

RESOLUTION NO. 2021-21

**APPROVING THE NINTH 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, May 28, 2014, May 22, 2017, and October 20, 2020; and

WHEREAS, it is proposed that the Contract be amended again to clarify installation requirements for meters and check meters, to increase flexibility in the negotiated terms of Subsequent Contracts, to modify how charges are calculated once a Subsequent Contract is approved, to manage the application of charges paid by Charter Customers and Subsequent Customers, and to allow for future transition to volume-based charges for all Authority Customers after the 2014 Bonds 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, The Village of Allouez is an Authority Customer, and is willing to approve this amendment.

NOW THEREFORE, IT IS HEREBY RESOLVED, as follows:

1. The Village of Allouez approves the Ninth Amendment to Central Brown County Water Authority Water Purchase and Sale Contract, a copy of which is attached to this Resolution.
2. The Village of Allouez shall provide a certified copy of the resolution approving the amendment to the Secretary-Treasurer of the Central Brown County Water Authority.
3. The Ninth 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 THIS 18th DAY OF MAY, 2021.

James F. Rafter, Village President

Attest: _____
Carrie Zittlow, Clerk-Treasurer

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

This NINTH AMENDMENT to CENTRAL BROWN COUNTY WATER AUTHORITY WATER PURCHASE AND SALE CONTRACT is effective this _____ day of _____, 20__.

1. Section 1.13m of the Water Purchase and Sale Contract, defining the term “Capital Recovery Charge,” is created as follows:

1.13.m “Capital Recovery Charge” means a charge paid by a Subsequent Customer in accordance with a Subsequent Contract to compensate the Authority for the Subsequent Customer’s use of the Authority’s Waterworks System in existence on the effective date of the Subsequent Contract.

2. Section 1.23 of the Water Purchase and Sale Contract, defining the term “Fixed Costs,” is revised as follows:

1.23 “Fixed Costs” means an amount sufficient at all times to pay the principal of and premium, if any, and interest on all Bonds, to provide an adequate depreciation fund for the Authority’s Waterworks System, to comply with the covenants of the Bond Resolution (including payment into any accounts and funds of amounts required by the Bond Resolution) related to the Bonds, ~~and~~ to pay 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 and its obligations under this Contract and any Third Party Water Supply Contract, to fund a reserve for future capital costs, and to pay Capital Recovery Charges provided for in a Subsequent Contract; except as any of the above are included in Operation Costs.

3. Section 4.1 of the Water Purchase and Sale Contract, “Authority to Supply Equipment, Official Record,” as amended by the Second Amendment, the Fifth Amendment, and the Eighth Amendment, is revised as follows:

4.1 Authority to Supply Equipment, Official Record. The Authority shall furnish, install, own, operate, maintain, repair and replace, at its own expense, at the Points of Delivery, the necessary equipment and devices for properly measuring the quantity of Potable Water delivered by the Authority to Authority Customers, and transferred between Authority Customers under this Contract. Such measuring equipment and devices shall be of a type meeting the standards of the American Water Works Association and shall be designed and installed in accordance with the manufacturer’s recommended guidelines for an accurate metering installation. The Authority shall install the equipment in above-ground structures located at sites selected by each Authority Customer, respectively, for Potable Water delivered to it. Such sites shall be subject to review and approval by the Authority, which shall not be unreasonably withheld. The Authority Customer shall pay the cost of constructing any new above-ground structures

or remodeling any existing above-ground structures to the extent necessary to house the Authority's equipment. The above-ground structures shall be owned, maintained, repaired and replaced by Authority Customers. The Authority's meters and other equipment installed in the above-ground structure shall remain the property of the Authority. An Authority Customer shall grant to the Authority, at no cost, an easement in each respective site sufficient to enable the Authority to install, use, operate and maintain the Authority's equipment during the term of this Contract. The Authority and each Authority Customer shall have access to such structures and equipment for examination and inspection at all reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Authority. For the purpose of this Contract, the official record of readings of the meter or meters shall be the journal or other record book of the Authority in its office in which the records of the employees or agents of the Authority who take the readings are or may be transcribed. Upon written request of an Authority Customer, the Authority will give the Authority Customer a copy of such journal or record book, or permit the Authority Customer to have access thereto in the office of the Authority during regular business hours.

