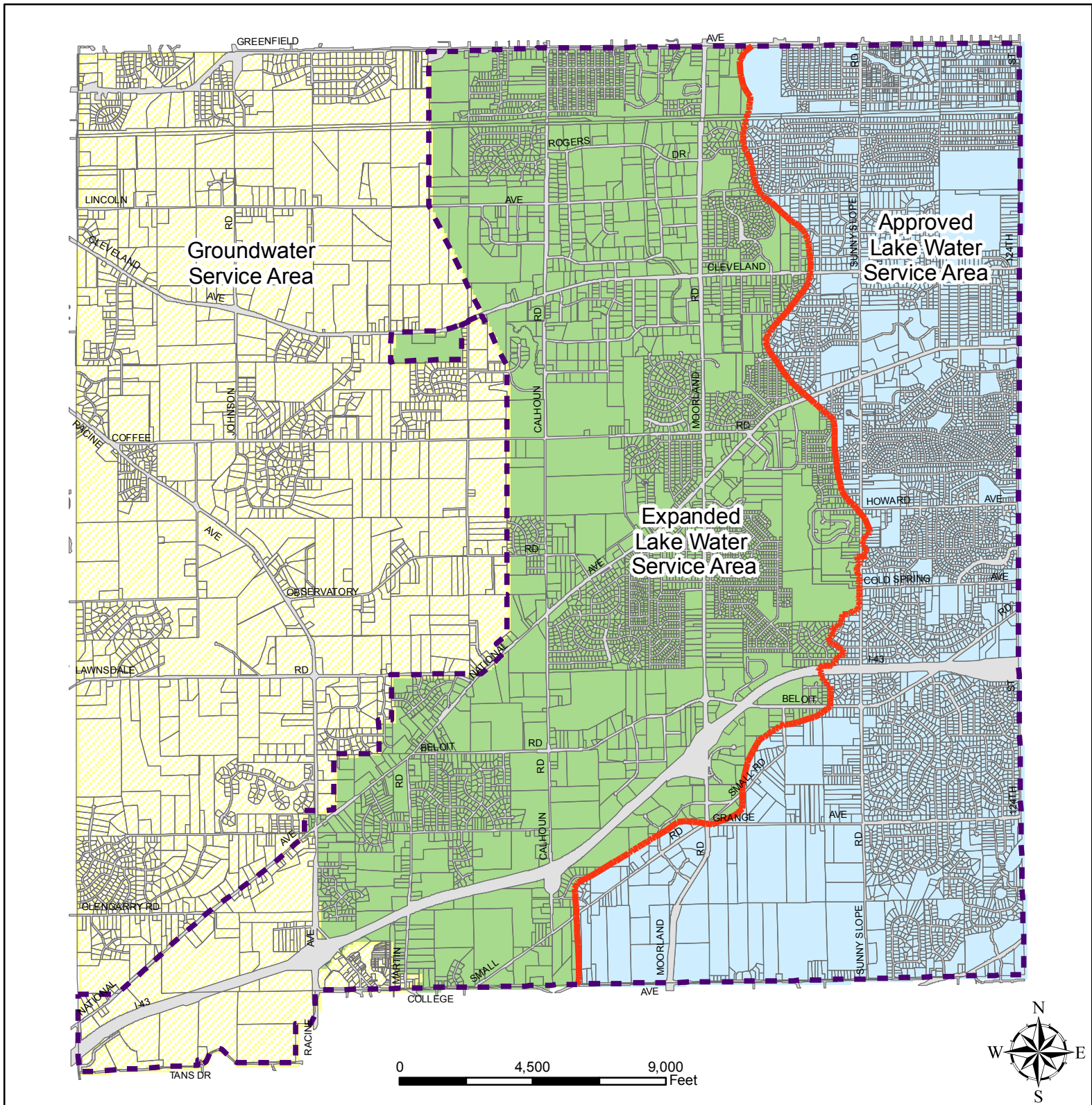
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APPENDIX A-1

Estimated Water Demands for Milwaukee Service to New Berlin: 2008 to 2035

Year	Projected Average Day Demand MGD	Projected Maximum Day Demand MGD
2008	3.553	6.060
2009	3.568	6.044
2010	3.582	6.027
2011	3.596	6.009
2012	3.610	5.991
2013	3.625	5.972
2014	3.639	5.952
2015	3.653	5.931
2016	3.667	5.910
2017	3.682	5.887
2018	3.696	5.910
2019	3.710	5.933
2020	3.725	5.956
2021	3.739	5.979
2022	3.753	6.001
2023	3.767	6.024
2024	3.782	6.047
2025	3.796	6.070
2026	3.810	6.093
2027	3.825	6.116
2028	3.839	6.138
2029	3.853	6.161
2030	3.867	6.184
2031	3.882	6.207
2032	3.896	6.230
2033	3.910	6.253
2034	3.924	6.275
2035	3.939	6.298

Appendix B-1



- Approved Lake Water Service Area
- Expanded Lake Water Service Area
- Area to Remain on Groundwater
- 2020 MMSD Planning Area
- Subcontinental Divide



APPENDIX C

Examples of billings for Excessive Demand Charge

The table of charges is used as specified in the First Amendment to Agreement Between the City of Milwaukee and the City of New Berlin for the Purchase of Water at Wholesale, reproduced below.

