

June 12, 2018

Ms. Debbie Baenen
Clerk-Treasurer
Village of Allouez
1900 Libal Street
Green Bay, WI 54301

Dear Ms. Baenen:

Central Brown County Water Authority is proposing an amendment to its formation document. A copy of this amendment is attached. The amendment serves two separate functions. The first is a clarification and update of the agreement as part of an overall review that will also result in future amendments to the Water Purchase and Sale Agreement and the Authority's By-Laws.

The most important amendments are changes that add more definition and distinction between the six existing member communities and any future members. This document does not change how charges to members are established, but rather addresses the voting and committee privileges of the membership. As designed, decisions on major issues will require approval of the existing membership (and any new members that have fulfilled their capital buy-in obligations) to be approved.

Approval of this amendment requires that it first be distributed to sitting Board members and the Clerks for each member community. This is followed by presentation at a CBCWA Board meeting. Current plans are for this to occur at a special Board meeting on July 10, 2018. Details on location and time will be communicated as soon as they become available. Following the presentation, the Board may act to approve the amendment at a following regularly scheduled Board meeting. Barring significant discussion or comment, this will likely occur at the Board meeting of July 25, 2018.

While no action may be taken at the June 27 CBCWA Board meeting, it will be placed on the agenda as a discussion item and member participation there is always welcome.

If you have specific questions or concerns regarding the proposed amendment please contact me and I will address them.

Sincerely,



Dave Vaclavik, Manager
Central Brown County Water Authority

**CENTRAL BROWN COUNTY WATER AUTHORITY
RESOLUTION NO. 2018-__**

WHEREAS, the Agreement Establishing the Central Brown County Water Authority was first entered into effective September 9, 1998 by the Village of Allouez, the Village of Ashwaubenon, the Town of Bellevue, the City of De Pere, the Town of Hobart, the Village of Howard, the Town of Lawrence, the Town of Ledgeview, the Oneida Tribe of Indians of Wisconsin, the Town of Scott and the Town of Suamico; and

WHEREAS, the current members of the Authority are the Village of Allouez, the Village of Bellevue, the City of De Pere, the Village of Howard, the Town of Lawrence, and Ledgeview Sanitary District No. 2; and

WHEREAS, the Authority wishes to amend the Agreement Establishing the Central Brown County Water Authority in order to provide additional opportunities and options for new members to join the Authority; and

WHEREAS, the Authority wishes to amend the Agreement in a manner that continues to recognize and respect the fact that the Authority's current members have invested the resources required to develop, finance, and construct the facilities necessary to deliver the water to Authority members, and to obtain a contract for wholesale water supply from the City of Manitowoc;

NOW, THEREFORE, BE IT RESOLVED that the Agreement Establishing the Central Brown County Water Authority is amended as follows:

1. The spelling of "De Pere" is corrected throughout the Agreement.
2. The Ninth Whereas Clause under the Recitals, as amended by Resolution 2000-8, is revised as follows:

WHEREAS, this Agreement provides that additional Members may, in accordance with the terms of this Agreement, ~~and with the approval of two-thirds of the Board of Directors,~~ join this Agreement and become a Member of the Authority;

3. Section 2.2 is revised to read:

2.2 Additional Member

A Wisconsin local governmental unit or a federally recognized Indian tribe or band located in the State of Wisconsin who becomes a party to this Agreement pursuant to Article XI after the Effective Date, and who has not withdrawn or been expelled pursuant to Article XII of this Agreement unless readmitted as a new Member pursuant to Section 11.1 of this Agreement.

4. Section 2.5M is created to read:

2.5M Customer Member

An Additional Member who has not yet fulfilled the terms and conditions established by the Board under Section 11.1 of this Agreement to become an Equity Member, and who has not withdrawn or been expelled pursuant to Article XII of this Agreement unless readmitted as a new Customer Member pursuant to Section 11.1 of this Agreement.

5. Section 2.6M is created to read:

2.6M Equity Member

The Village of Allouez, the Village of Bellevue, the City of De Pere, the Village of Howard, the Town of Lawrence, Ledgeview Sanitary District No.2, and each Additional Member who has fulfilled the terms and conditions established by the Board under Section 11.1 of this Agreement to become an Equity Member, provided such entity has not withdrawn or been expelled pursuant to Article XII and has not been readmitted as a new Equity Member pursuant to Section 11.1 of this Agreement.

