

# VILLAGE OF ALLOUEZ

Allouez Village Hall • 1900 Libal Street • Green Bay, Wisconsin 54301-2453  
Phone No.: (920) 448-2800 • Fax No.: (920) 448-2850

## Department of Public Works

### AMENDMENT NO. 7 TO THE CBCWA CONTRACT

Attached is amendment #7 to the Central Brown County Water Authority (CBCWA) contract. The reason for the amendment is to remove out of date items from the CBCWA contract. The attached letter explains the reasons for the amendment.

There is a reference to Exhibit B-1 for the amount of water purchase by Allouez. The contracted amount of water purchase by the village has been revised to less than 400 million gallons per year from the original 550 million gallons per year. This is reflected in Exhibit B-1 of the contract. Allouez is unlikely to experience a water purchase amount low enough to incur a special water charge for less than contract water purchase due to the revision to the lower water purchase amount.

It is recommended that Amendment No. 7 be approved via approving the attached Resolution 2017-25.

EXHIBIT B-1

**MINIMUM WATER USAGE AMOUNT FOR  
ESTIMATED ANNUAL WATER REQUIREMENT**

<u>Charter Customer in Million Gallons Per Year</u>	<u>Annual Water Requirement</u>
Village of Allouez	355.882
Village of Bellevue	360.553
City of De Pere	717.800
Village of Howard	585.424
Town of Lawrence	53.118
Ledgeview Sanitary District No. 2	139.691
<u>Authority Total</u>	2,212.468

*[Created by Sixth Amendment to Contract effective 5/28/14]*



March 8, 2017

Brad Lange, Administrator  
1900 Libal Street  
Green Bay, WI 54301

Dear Mr. Lange:

The Central Brown County Water Authority Board has acted to begin the process of adopting Amendment #7 to the Water Purchase and Sale Agreement and is requesting that member communities adopt resolutions in support of this amendment. Resolutions as well as copies of the proposed amendments have been provided to each Board representative and are attached again to this letter.

Amendment #7 makes no substantive changes. It is intended to clean up the existing agreement and delete unnecessary and outdated contract provisions. It will have no impact on member rates or the obligations of either CBCWA or its members.

We anticipate that you will be presented with Amendment #8 later this year. Amendment #8 will propose changes to the contract language that applies to the addition of new members and charges thereto.

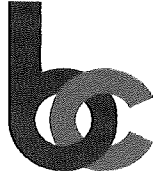
According to our Contract, the amendment process requires the Board to hold a joint meeting of representatives of all governing bodies of the member communities and the CBCWA to discuss the proposed amendment. The Board has set the meeting date and time for 3:00 p.m. on April 26 at its regular Board meeting held in the City of De Pere Council Chambers on the second floor. After the joint meeting, the Board and governing bodies of the member communities are asked to approve the amendment resolution.

Attached is a memo from the Authority's attorney with background information and a step by step procedure for implementing necessary changes. If you have any questions regarding any of the information contained herein, please contact me. I am available to meet with you and/or your community at your convenience.

Sincerely,

David Vaclavik, P.E.  
Manager, Central Brown County Water Authority

cc: Craig Berndt  
Robert Dennis



**MEMORANDUM**

TO: Central Brown County Water Authority  
c/o Dave Vaclavik

FROM: Lawrie J. Kobza

DATE: January 4, 2017

RE: Amendment to Water Purchase and Sale Contract

The process for amending the Central Brown County Water Purchase and Sale Contract between the Authority and the Authority Members is set forth in Article 16 of the Contract. That process is as follows:

- Any Party to the Contract may request that the Contract be modified.
- If such a request is received, the Authority is to set up a joint meeting of representatives of all governing bodies of the Charter Customers and the Authority to discuss the proposed changes. The meeting should be scheduled no later than sixty (60) days after the request for the change is made.
- The Authority must provide notice of the joint meeting to representatives of all governing bodies of the Charter Customers and Authority. The notice of the meeting is to be provided at least thirty (30) days prior to the meeting.
- The joint meeting of representatives of all governing bodies of the Charter Customers and the Authority is to be held to discuss the change.
- The Authority must approve the amendment by an Authority resolution. Article 16 does not require that Authority approval come after the joint meeting.
- At least three-fourths of the Charter Customers must approve the amendment. Charter Customer approval is demonstrated by the adoption of a resolution.
- The amendment is effective on the date all the necessary approvals are obtained. In this case, that is the date the fifth Charter Customer approves the amendment (assuming the Authority had already approved the amendment).