Maximum Total Flow Rate Measured Through All Metering Devices (MGD)	Excessive Demand Charge (Per Hour or Portion Thereof)
< 6.50	n/a
6.51 – 7.00	\$10,000
7.01 – 7.50	\$15,000
7.51 – 8.00	\$20,000
8.01 – 8.50	\$25,000
8.51 – 9.00	\$30,000

An additional \$10,000 per hour or portion thereof Excessive Demand Charge will apply for each 0.50 MGD increment above 9.00 MGD.

Example: 6.80 MGD for 3.5 hours

<6.50 MGD			No excessive demand charge
6.51 to 6.80 MGD	<1 to 10 minutes	\$0	No excessive demand charge for first ten minutes over 6.50 MGD
6.80 MGD	11 to 60 minutes	\$10,000	Maximum rate between 6.51 and 7.00 MGD in first hour
6.80 MGD	61 to 120 minutes	\$10,000	Maximum rate between 6.51 and 7.00 MGD in second hour
6.80 MGD	121 to 180 minutes	\$10,000	Maximum rate between 6.51 and 7.00 MGD in third hour
6.80 MGD	181 to 210 minutes	\$10,000	Maximum rate between 6.51 and 7.00 MGD in fourth hour
< 6.50 MGD	>211 minutes	\$0	Maximum rate below 6.50 MGD; no excessive demand charge
Event total		\$40,000	

Example: 7.30 MGD for 3.5 hours

<6.50 MGD		\$0	Maximum rate below 6.50 MGD; no excessive demand charge
6.51 to 7.30 MGD	<1 to 10 minutes	\$0	No excessive demand charge for first ten minutes over 6.50 MGD
7.30 MGD	11 to 60 minutes	\$15,000	Maximum rate between 7.01 and 7.50 MGD in first hour
7.30 MGD	61 to 120 minutes	\$15,000	Maximum rate between 7.01 and 7.50 MGD in second hour
7.30 MGD	121 to 180 minutes	\$15,000	Maximum rate between 7.01 and 7.50 MGD in third hour
7.30 MGD	181 to 210 minutes	\$15,000	Maximum rate between 7.01 and 7.50 MGD in fourth hour
<6.50 MGD	>211 minutes	\$0	Maximum rate below 6.50 MGD; no excessive demand charge
Event total		\$60,000	

Example: Variable flows up to 9.95 MGD over 165 minute period

<6.50 MGD		\$0	Maximum rate below 6.50 MGD; no excessive demand charge
6.51 to 9.23 MGD	<1 to 10 minutes	\$0	No excessive demand charge for first ten minutes over 6.50 MGD
9.23 MGD	11 to 60 minutes	\$40,000	Maximum rate between 9.01 and 9.50 MGD in first hour ¹
9.23 MGD	61 to 90 minutes	\$50,000	Maximum rate between 9.51 and 10.00 MGD in second hour ²
9.75 MGD	91 to 120 minutes		
9.95 MGD	121 to 165 minutes	\$50,000	Maximum rate between 9.51 and 10.00 MGD in third hour ²
<6.50 MGD	>166 minutes	\$0	Maximum rate below 6.50 MGD; no excessive demand charge
Event total		\$140,000	

¹Excessive demand charge for 9.01 to 9.50 MGD is \$40,000 per hour or portion thereof.

²Excessive demand charge for 9.51 to 10.00 MGD is \$50,000 per hour or portion thereof.

Example: Variable flows up to 7.25 MGD over 75 minute period

<6.50 MGD		\$0	Maximum rate below 6.50 MGD; no excessive demand charge
6.60 to 6.75 MGD	<1 to 10 minutes	\$0	No excessive demand charge for first ten minutes over 6.50 MGD
6.75 MGD	11 to 30 minutes	\$15,000	Maximum rate between 7.01 and 7.50 MGD in first hour
7.25 MGD	31 to 50 minutes		
6.75 MGD	51 to 60 minutes		
6.75 MGD	61 to 75 minutes	\$10,000	Maximum rate between 7.01 and 7.50 MGD in second hour
<6.50 MGD	>76 minutes	\$0	Maximum rate below 6.50 MGD; no excessive demand charge
Event total		\$25,000	

Billings for Excessive Demand Charge after infrastructure improvements.

For this example, it is assumed that infrastructure improvements have been made which allow maximum flow rates of 8.50 MGD to be delivered without adverse effects on Milwaukee's system.

In this case, the table of charges would be modified as follows:

Maximum Total Flow Rate Measured Through All Metering Devices (MGD)	Excessive Demand Charge (Per Hour or Portion Thereof)
< 8.50	n/a
8.51 – 9.00	\$10,000
9.01 – 9.50	\$15,000
9.51 – 10.00	\$20,000
10.01 – 10.50	\$25,000
10.51 – 11.00	\$30,000

An additional \$10,000 per hour or portion thereof Excessive Demand Charge will apply for each 0.50 MGD increment above 11.00 MGD.