6. Section 2.8 is revised to read:

2.8 Member

An ~~Original Member or an Additional Member~~ Equity Member or Customer Member who has not yet withdrawn or been expelled pursuant to Article XII of this Agreement unless readmitted as a new Member pursuant to Section 11.1 of this Agreement.

7. Section 3.2 is revised to read:

3.2 Members

The Members of the Authority created by this Agreement are the Wisconsin local governmental entities and the federally recognized Indian tribes or bands located in Wisconsin which have duly executed identical counterparts or copies of this Agreement, but which have not withdrawn or been expelled pursuant to Article XII of this Agreement, unless readmitted as a new Member pursuant to Section 11.1 of this Agreement. Additional Wisconsin local governmental entities and federally recognized Indian tribes or bands located in Wisconsin may become members of the Authority by becoming parties to this Agreement pursuant to Article XI hereof. Members may cease to be Members to this Agreement pursuant to Article XII hereof.

8. Section 4.8 is revised to read:

4.8 Meetings

The Board may hold such meetings as necessary, upon call of the President, one-third of the Directors, or as provided in the Bylaws. ~~Meetings may be held by telephone or other similar means.~~

9. Section 5.3, as amended by Resolution 2000-8, is revised to read:

5.3. Supermajority Vote of the Board of Directors

The following actions of the Board of Directors shall be taken only by the affirmative vote of at least two-thirds of the Directors appointed to the Authority:

- (a) Approval of any agreement or contract between the Authority and any other government or government agency;
- (b) Approval of individual contracts or expenditures, or a series of contracts or expenditures related to a single Project in an amount in excess of \$250,000;
- (c) Issuance of Bonds in an amount in excess of \$100,000;
- ~~(d) Employment of managerial and professional personnel either as employees or consultants to the Authority;~~
- (e) Approval of a contract to operate the waterworks system;
- (f) Approval of any Authority ordinance or resolution adopted pursuant to Subsection 9.2S of this Agreement;
- (g) Approval of any agreement or contract to purchase a supply of water or to purchase capacity in a Project;
- (h) Approval of any agreement or contract to sell a Project or supply of water or ~~to sell capacity in a Project to a non-Member;~~
- (i) Establishment of a Commitment Date pursuant to Section 12.2 of this Agreement by which each Member must have entered into either a water sale and purchase agreement or a capacity sale and purchase agreement with the Authority;
- ~~(j) Approval or conditional approval of an application of membership to the Authority which meets the requirements of Section 11.1 of this Agreement;~~
- (k) Removal of an Officer of the Board of Directors;
- (l) Amendment Adoption and amendment of the Bylaws;
- (m) Amendment of this Agreement in accordance with Section 11.2;
- (n) Disconnection of a Member's water service; and
- (o) Other matters requiring a two-thirds affirmative vote of the Directors of the Authority under a water sale and purchase agreement signed by the Authority and its Members; ~~and-~~
- (p) Delegation of Board power under Section 7.2.

10. Section 5.5 is created to read as follows:

5.5 Matters Requiring Executive Committee Recommendation Before Board Action

If there is an Executive Committee, the Board of Directors shall not take action on any of the following without first receiving the Executive Committee's recommendation:

- (a) Approval of individual contracts or expenditures, or a series of contracts or expenditures related to a single Project in an amount in excess of \$250,000;
- (b) Issuance of Bonds in an amount in excess of \$100,000;
- (c) Approval of any agreement or contract to sell a Project or capacity in a Project to a non-Member;
- (d) Adoption and amendment of the Bylaws;
- (e) Amendment of this Agreement in accordance with Section 11.2; and
- (f) Delegation of Board power under Section 7.2.

Board of Director action shall be limited to accepting or rejecting the Executive Committee's recommendation. The Board may not modify, condition, or partially accept or reject the Executive Committee's recommendation.

11. Section 5.6 is created to read:

5.6 Matters Requiring Membership Committee Recommendation Before Board Action

The Board of Directors shall not take action on any of the following without first receiving the affirmative recommendation of two-thirds of the Membership Committee:

- (a) Approval or conditional approval of an application of membership to the Authority which meets the requirements of Section 11.1 of this Agreement;
- (b) Advancement of a Customer Member to Equity Member status;
- (c) Approval of any agreement or contract to sell a supply of water or to sell capacity in a Project to a Member.