- No change or modification may materially impair or adversely affect the ability or obligation of any Charter Customer under the Contract to make payments to the Authority.

Although not required by Article 16, I recommend that the following additional steps also be taken.

- The Authority's Secretary-Treasurer should collect a certified copy of all the resolutions approving the amendment, and should attach those resolutions to the amendment. The amendment with all the certified resolutions attached constitutes the approved and effective amendment. This document should be kept with the Authority's official records.
- A copy of the document with the resolutions attached should be provided to me.
- After the amendment is effective, the Authority's Secretary-Treasurer should do a written letter to all Authority Members telling the Members of the effective date of the amendment.

If you have any questions, please give me a call.

SEVENTH AMENDMENT TO  
CENTRAL BROWN COUNTY WATER AUTHORITY  
WATER PURCHASE AND SALE CONTRACT

This SEVENTH AMENDMENT to CENTRAL BROWN COUNTY WATER AUTHORITY WATER PURCHASE AND SALE CONTRACT is effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

1. Section 1.4 of the Water Purchase and Sale Contract, the definition of "Annual Water Usage," as amended by the second, third, fourth and sixth amendments, is revised as follows to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

1.4 **"Annual Water Usage"** means for an Authority Customer the amount of Potable Water taken from the Authority by that Authority Customer in a particular year measured in accordance with Section 5.2. Notwithstanding the foregoing, ~~if the Bonds issued by the Authority in 2005 and 2013 are outstanding at the end of the Fiscal Year, and if the sum of all the Authority Customer's Annual Water Usage at the end of the Fiscal Year is less than the number set forth on Exhibit B for the Authority as a whole, all Authority Customers with an Annual Water Usage lower than the number set forth on Exhibit B for that Customer shall have their Annual Water Usage increased proportionately so that the Annual Water Usage for the Authority as a whole is equal to the amount shown in Exhibit B. If, however, the Bonds issued by the Authority in 2005 and 2013 are no long outstanding at the end of the Fiscal Year, and if the sum of all the Authority Customer's Annual Water Usage at the end of the Fiscal Year is less than the number set forth on Exhibit B-1 for the Authority as a whole, all Authority Customers with an Annual Water Usage lower than the number set forth on Exhibit B-1 for that Customer shall have their Annual Water Usage increased proportionately so that the Annual Water Usage for the Authority as a whole is equal to the amount shown in Exhibit B-1. Exhibit B-1 may be amended by the Authority's Board of Directors in accordance with Section 2.13.~~

2. Section 1.21 of the Water Purchase and Sale Contract, the definition of "Estimated Annual Water Requirement," as amended by the first, second, third, fourth and sixth amendments, is revised as follows to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

1.21 **"Estimated Annual Water Requirement"** means for an Authority Customer the estimated amount of Potable Water the Authority Customer is expected to take from the Authority in the upcoming Fiscal Year. The Estimated Annual Water Requirement for each Authority Customer shall be calculated prior to the beginning of each Fiscal Year. The Authority shall work jointly with each Authority Customer to develop the Estimated Annual Water Requirement for that Customer. The Estimated Annual Water Requirement for each Authority Customer shall be based on historical water consumption adjusted for economic