4. Section 4.3 of the Water Purchase and Sale Contract, "Check Meters," as amended by the Eighth Amendment, is further revised as follows:

4.3 **Check Meters.** An Authority Customer may, at its option and its own expense, install and operate a check meter to check each meter installed by the Authority, but the measurement of Potable Water for the purpose of this Contract shall be solely by the Authority's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be installed ~~as near to the Authority's meters as practicable~~ so as to not interfere in the metering accuracy of the Authority's meter, be of standard make, and be subject at all reasonable times to inspection and examination by any employee or agent of the Authority, but the calibration and adjustment thereof shall be made only by such Authority Customer, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water under this Contract, in which case the calibration and adjustment thereof shall be made by a certified independent contractor in the presence of the Authority and the Authority Customer, with like effects as if such check meter or meters had been furnished and installed by the Authority. The cost of the certified independent contractor shall be shared equally by the Authority and the Authority Customer.

5. Subsection 6.1.2. of the Water Purchase and Sale Contract, "Development of Budget," as amended by the Third Amendment, the Fourth Amendment, the Sixth Amendment, and the Eighth Amendment, is revised as follows:

6.1.2 Development of Budget. By September 1 prior to the beginning of each Fiscal Year, the Authority shall prepare and send to the Authority Customers a tentative budget. Each budget shall include, among such other items as the Authority may choose:

- (a) the Estimated Annual Water Requirement for each Authority Customer for the Fiscal Year established as set forth in Section 1.21;

- (b) an estimate of Operation Costs in a stated price per 1000 gallons for the Fiscal Year calculated in accordance with Section 6.2;
- (c) an estimate of Fixed Costs for each Authority Customer for the Fiscal Year ~~determined~~ calculated in accordance with Section 6.3; and
- (d) an estimate of monthly Security Fund Payments to be payable by each Authority Customer calculated in accordance with Section 6.6.

The Authority will hold a hearing on the tentative budget, at which the Authority Customers may be heard, and shall give the Authority Customers not less than 21 days notice of the hearing. The Authority shall adopt the tentative budget, as submitted or as changed after the hearing, by a majority vote of the Authority

- 6. Subsection 6.1.4 of the Water Purchase and Sale Contract, "Amendment of Operation Costs," as amended by the Sixth Amendment and the Eighth Amendment, is revised as follows:

6.1.4 Amendment of Operation Costs. The price of Operation Costs per 1000 gallons for the Fiscal Year shall not exceed the amount set forth in the approved budget unless the Authority first amends the budget. However, before the budget may be amended to increase the price of Operation Costs, the Authority shall hold a hearing on such higher amount, at which the Authority Customers may be heard, and shall give the Authority Customers not less than 21 days notice of such hearing. This subsection does not apply to an end of year adjustment under subsection 6.2.4 or 6.2.5.

- 7. Subsection 6.2.1 of the Water Purchase and Sale Contract, "Calculation of Price for Operation Costs," as amended by the Fourth Amendment and Sixth Amendment, is revised as follows:

6.2.1 Calculation of Price for Operation Costs. Prior to each Fiscal Year, the Authority shall, in accordance with Section 6.1, calculate a price per 1000 gallons of water for Operation Costs for the upcoming Fiscal Year. The price per 1000 gallons for Operation Costs shall be calculated by:

- (~~a~~i) estimating total Operation Costs for the upcoming Fiscal Year; and
- (~~b~~ii) dividing such total Operation Costs by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons.

~~The price per 1000 gallons for Operation Costs calculated under this Section may be adjusted by the Authority in accordance with subsection 6.2.5.~~

8. Subsection 6.2.2 of the Water Purchase and Sale Contract, "Customers' Monthly Payment of Operation Costs," as amended by the First Amendment and Fourth Amendment, is revised as follows:

6.2.2 Customers' Monthly Payment of Operation Costs. The monthly charge to all Authority Customers for Operation Costs shall equal the then current price per 1000 gallons for Operation Costs times that Authority Customer's measured water usage for the month. Notwithstanding the prior sentence, if Bonds issued by the Authority in 2014 are still outstanding at the beginning of the Fiscal Year, e~~Each Charter Customer shall pay a fixed monthly charge for share of Operation Costs for each month~~equal to the then current price per 1000 gallons for Operation Costs times the Customer's Estimated Annual Water Requirement divided by 12 ~~instead of paying a usage based charge.~~