Board of Director action shall be limited to accepting or rejecting the Membership Committee's recommendation. The Board may not modify, condition, or partially accept or reject the Membership Committee's recommendation.

12. Section 6.1, as amended by Resolution 2003-2, is revised to read as follows:

6.1 Election of Officers

There shall be three Officers of the Authority consisting of the President, Vice President, and Secretary/Treasurer. The Board of Directors shall elect from among the Directors one Director to serve as President and another, a second Director to serve as Vice President, and a third Director to serve as Secretary/Treasurer. Only Directors of Equity Members are eligible to serve as Officers. Notwithstanding the foregoing, if there are fewer Equity Members than open officer positions and all Directors of Equity Members currently serve as Officers, then Directors of Customer Members may be elected to the open officer positions, except that the President shall always be a Director of an Equity Member. The Board of Directors shall elect other Directors to the offices of Secretary and Treasurer and to such other offices, if any, as the Board of Directors shall establish by Bylaws. The Bylaws may provide for the offices of Secretary and Treasurer to be held by the same person. Beginning in the first calendar year commencing after the initial meeting of the Authority, elections for new officers shall be held once in each calendar year at the last regular meeting of the Authority held prior to December 31.

13. Section 7.2 is revised to read as follows:

7.2 Delegation of Power

The Board, by the affirmative vote of at least two-thirds of the Directors appointed to the Authority, may delegate any of its powers or duties to a committee of the Board, whether created by action of the Board or by Authority Bylaw, a Board member, or an employee provided, however, that the Board may not delegate the power to take the following actions: any action requiring supermajority approval of the Board of Directors under Section 5.3 of this Agreement; approval of any agreement or contract to purchase or sell a supply of water; final authorization of construction of water supply facilities; approval of the annual budget, provided that the Board may delegate to a committee of the Board the power to amend the budget so approved; imposition of any special assessments upon Members; approval of issuance of any Bond; and admission of new Members;~~expulsion of Members; amendment of this Agreement; termination of this Agreement; and removal of an officer or Director.~~ Any power or duty delegated to a committee of the Board under this Section 7.2 may be revoked pursuant to the provisions in Section 5.2 of this Agreement.

14. Section 7.3 is revised to read as follows:

7.3 Bylaws

Matters not governed by this Agreement or the Act may be regulated by such Bylaws, rules or regulations, as the Board shall adopt. The Board of Directors shall by ordinance or resolution adopt Bylaws for the Authority that are not inconsistent with the Act or this Agreement. The Board of Directors may by ordinance or resolution adopt and amend the Bylaws for the Authority upon the affirmative vote of at least two-thirds of the Directors appointed to the Authority.

15. Section 7.4 is created to read:

7.4. Executive Committee

If there is at least one Customer Member then an Executive Committee consisting of all Officers shall be established, otherwise an Executive Committee consisting of all Officers may be established by affirmative vote of the Board of Directors. The Executive Committee shall meet as necessary, and at a minimum, shall meet to consider and provide a recommendation to the Board of Directors on the matters identified in Section 5.5. The quorum and voting provisions in Sections 5.1, 5.2, and 5.4 shall apply to the Executive Committee as if it were the Board of Directors.

16. Section 7.5 is created to read:

7.5. Membership Committee

A Membership Committee shall be established. If there are at least three Equity Members then the Membership Committee shall consist of all Directors of Equity Members. If there are two or fewer Equity Members then the Membership Committee shall consist of all Officers. The Membership Committee shall meet as necessary, and at a minimum, shall meet to consider and provide a recommendation to the Board of Directors on the matters identified in Section 5.6. A Committee recommendation shall be forwarded to the Board of Directors for action only if the recommendation receives the support of two-thirds of the Directors on the Membership Committee. A Committee recommendation on a membership application shall include the conditions under which membership would be granted including a schedule of any charges, fees, rates or terms as allowed under Section 11.1. The recommendation shall also include a recommendation as to whether the applicant would join the Authority as an Equity Member or Customer Member and if the latter, the terms and conditions under which the applicant may become an Equity Member. The quorum and voting provisions in Sections 5.1, 5.2, and 5.4 shall apply to the Membership Committee as if it were the Board of Directors.