conditions, known changes to customer base, system improvements reducing water loss, or other quantifiable factors. In the event that mutual agreement on the Estimated Annual Water Requirement for an Authority Customer cannot be achieved, the Authority shall unilaterally establish the Estimated Annual Water Requirement. Notwithstanding the foregoing, ~~if the Bonds issued by the Authority in 2005 and 2013 are outstanding at the beginning of the Fiscal Year, and if the sum of all the Authority Customer's Estimated Annual Water Requirements at the beginning of the Fiscal Year is less than the number set forth on Exhibit B for the Authority as a whole, all Authority Customers with an Estimated Annual Water Requirement lower than the number set forth on Exhibit B for that Customer shall have their Estimated Annual Water Requirements increased proportionately so that the Estimated Annual Water Requirement for the Authority as a whole is equal to the amount shown in Exhibit B. If, however, the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding at the beginning of the Fiscal Year, and if the sum of all the Authority Customer's Estimated Annual Water Requirements at the beginning of the Fiscal Year is less than the number set forth on Exhibit B-1 for the Authority as a whole, all Authority Customers with an Estimated Annual Water Requirement lower than the number set forth on Exhibit B-1 for that Customer shall have their Estimated Annual Water Requirements increased proportionately so that the Estimated Annual Water Requirement for the Authority as a whole is equal to the amount shown in Exhibit B-1. Exhibit B-1 may be amended by the Authority's Board of Directors in accordance with Section 2.13.~~

3. Section 2.3 of the Water Purchase and Sale Contract, "Operation Costs Prior to the Availability of Potable Water," as amended by the second amendment, is deleted as it is no longer relevant.

~~2.3 — **Operation Costs Prior to the Availability of Potable Water.** The Authority anticipates incurring Operation Costs prior to the time the Authority will provide Potable Water to Charter Customers. In order to pay for these Operating Costs before the Authority begins to provide Potable Water to Charter Customers, this Contract obligates Charter Customers to pay Operation Costs beginning no later than January 1, 2005. A Charter Customer's obligation to pay Operation Costs is addressed in Section 6.2 of this Contract.~~

3. Subsection 6.3.1 of the Water Purchase and Sale Contract, "Calculation of Price for Fixed Costs," as amended by the fourth and sixth amendments, is revised as follows to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

6.3.1 Calculation of Price for Fixed Costs. Prior to each Fiscal Year, ~~while the Bonds issued by the Authority in 2005 and 2013 are outstanding, the Authority shall, in accordance with Section 6.1, calculate a price per 1000 gallons of water for Fixed Costs for the upcoming Fiscal Year. The price per 1000 gallons for Fixed Costs shall be calculated by (i) estimating total Fixed Costs for the Fiscal Year~~

~~following the upcoming Fiscal Year (i.e. budgeting done in 2004 for Fiscal Year 2005 would use estimated Fixed Costs for 2006); and (ii) dividing such Fixed Costs by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons. Once the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding,~~ the Authority shall annually, in accordance with Section 6.1, calculate a price per 1000 gallons of water for Fixed Costs for the upcoming Fiscal Year by (i) estimating total Fixed Costs for the upcoming Fiscal Year; and (ii) dividing such Fixed Costs by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons. The price per 1000 gallons for Fixed Costs calculated under this Section may be adjusted by the Authority in accordance with subsection 6.3.5.

4. Subsection 6.3.7 of the Water Purchase and Sale Contract, “Restricted Use of Fixed Costs,” as created by the sixth amendment, is revised as follows to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

6.3.7 Restricted Use of Fixed Costs. ~~Once the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding,~~ Fixed Costs collected by the Authority in each Fiscal Year shall be used or applied in the following priority order:

- (a) to paying the principal, premium, and interest due on all subsequently issued Bonds in that Fiscal Year;
- (b) to complying with the covenants of any Bond Resolution (including payment into any accounts and funds of amounts required by the Bond Resolution) related to the subsequently issued Bonds
- (c) to paying reasonable capital costs, including capital costs for which Bonds may be issued and such other capital costs as are necessary or desirable to carry out the corporate purposes and powers of the Authority;
- (d) to providing an adequate depreciation fund for the Authority’s Waterworks System; and
- (e) to contributing to the Authority’s segregated maintenance, repair and replacement fund.