9. Subsection 6.2.3 of the Water Purchase and Sale Contract, "End of Year Adjustment," as amended by the Fourth Amendment, is revised as follows:

6.2.3 End of Year Adjustment Where Total Annual Water Usage Equals or Exceeds the Estimated Annual Water Requirement. This subsection provides for an end of year adjustment for Charter Customers if Bonds issued by the Authority in 2014 are still outstanding at the beginning of the Fiscal Year and~~applies only if the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is equal to or greater than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or refund~~rebate ~~for the previous Fiscal Year based on the Charter Customer's Annual Water Usage during that Fiscal Year. The amount of the adjustment charge or refund~~rebate ~~for each specific Charter Customer for a given year shall be determined as follows:~~

STEP ONE: For each Charter Customer, determine how much that Charter Customer should pay in Operation Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage in that year. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for the previous Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Operation Costs for the year. (Total Amount Owed)

STEP TWO: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Operation Costs for the previous Fiscal Year pursuant to subsection 6.2.2. (Amount Paid)

STEP THREE: Where the amount calculated for a ~~For each Charter Customer in STEP ONE exceeds the amount calculated in STEP TWO, subtract the figure determined under STEP TWO from the figure determined under STEP ONE. This is resulting number is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year. If this number is less than zero, the Charter Customer owes no additional money to the Authority and the Charter Customer is entitled to a rebate from the Authority.~~ (Adjustment Owed = Total Amount Owed – Amount Paid)

STEP FOUR: Where the amount calculated for a Charter Customer in STEP ONE is less than the amount calculated in STEP TWO, subtract the figure determined under STEP ONE from the figure determined under STEP TWO. The resulting number is the amount to be refunded to the Charter Customer by the Authority for Operation Costs for the previous Fiscal Year. (Refund Owed = Amount Paid - Total Amount Owed)

The Authority shall bill each Charter Customer for such additional Operation Costs by March 1, and the Charter Customer shall pay the Authority for such additional Operation Costs by April 1. The Authority shall issue refundsrebates by April 15.

10. Subsection 6.2.4 of the Water Purchase and Sale Contract, "Adjustment Where Total Annual Water Usage Declines," as revised and recreated by the Fourth Amendment, is revised as follows:

6.2.4 End of Year Adjustment Where Total Annual Water Usage is Less than the Estimated Annual Water Requirement and No Subsequent Customer ExistsDeclines. This subsection provides for an end of year adjustment for Charter Customers ~~applies only~~ if Bonds issued by the Authority in 2014 are still outstanding at the beginning of the Fiscal Year, the Authority has no Subsequent Customers, and the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is less than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or refundrebate for the previous Fiscal Year. The amount of the adjustment charge or refundrebate for each specific Charter Customer shall be determined as follows:

STEP ONE: For purposes of this subsection 6.2.4 only, the term Operation Costs means the lesser of estimated Operation Costs for the previous Fiscal Year and actual Operations Costs for the previous Fiscal Year. Operation Costs include any contributions to operating reserves.

STEP TWO: Calculate the price per 1000 gallons for Operation Costs in accordance with the methodology set forth in subsection 6.2.1 using Operation Costs determined under STEP ONE and the Annual Water Usage of all Charter Customers combined in the previous Fiscal Year divided by 1000.

STEP THREE: For each Charter Customer, determine how much that Charter Customer should pay in Operation Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for that Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Operation Costs for the year calculated in STEP TWO. (Amount Owed)

STEP FOUR: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Operation Costs for the previous Fiscal Year pursuant to subsection 6.2.2. (Amount Paid)

~~STEP FIVE: For each Charter Customer, subtract the figure determined under STEP FOUR from the figure determined under STEP THREE. If this figure is greater than zero, this is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year. If this number is less than zero, this is the amount of money the Authority must rebate to the Charter Customer for Operation Costs for the previous Fiscal Year.~~