17. Section 8.2, as amended by Resolution 2000-8, is revised to read as follows:

8.2 Duty to Adopt Annual Budget; Member Review

The Authority shall formulate and adopt an Annual Budget before the beginning of each fiscal year of the Authority. By September 1 of the year prior to the beginning of each fiscal year of the Authority, other than the first fiscal year, the Authority shall deliver a tentative Annual Budget for such upcoming fiscal year to each Member for its review and comment. The Authority shall hold a hearing on the tentative Annual Budget, at which the Members may be heard, and shall give the Members not less than 21 days notice of the hearing. If the Authority proposes any revision to the tentative Annual Budget as originally delivered, it shall promptly deliver a copy of such proposed revision to each Member for its review and comment. The Authority shall adopt the tentative Annual Budget, as submitted or as changed after the hearing, by a majority vote of the Directors of the Authority.

18. Section 8.3, as amended by Resolution 2000-8, is revised to read as follows:

8.3 Contents of Annual Budget

The tentative Annual Budget shall contain:

- (a) A statement of all existing indebtedness;
- (b) A statement of all anticipated revenue;
- (c) A statement of all proposed appropriations for each department, activity, and reserve account;
- (d) A statement of actual revenues and expenditures for the prior year (which is the year preceding the year in which the tentative Annual Budget is prepared);

- (e) A statement of actual revenues and expenditures for not less than the first six months of the current year (which is the year in which the tentative Annual Budget for the upcoming year is prepared);
- (f) A statement of estimated revenues and expenditures for the balance of the current year in which the tentative Annual Budget is prepared;
- (g) A projection of the contribution, if any, required from each Member to pay:
 - (i) any obligation assumed by such Member pursuant to Section 8.8 of this Agreement with respect to the payment of any Authority Bond (the "Member's Debt"); and
 - (ii) ~~such Member's share, if any, of any and all costs and expenses of the Authority that are not budgeted to be paid or otherwise satisfied from the revenues and other resources of the Authority, as determined pursuant to Section 8.4 of this Agreement (the "Member's Expenses");~~ and
- (h) After a water sale and purchase agreement has been signed, an estimate of operation and maintenance costs in a stated price per 1000 gallons for the upcoming fiscal year, and an estimate of fixed, capital and other costs to be payable by each Member in either a stated aggregate dollar amount per month or a stated price per 1000 gallons for the upcoming fiscal year.

19. Section 8.4, Basis for Member's Expenses; Limitation, Section 8.5, Member's Initial Contributions; Reimbursement, and Section 8.6, Payment of Member's Debts, Expenses and Other Obligations, which deal with Authority funding before a water sale and purchase agreement exists are no longer relevant and are deleted.

20. Section 8.7 is revised to read as follows:

8.7 Penalties for Non-Payment

If any Member fails to pay the Authority funds contractually due~~its Member's Expenses~~, within 60 days after written demand therefor by the Authority, such Member shall be in default, and interest of 12% per annum on the amount of such payment shall accrue, and be compounded on a monthly basis, during the period of non-payment. The Authority shall have the power to collect the amount of such payment, together with interest as set forth above and its costs of collection, including legal fees and administrative costs. Any Member that does not pay funds due the Authority~~its Member's Expenses~~ within 60 days after written demand therefor by the Authority shall be, without any further action of the Board of Directors, suspended from all of its rights and privileges as a Member. The Director of a Member under suspension shall have no power to make or second motions or to vote at or otherwise participate in any meeting of the Board of Directors or any of its committees or task forces, nor shall such Director be counted for the purposes of the establishment of a quorum or the determination of the vote needed to pass or approve any matter coming before the Board of Directors or any of its committees or task forces. A Member under suspension shall continue during its suspension to be responsible for moneys legally due the Authority~~its Member's Expenses~~. Upon payment

of all amounts due to the Authority under this Agreement, including those accrued during the suspension, a Member under suspension shall be reinstated to the rights and privileges of its membership in the Authority.