5. Subsection 6.3.8 of the Water Purchase and Sale Contract, “Treatment of Excess Fixed Costs Revenues,” as created by the sixth amendment, is revised to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

6.3.8 Treatment of Excess Fixed Costs Revenues. ~~This subsection applies only once the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding.~~ If after the Authority applies Fixed Costs revenues in accordance with subsection 6.3.7, total funds accumulated in the Authority’s segregated maintenance, repair and replacement fund exceeds \$1,500,000, the Authority may determine by at



least a two-thirds affirmative vote under Section 7.1, to refund some or all of the excess Fixed Costs Revenues to Charter Customers. Only Fixed Costs revenues in excess of revenues needed to fully fund the items enumerated in subsection 6.3.7 and to maintain at least \$1,500,000 in the Authority's segregated maintenance, repair and replacement account may be refunded to Charter Customers. Excess Fixed Costs Revenues to be refunded shall be refunded to Charter Customers in proportion to a Charter Customer's Annual Water Usage for the previous Fiscal Year divided by the Annual Water Usage of all Charter Customers combined in the previous Fiscal Year.

6. Article 11 of the Water Purchase and Sale Contract, "Abandonment", which address the potential to terminate acquisition and construction of the Authority's Waterworks System prior to substantial completion is deleted as it is no longer relevant.

11 — Abandonment

~~Upon obtaining the consent of not less than (i) two-thirds of all Charter Customers, and (ii) a majority of those Charter Customers which would receive less than one-half of their Full Water Requirements due to the termination hereinafter referred, the Authority may elect to terminate acquisition and construction of all or any part of its Authority's Waterworks System prior to its substantial completion. All of the following must occur before such termination.~~

- ~~(i) — The Authority shall have found that the cost of substantial completion of the Authority's Waterworks System would so greatly exceed original estimates of that cost that it would not be economically feasible for the Charter Customers together to pay the Fixed Costs which would be payable after substantial completion.~~
- ~~(ii) — The Authority and each Charter Customer shall have been provided with a certificate from an independent consulting engineer and a certificate from an independent financial consultant to the effect that they each concur with the finding of the Authority described in subsection (i) of this Section.~~
- ~~(iii) — The Charter Customers and any Trustee appointed under a Bond Resolution of the Authority shall have been given ninety (90) days' notice of the proposed termination of acquisition and construction of all or any part of the Authority's Waterworks System.~~
- ~~(iv) — The Authority shall have caused to be prepared a cooperative study by an attorney or firm of attorneys having nationally recognized expertise in municipal finance, an independent consulting engineer, and an independent financial consultant as to the proper, advantageous and equitable operation and disposition of the assets of the Authority's Waterworks System.~~

~~———— If the Authority terminates acquisition and construction of all or any part of the Authority's Waterworks System pursuant to this Section, the obligations of each Charter Customer to make the payments required for Aggregate Costs under Article 6 of this Contract shall continue. This Article 11 may be applied only if there is no Third Party Water Supply Contract in force.~~

7. Article 16 of the Water Purchase and Sale Contract, "Modification of Contract," as amended by the first and sixth amendments, is revised as follows to reflect the fact that the Bonds issued by the Authority in 2005 and 2013 are no longer outstanding:

16     **Modification of this Contract**

Except for revisions and adjustments otherwise expressly provided for by the terms of this Contract, this Contract may not be changed or modified unless the consent of the Authority and of three-fourths of the Charter Customers shall have been obtained. Such modification may be requested by any Party, in which event a joint meeting of representatives of all governing bodies shall be called by the Authority and held not more than sixty (60) days after such request is made and at least thirty (30) days after the giving of notice of such meeting. At the joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification made under this Section 16 may materially impair or adversely affect the ability or obligation of any Charter Customer under the Contract to make payments to the Authority at the times, in the amounts, and with the priority required in order for the Authority timely to meet its obligations under this Contract, any Third Party Water Supply Contract, other water purchase or sale contracts of the Authority and each Bond Resolution, including without limitation the making of all deposits in various funds and accounts created under each Bond Resolution; or materially impair or adversely affect the ability of the holders of the Bonds or the Trustee, under the Contract or the Bond Resolutions, to enforce the terms of the Contract. ~~While the 2005 Bonds and 2013 Bonds are outstanding, no such change or modification which will affect the rights and interest of the holders of the Bonds shall be made without the written approval of an authorized representative of the holders of at least seventy percent (70%) of the outstanding Bonds. Once all 2005 Bonds and 2013 Bonds are no longer outstanding, the approval requirement in the immediately preceding sentence shall no longer apply.~~ No such change or modification shall be effective which would cause a violation of any provisions of any Bond Resolution or any ordinance authorizing bonds of any Charter Customer.

APPROVAL OF THIS AMENDMENT IS SIGNIFIED BY THE CERTIFIED RESOLUTIONS OF THE CENTRAL BROWN COUNTY WATER AUTHORITY AND THREE-FOURTHS OF THE AUTHORITY MEMBERS WHICH RESOLUTIONS SHALL BE ATTACHED TO THIS AMENDMENT.

*(For Authority Members other than Ledgeview)*

**RESOLUTION NO. 2017-25**

**APPROVING THE SEVENTH AMENDMENT TO  
CENTRAL BROWN COUNTY WATER AUTHORITY  
WATER PURCHASE AND SALE CONTRACT**

WHEREAS, the Central Brown County Water Authority (the “Authority”), and the City of De Pere, the Village of Allouez, the Village of Bellevue, the Village of Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2 (hereinafter jointly known as “Authority Customers”) have entered into the Central Brown County Water Purchase and Sale Contract (the “Contract”) with an effective date of November 24, 2003; and

WHEREAS, the Contract was subsequently amended effective December 20, 2004, November 14, 2007, September 22, 2008, January 5, 2010, September 24, 2012, and May 28, 2014; and

WHEREAS, it is proposed that the Contract be amended again to remove provisions that are outdated and no longer relevant; and

WHEREAS, one amendment would remove the contractual provision establishing how Authority costs are to be paid prior to the availability of potable water; and

WHEREAS, another amendment would remove the contractual provision that addresses the potential to terminate construction of the Authority’s waterworks system prior to completion; and

WHEREAS, all other amendments would remove provisions related to the Authority’s 2005 and 2013 bonds which are no longer outstanding; and

WHEREAS, pursuant to Article 16 of the Contract, this amendment must be approved by the Authority and three-fourths of the Authority Customers in order to be effective; and

WHEREAS, \_\_\_\_\_ is an Authority Customer, and is willing to approve this amendment.

NOW THEREFORE, IT IS HEREBY RESOLVED, as follows:

1. \_\_\_\_\_ approves the Seventh Amendment to Central Brown County Water Authority Water Purchase and Sale Contract, a copy of which is attached to this Resolution.
2. \_\_\_\_\_ shall provide a certified copy of the resolution approving the amendment to the Secretary-Treasurer of the Central Brown County Water Authority.

3. The Seventh Amendment to Central Brown County Water Authority Water Purchase and Sale Contract shall become effective on the first day that the amendment is approved by the Authority and five of the following six Authority Customers: the City of De Pere, the Village of Allouez, the Village of Bellevue, the Village of Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2. Approval by Ledgeview Sanitary District No. 2 is not effective until the Town of Ledgeview has approved the amendment as a Town Signatory for Ledgeview Sanitary District No. 2.

PASSED AND ADOPTED by the Village Board on the 6<sup>th</sup> day June, 2017.

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James F. Rafter, President

ATTEST:

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Debra M. Baenen, Clerk-Treasurer