STEP FIVE: Where the amount calculated for a Charter Customer in STEP THREE exceeds the amount calculated in STEP FOUR, subtract the figure determined under STEP THREE from the figure determined under STEP FOUR. The resulting number is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year. (Adjustment Owed = Total Amount Owed – Amount Paid)

STEP SIX: Where the amount calculated for a Charter Customer in STEP THREE is less than the amount calculated in STEP FOUR, subtract the figure determined under STEP THREE from the figure determined under STEP FOUR. The resulting number is the amount to be refunded to the Charter Customer by the Authority for Operation Costs for the previous Fiscal Year. (Refund Owed = Amount Paid - Total Amount Owed)

The Authority shall bill each Charter Customer for such additional Operation Costs by March 1, and the Charter Customer shall pay the Authority for such additional Operation Costs by April 1. The Authority shall issue ~~refunds~~rebates by April 15.

11. Subsection 6.2.5 of the Water Purchase and Sale Contract, “Adjustment if Subsequent Customers Purchase Water,” is deleted and replaced with the following:

6.2.5 End of Year Adjustment Where Total Annual Water Usage is Less than the Estimated Annual Water Requirement and Subsequent Customer Exists. This subsection provides for an end of year adjustment for Charter Customers if Bonds issued by the Authority in 2014 are still outstanding at the beginning of the Fiscal Year, the Authority has one or more Subsequent Customers, and the Annual Water Usage of all Authority Customers combined during the previous Fiscal Year is less than the total Estimated Annual Water Requirements for all Authority Customers for that year. By March 1 of each year, the Authority shall calculate an adjustment charge or refund for the previous Fiscal Year. The amount of the adjustment charge or refund for each specific Charter Customer shall be determined as follows:

STEP ONE: Determine the total operating revenue that was to be generated for the Fiscal Year from Authority Customers by multiplying the budgeted price per 1000 gallons for Operation Costs times the Estimated Annual Water Requirements of all Authority Customers. (Budgeted Revenue)

STEP TWO: Determine the actual operating revenue collected from all Authority Customers generated during the Fiscal Year. (Actual Revenue)

STEP THREE: Subtract the amount calculated in STEP TWO from the amount in STEP ONE. This is the additional amount of Operation Costs to be recovered from Charter Customers.

STEP FOUR: Add the amount from STEP THREE to the total amount that was charged to Charter Customers for Operation Costs in the prior Fiscal Year. This is the total amount of Operations Costs to be recovered from Charter Customers.

STEP FIVE: Divide the amount calculated in STEP FOUR by the Total Annual Water Usage of all Charter Customers divided by 1000 gallons to calculate a revised charge for Operation Costs for the previous Fiscal Year for Charter Customers.

STEP SIX: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Operation Costs for the previous Fiscal Year pursuant to subsection 6.2.2.

STEP SEVEN: For each Charter Customer, determine how much that Charter Customer should pay in Operation Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage in that year. This determination is made by multiplying (i) the Charter Customer's Annual Water Usage for that Fiscal Year divided by 1000, by (ii) the price per 1000 gallons for Operation Costs for the year calculated in STEP FIVE.

STEP EIGHT: Where the amount calculated for a Charter Customer under STEP SEVEN exceeds the amount calculated in STEP SIX, subtract the figure determined under STEP SIX from the figure determined under STEP SEVEN. This number is the additional amount of money the Charter Customer must pay the Authority for Operation Costs for the previous Fiscal Year.

STEP NINE: Where the amount calculated for a Charter Customer in STEP SEVEN is less than the amount calculated in STEP SIX, subtract the figure determined under STEP SEVEN from the figure determined under STEP SIX. This number is the amount to be refunded to the Charter Customer by the Authority for Operation Costs for the previous Fiscal Year.

The Authority shall bill each Charter Customer for such additional Operation Costs by March 1, and the Charter Customer shall pay the Authority for such additional Operation Costs by April 1. The Authority shall issue refunds by April 15.