21. Section 9.3, the heading is revised as follows:

9.3 Additional Member Covenants

22. Section 11.1 is revised to read as follows:

11.1 New Members

Any Wisconsin local governmental unit or federally recognized Indian tribe or band located in Wisconsin may apply for membership in the Authority by passing an ordinance or resolution of its governing body which meets each of the requirements contained in Section 3.4, and by filing the ordinance or resolution and an application for membership with the Secretary of the Authority. The application for membership shall be in the form prescribed by the Authority. An applicant that previously withdrew or was expelled from the Authority may reapply for membership pursuant to this Section 11.1, provided however that the applicant shall not be credited for any capital investment in the Authority prior to the applicant's prior withdrawal or expulsion. The application and ordinance or resolution shall be submitted to the ~~Board for its approval, conditional approval or disapproval.~~ Membership Committee for its review and recommendation. ~~The Board-Membership Committee~~ in its discretion may ~~disapprove~~ recommend disapproval of the application of any applicant for any reason. ~~The Board-Membership Committee~~ may place such terms and conditions on its recommendation of the approval of any application as the ~~Board-Membership Committee~~ deems in the interests of the Authority and its existing Members, including but not limited to, conditions (a) requiring the new Member to make a special payment to the Authority for costs paid and risks taken by existing Members in laying the groundwork for the Authority and in forming and operating the Authority; (b) imposing different rates for the sale of water to the new Member than to other Members; ~~and~~ (c) imposing other charges on the new Member so that existing Members will not be adversely affected by the admission of the new Member; and (d) requiring the new Member to join as a Customer Member until it meets the requirements established to become an Equity Member. Upon the favorable recommendation of two-thirds of the Membership Committee, the application and recommendation, including all applicable terms and conditions, shall be submitted to the Board for its approval or disapproval. The applicant shall by ordinance or resolution agree to all terms and conditions imposed by the Membership Committee and approved by the Board or its application shall be deemed denied. Upon approval of the Board of any application, and acceptance of any terms and conditions of approval by the applicant, an amendment to this Agreement making the applicant a Member of the Authority and party to this Agreement shall be executed by the Authority. No further vote on the amendment making the applicant a Member of the Authority shall be taken. A certified copy of the authorizing ordinance or resolution for each new Member to the Agreement shall be

attached to the Agreement as an Attachment. The amendment shall become effective upon filing with the Secretary of State.

23. Section 12.1, **Withdrawal**, is revised to add Subparagraph D, to read as follows:

D. **Withdrawal of Three Original Members.** In accordance with this Section, three Original Members, the Oneida Tribe of Indians of Wisconsin, the Town of Scott, and the Town of Suamico withdrew from the Authority prior to the Commitment Date established under Section 12.2.

24. Section 12.2, as amended by Resolution 2000-8, is revised to read as follows:

12.2 **Expulsion of Member**

In order to allow the Authority to take the steps necessary to jointly develop, finance, and construct a Joint Lake Water System, the Authority must definitively know prior to the design and financing of the Joint Lake Water System which Members will purchase water from the Authority. The Authority shall establish a date called the Commitment Date by which each Member must have entered into an agreement obligating it to purchase water from the Authority. If a Member has not entered into an agreement obligating it to purchase water from the Authority by the Commitment Date, the Member shall be automatically expelled from the Authority without further action by the Board. Such expulsion shall be effective as of the Commitment Date. In accordance with this Section, two Original Members, the Village of Ashwaubenon and the Town of Hobart was expelled from the Authority.

25. Section 12.3, as amended by Resolution 2000-1 and Resolution 2000-8, is revised to read as follows:

12.3 **Member Responsibility Upon Withdrawal or Expulsion**

Any Member withdrawing from the Authority pursuant to Section 12.1 of this Agreement or being expelled from the Authority pursuant to Section 12.2 of this Agreement shall remain liable for all of its Member's Expenses costs incurred prior to the date of withdrawal or expulsion. Except if the withdrawal or expulsion of one or more Members results in dissolution and termination of the Authority pursuant to Section 12.4 of this Agreement, the withdrawing or expelled Members retain no equity rights in the Authority or distributive rights to any of the Authority's tangible or intangible assets. In no case shall the Authority be obligated to return to a withdrawing or expelled Member Member's Expenses which have not yet been incurred, but which have been paid by the Member to the Authority pursuant to Section 8.6, unless the withdrawn or expelled Member has signed a water sale and purchase agreement with the Authority agreeing to fulfill the responsibilities of a current Member should such current Member default. If the withdrawal or expulsion of one or more Members results in dissolution and termination of the Authority pursuant to Section 12.4 of this Agreement, the Member or Members withdrawing or being expelled shall participate in the dissolution and termination of the

Authority as set forth in Sections 12.4 and 12.5.