12. Subsection 6.3.1 of the Water Purchase and Sale Contract, "Calculation of Price for Fixed Costs," as amended by the Fourth Amendment, the Sixth Amendment, and the Seventh Amendment, is deleted and replaced with the following:

6.3.1 Calculation of Fixed Costs for Each Authority Customer. Prior to each Fiscal Year, the Authority shall annually, in accordance with Section 6.1, calculate the following charges for the upcoming Fiscal Year:

- (a) for Charter Customers, Fixed Costs related to the Authority's 2014 Bonds, if still outstanding at the beginning of the Fiscal Year, calculated as provided in subparagraph 6.3.1.1;
- (b) for all Authority Customers, Fixed Costs related to Bonds (other than the 2014 Bonds) issued after the Authority Customer became an Authority Customer, calculated as provided in subparagraph 6.3.1.2;
- (c) for all Authority Customers, all Fixed Costs other than those covered by (a), (b) and (d), calculated as provided in subparagraph 6.3.1.3; and
- (d) for all Subsequent Customers, Fixed Costs related to Capital Recovery Charges required by the Subsequent Contract covering the Subsequent Customer, as referenced under subparagraph 6.3.1.4.

6.3.1.1 Fixed Costs Related to Authority's 2014 Bonds. The Authority shall annually calculate each Charter Customer's share of Fixed Costs for the Authority's 2014 Bonds for the upcoming Fiscal Year by:

- (a) estimating total Fixed Costs related to the Authority's 2014 Bonds for the upcoming Fiscal Year;
- (b) subtracting from that estimate of total Fixed Costs related to the Authority's 2014 Bonds for the upcoming Fiscal Year the total amount of Capital Recovery Charges collected in the prior year from all Subsequent Customers;
- (c) dividing the remaining Fixed Costs related to the Authority's 2014 Bonds for the upcoming Fiscal Year by the total Estimated Annual Water Requirements for all Charter Customers divided by 1000 gallons; and
- (d) multiplying this Fixed Cost rate by the Charter Customer's Estimated Annual Water Requirement for the Fiscal Year.

6.3.1.2 Fixed Costs Related to the Authority's Bonds Issued After 2014. The Authority shall annually calculate a Fixed Cost rate for each Bond issued after the 2014 Bonds. The Fixed Cost rate for each Bond issued after the 2014 Bonds shall be calculated by:

- (a) estimating total Fixed Costs related to that Bond for the upcoming Fiscal Year; and
- (b) dividing such Fixed Costs by the total Estimated Annual Water Requirements for all Authority Customers who were Authority Customers at the time of that Bond issuance divided by 1000 gallons.

6.3.1.3 Other Fixed Costs. The Authority shall annually calculate a Fixed Cost rate to cover the Authority's Fixed Costs not covered by subparagraphs 6.3.1.1, 6.3.1.2, and 6.3.1.4. Such Fixed Costs may include, but are not limited to, the Authority's capital improvement program and budgeted contributions to capital reserves such as funded depreciation or a maintenance, repair and replacement fund. The Fixed Cost rate under this subparagraph shall be calculated by:

- (a) estimating total Fixed Costs under this subparagraph for the upcoming Fiscal Year;
- (b) subtracting from that estimate the amount of Capital Recovery Charges collected in the prior year from all Subsequent Customers, unless Bonds issued by the Authority in 2014 are still outstanding at the beginning of the Fiscal Year, in which case subparagraph 6.3.1.1(b) applies; and
- (c) dividing such remaining Fixed Costs under this subparagraph by the total Estimated Annual Water Requirements for all Authority Customers divided by 1000 gallons.

6.3.1.4 Fixed Costs for Capital Recovery Charges. The Authority shall annually calculate a Fixed Cost rate for each Subsequent Customer's Capital Recovery Charge for the upcoming Fiscal Year. The methodology used to calculate the Fixed Cost rate for each Subsequent Customer's Capital Recovery Charge shall be set forth in the Subsequent Contract between the Authority and that Subsequent Customer.

13. Subsection 6.3.2 of the Water Purchase and Sale Contract, "Customers' Monthly Payment of Fixed Costs," as amended by the First Amendment and Fourth Amendment, is deleted and replaced with the following:

6.3.2 Authority Customers' Monthly Payment of Fixed Costs. The Authority shall bill Authority Customers monthly for the following Fixed Costs:

- (a) A Charter Customer's monthly share of Fixed Costs related to the Authority's 2014 Bonds shall equal the then current price per 1000 gallons for Fixed Costs related to the Authority's 2014 Bonds times the Charter Customer's Estimated Annual Water Requirement divided by 12.
- (b) An Authority Customer's monthly share of Fixed Costs related to Bonds, other than 2014 Bonds, issued after the Authority Customer became an Authority Customer, shall equal the then current price per 1000 gallons for Fixed Costs related to that Bond issuance times the Authority Customer's measured water usage for the month.
- (c) An Authority Customer's monthly share of Fixed Costs not covered by (a), (b) or (d) shall equal the then current price per 1000 gallons for Fixed Costs determined

under subparagraph 6.3.1.3 times the Authority Customer's measured water usage for the month.

- (d) An Authority Customer's monthly share of Fixed Costs related to Capital Recovery Charges shall equal the then current price per 1000 gallons established in the Subsequent Contract between the Authority and the Authority Customer times the Authority Customer's measured water usage for the month.

- 14. Subsection 6.3.3 of the Water Purchase and Sale Contract, "End of Year Adjustment," as amended by the Fourth Amendment, is deleted and replaced with the following:

6.3.3 End of Year Adjustment Related to 2014 Bonds. This subsection which provides for an end of year adjustment for Charter Customers only applies if the 2014 Bonds issued by the Authority are still outstanding at the beginning of the Fiscal Year. By March 1 of each year, the Authority shall calculate an adjustment charge or refund for the previous Fiscal Year based on the Charter Customer's Annual Water Usage during that Fiscal Year. The amount of the adjustment charge or refund for each specific Charter Customer for a given year shall be determined as follows:

STEP ONE: For each Charter Customer, determine how much that Charter Customer should pay in Fixed Costs for the previous Fiscal Year based upon the Charter Customer's Annual Water Usage in that year. This determination is made by dividing the total Fixed Costs related to the Authority's 2014 Bonds (see 6.3.1.1.(a)) by the total Annual Water Usage in 1000 gallons for all Charter Customers, and then multiplying by each Charter Customer's Annual Water Usage for the previous Fiscal Year. (Total Amount Owed)

STEP TWO: For each Charter Customer, determine how much that Charter Customer has already paid the Authority in Fixed Costs related to the 2014 Bonds for the previous Fiscal Year pursuant to subsection 6.3.2. (Amount Paid)

STEP THREE: Where the amount calculated for a Charter Customer in STEP ONE exceeds the amount calculated in STEP TWO, subtract the figure determined under STEP TWO from the figure determined under STEP ONE. The resulting number is the additional amount of money the Charter Customer must pay the Authority for Fixed Costs related to the 2014 Bonds for the previous Fiscal Year. (Adjustment Charge = Total Amount Owed – Amount Paid)

STEP FOUR: Where the amount calculated for a Charter Customer in STEP ONE is less than the amount calculated in STEP TWO, subtract the figure determined under STEP ONE from the figure determined under STEP TWO. The resulting number is the amount to be refunded to the Charter Customer by the Authority for Fixed Costs related to the 2014 Bonds for the previous Fiscal Year. (Refund = Amount Paid - Total Amount Owed)

The Authority shall bill each Charter Customer for such additional Fixed Costs related to the 2014 Bonds by March 1, and the Charter Customer shall pay the Authority for such additional Fixed Costs related to the 2014 Bonds by April 1. The Authority shall issue refunds by April 15.

15. Subsection 6.3.4 of the Water Purchase and Sale Contract, "Adjustment Where Total Annual Water Usage Declines," as recreated by the Fourth Amendment, is deleted.
16. Subsection 6.3.5 of the Water Purchase and Sale Contract, "Adjustment if Subsequent Customer Purchases Water," is deleted.
17. Subsection 6.3.7 of the Water Purchase and Sale Contract, "Restricted Use of Fixed Costs," as created by the Sixth Amendment and amended by the Seventh Amendment, is revised as follows:
 - 6.3.7 Restricted Use of Fixed Costs. 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; and
 - (f) to contributing to the Authority's rate stabilization fund.
18. Subsection 6.3.8 of the Water Purchase and Sale Contract, "Treatment of Excess Fixed Costs Revenues," as created by the Sixth Amendment and amended by the Seventh Amendment and the Eighth Amendment, is deleted.
19. Subsection 6.6.2 of the Water Purchase and Sale Contract, "Monthly Security Fund Payments," as amended by the Sixth Amendment and the Eighth Amendment, is revised as follows:

6.6.2 Monthly Security Fund Payments. Prior to each Fiscal Year, the Authority shall, in accordance with this subsection, calculate how much money each Authority Customer must pay to and maintain in its Security Fund Account. This amount shall be calculated as follows:

STEP ONE: Determine each Authority Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Operation Costs for the upcoming Fiscal Year;

STEP TWO: Determine each Authority Customer's Estimated Annual Water Requirement divided by 1000 and then divided by 12, and multiply this quotient by the price per 1000 gallons for Fixed Costs for the upcoming Fiscal Year;

STEP THREE: Add the figure from STEP ONE to the figure or figures from STEP TWO, and multiply this sum by two;

STEP FOUR: Subtract from the figure determined in STEP THREE, the balance in the Authority Customer's Security Fund Account;

STEP FIVE: If the figure determined in STEP FOUR is less than zero, no further contribution need be made to the Authority Customer's Security Fund Account for the upcoming Fiscal Year. If the figure determined in STEP FOUR is more than zero, the Authority Customer must make a monthly contribution to the Authority Customer's Security Fund Account during the upcoming Fiscal Year. The amount of the monthly contribution to the Authority Customer's Security Fund Account for the upcoming Fiscal Year shall be as set forth in STEPS SIX, SEVEN and EIGHT;

STEP SIX: For the first year an Authority Customer pays monthly Aggregate Costs, the Authority Customer's monthly contribution to the Authority Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by ~~36~~24;

STEP SEVEN: For the second year an Authority Customer pays monthly Aggregate Costs, the Authority Customer's monthly contribution to the Authority Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by ~~24~~18;

STEP EIGHT: For all other years, an Authority Customer's monthly contribution to the Authority Customer's Security Fund Account shall equal the figure determined by STEP FOUR (provided that figure is greater than zero) divided by 12.

Each Authority Customer's Security Fund Account shall bear interest from the date funds are contributed to the date it is applied as provided in subsection

6.10.1. The interest rate to be paid shall be the rate established by the PSC under PSC 185.361(8), Wisconsin Administrative Code.

20. Section 7.1 of the Water Purchase and Sale Contract, "Procedural Rule," as amended by the Sixth Amendment and Eighth Amendment, is revised as follows:

7.1 **Procedural Rule.** Any motion, resolution or ordinance concerning the subjects enumerated below shall be adopted by the Authority in accordance with the terms of the Authority Formation Agreement, or if not addressed in the Authority Formation Agreement, by at least a two-thirds affirmative vote of all of the Authority's Directors.

- (i) Approval of individual contracts or expenditures, or a series of contracts or expenditures related to a single Authority Project in an amount in excess of \$250,000;
- (ii) *[Deleted by Eighth Amendment to Contract effective 10/20/20.]*
- (iii) ~~Refund of excess Fixed Costs revenues in a manner consistent with subsection 6.3.8;~~
- (iv) Amendment of Exhibit B-1 in accordance with Section 2.13;
- (v) Issuance of Bonds in an amount in excess of \$100,000;
- (vi) Sale of Potable Water to Subsequent Customers;
- (vii) Approval of a contract between the Authority and an Authority Customer;
- (viii) Approval of a contract to operate the Authority's Waterworks System; or
- (ix) *[Deleted by Eighth Amendment to Contract effective 10/20/20.]*
- (x) Disconnection of an Authority Customer's water pursuant to subsection 6.10.4.

21. Section 12.1 of the Water Purchase and Sale Contract, "No Contract with Rate More Favorable," is deleted and replaced with the following:

12.1 **Written Contract Required for Subsequent Customer.** The Authority shall not supply Potable Water except pursuant to a written contract. Any Subsequent Contract entered into by the Authority shall require a Subsequent Customer to abide by the provisions of this Contract except as explicitly modified by the Subsequent Contract.