26. Section 12.4 is revised to read as follows:

12.4 **Dissolution and Termination**

Subject to the provisions of Section 12.5 of this Agreement, the Authority shall be dissolved and terminated only upon the withdrawal or expulsion of one or more of the Members so as to reduce the total number of Members to fewer than two; provided, however, that in no event shall the Authority dissolve or terminate while any Bond of the Authority is outstanding and not paid or defeased or while the Authority remains party to any contract to sell water.

27. Section 12.5, Responsibilities Prior to Dissolution and Termination, is deleted and recreated to read as follows:

12.5 **Procedure for Dissolution and Termination**

A. **Definitions.** For the purposes of this Section 12.5, the term “Participating Member” shall include a current “Member” as defined in Section 2.8 of this Agreement, and also any withdrawing or expelled Member that is participating in the dissolution and termination of the Authority pursuant to Section 12.3 of this Agreement.

B. **Appointment of Liquidator.** The Board, by the affirmative vote of at least two-thirds of the Directors appointed to the Authority, which shall include a Director from each of the Participating Members, shall appoint a Liquidator to wind up the Authority. If a Liquidator is not appointed, then the then current Officers of the Authority shall act as Liquidator. Any action of the Officers as Liquidator shall occur by the affirmative vote of a majority of the Officers.

C. **Liquidation and Distribution of Assets.** The Liquidator shall create a plan of liquidation of the assets of the Authority. The plan of liquidation shall provide: (a) an accounting of all assets, liabilities, and obligations of the Authority; (b) for the payment, satisfaction, and discharge of all liabilities and obligations of the Authority before or at the same time as distribution of assets of the Authority to Participating Members; and (c) for the distribution of any assets of the Authority remaining after satisfaction of all liabilities and obligations among the Participating Members in a substantially similar proportion to which each Participating Member's total capital contribution to the Authority bears to the total capital contribution that all Participating Members have made to the Authority through the date of dissolution and termination of the Authority, except that any Participating Member's distribution shall be reduced by any debt it may owe to the Authority. The plan may propose that the Liquidator may defer the liquidation of any assets except those necessary to satisfy the Authority's liabilities and obligations, and may distribute to the Participating Members, in lieu of cash, assets of the Authority deemed not suitable for liquidation or where such distribution maximizes value to all Participating Members. The plan of liquidation shall be submitted to the Board for approval, and once approved, the Liquidator shall carry out the plan of liquidation.

D. **Operation of the Authority During Dissolution.** During dissolution of

the Authority, the Authority shall conduct no business except for the purpose of winding up its business and affairs, providing service to any Participating Members remaining on the Joint Lake Water System, and disposing of all of its property and other assets pursuant to the plan of liquidation, and, for that sole purpose, except for the powers given to the Liquidator under this Section 12.5, the Board of Directors, which shall include a Director from each of the Participating Members, shall continue to possess all of its authority and powers.

28. Section 12.6, Distribution of Assets Upon Dissolution and Termination, having been incorporated into the amended Section 12.5, is deleted.

12.6 Distribution of Assets Upon Dissolution and Termination

Upon the dissolution and termination of the Authority, and after satisfaction of all liabilities and obligations of the Authority, any assets of the Authority remaining shall be distributed among the Members in proportion to each Member's total capital contribution to the Authority, through the date of dissolution and termination of the Authority, ~~whether~~ in the form of ~~Member's Expenses, or~~ water rates paid to the Authority, except that any Member's distribution shall be reduced by any debt it may owe to the Authority.

29. Article XIV, OFFICE AND AGENT, as amended by Resolution 2000-8 and Resolution No. 2004-1, is deleted.

BE IT FURTHER RESOLVED, that the Secretary of the Authority shall promptly file these amendments to the Intergovernmental Agreement with the Secretary of State of the State of Wisconsin, and that these amendments shall be effective upon such filing with the Secretary of State.

PASSED AND ADOPTED this ____ day of _____, 2018.

CENTRAL BROWN COUNTY WATER AUTHORITY

BY: Sarah Burdette, President.

Attest:

BY: Geoff Farr, Vice President
Central Brown County Water Authority