22. Section 12.2 of the Water Purchase and Sale Contract, "Payment of Infrastructure Costs Required in Subsequent Contract" and Subsections 12.2.1, 12.2.2, and 12.2.3, are deleted and replaced with the following:

12.2 Infrastructure Required by Subsequent Contract.

12.2.1 Every Subsequent Contract shall identify the infrastructure necessary for the Authority to supply water and for the Subsequent Customer to receive water from the Authority's Waterworks System. The Subsequent Contract shall define contracting responsibilities for the design and construction of the infrastructure necessary for the Authority to supply water and for the Subsequent Customer to receive water from the Authority's Waterworks System. The Subsequent Contract shall provide that the Authority retains final design approval for such infrastructure in all cases. The Subsequent Contract shall also define payment responsibilities for all infrastructure and other related costs, including but not limited to, real estate, administrative, and legal costs, necessary for the Authority to supply water to the Subsequent Customer.

12.2.2 *[Deleted]*

12.2.3 A Subsequent Customer may enter into an agreement with an Authority Customer which allows the Subsequent Customer to use the Authority Customer's Unit System as a means of transporting water from the Authority's Waterworks System to the Subsequent Customer.

23. Subsection 12.3.2 of the Water Purchase and Sale Contract, "Excess Capacity Charge," as revised by the Second Amendment, is revised as follows:

12.3.2 Excess Capacity Charge. Unless agreed to otherwise, eEvery Subsequent Contract shall require the Subsequent Customer to pay to the Authority an Excess Capacity Charge, calculated as provided in Section 6.4, to recover Fixed Costs from the Subsequent Customer for excess capacity built into the Authority's Waterworks System and any other facilities paid for with Bonds. ~~A Subsequent Customer's Excess Capacity Charge shall be determined based upon the number and sizes of water meters served by the Subsequent Customer. For each water meter served, the Subsequent Customer shall pay a charge equal to \$294.00 multiplied by a factor determined by the size of the water meter. The size of the meter, the appropriate factor, and the resulting excess capacity charge for that meter is as set forth in Exhibit D. A Subsequent Customer's total Excess Capacity Charge shall equal the sum of all charges on all water meters served by the Subsequent Customer, plus interest. Interest shall accrue on this amount from December 1, 2003 until the date of the Subsequent Contract. The rate of interest shall equal the sum of the weighted average effective interest rate on all series of Bonds of the Authority any of which are outstanding on the date of the Subsequent Contract plus two percent (2%).~~

24. Subsection 12.3.3 of the Water Purchase and Sale Contract, "Payment of Charges," is revised as follows:

12.3.3 Payment of Charges. The Subsequent Customer shall pay the Authority for the costs under subsections ~~12.3.1 and~~ 12.3.2 by either (a) making a direct cash payment to the Authority within thirty days after the Authority notifies the Subsequent Customer of the amount due; or (b) paying the Authority such costs over time by amortizing such costs and adding them to the wholesale water rate paid by the Subsequent Customer; or (c) some combination of (a) and (b) above. If costs are to be amortized and included in rates, the length of time over which costs may be amortized shall be mutually agreed upon, but shall~~may~~ not exceed the remaining term of the Authority's Bonds, ~~or the term of the Subsequent Contract, whichever is shorter.~~ Interest on the costs amortized shall accrue during the period of amortization at an agreed upon rate not to exceed the weighted average effective interest rate on all series of Bonds of the Authority any of which are then outstanding or the cost of borrowing incurred by the Authority for the project, whichever is higher, plus two percent (2%).

25. Section 12.4 of the Water Purchase and Sale Contract, "Water Rate and Charge Differential Required by Subsequent Contract" and Subsection 12.4.1 and 12.4.2, are deleted and replaced with the following:

12.4 Water Rates in Subsequent Contract.

12.4.1 Every Subsequent Contract shall provide that the Operation Costs rate that the Subsequent Customer pays for water shall equal the rate that an Authority Customer would pay in accordance with Section 6.2.

12.4.2 Every Subsequent Contract shall require a Subsequent Customer to contribute to the capital costs of the Authority's Waterworks System by making monthly Fixed Costs payments in accordance with Section 6.3. The Fixed Costs payments required by a Subsequent Contract shall include a Capital Recovery Charge to compensate the Authority for the Subsequent Customer's use of the Authority's Waterworks System already in existence at the time of the Subsequent Contract.

26. Section 12.5 of the Water Purchase and Sale Contract, "Other Terms in Subsequent Contract," is deleted.

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.