



Meeting: Village Board
Meeting Date: 08/27/2012
Agenda Item: 6e

Mission Statement

Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Geoffrey S. Farr, PE, Director of Public Works

AGENDA ITEM: Review and take action on Resolution 2012- 16 approving the 5th Amendment to the CBCWA Water Purchase and Sale Contract and subsequent associated transactions.

POLICY ISSUE

Should the Village Board approve the 5th Amendment?

BACKGROUND INFORMATION

At the time the Water Purchase and Sale Contract was originally entered into in November 2003, it was anticipated that at the point where CBCWA's facilities connected with a member's facilities there would be two separate buildings: a separate meter station owned by CBCWA, and a separate pressure reducing facility owned by the member community. The Contract required that CBCWA own the meter station, and that the member community own the pressure reducing facility.

As the construction of the CBCWA system progressed, a decision was made to combine the meter station and pressure reducing facility into one building with two rooms. CBCWA was to have exclusive access to the room housing the metering equipment, and the member community was to have exclusive access to the room housing the pressure reducing equipment. In order to meet the ownership requirements of the Contract, the building was to be a "condominium" with CBCWA owning the condominium unit with the metering equipment, and the member community owning the condominium unit with the pressure reducing equipment. Communities entered into condominium agreements with CBCWA to establish this.

As construction proceeded further, decisions were made in some cases to use existing buildings for the metering and pressure reducing facilities. In these buildings there were no exclusive access areas, and the condominium concept did not work well. In other situations, one building was used to house equipment for two member communities and CBCWA. While these configurations made sense, they did not fit with the condominium concept. However, no changes were made to the condominium agreements to address these situations.

At this point in time, there is confusion over who owns the connection station buildings, and what each party's respective responsibilities are. Issues have also arisen regarding the ability to acquire insurance for the joint buildings.

In order to address this issue, it is recommended that the Water Purchase and Sale Agreement be revised to eliminate the requirement that CBCWA own the building housing the metering equipment. It is also recommended that CBCWA transfer its interest in each connection station building to the member community owning the land on which the building is located, and that CBCWA obtain an easement from the member community for its equipment on the site.

In order to have the connection stations owned by the member communities with CBCWA having an easement to access its equipment at the connection stations, the Water Purchase and Sale Contract must be amended to eliminate the requirement that CBCWA own the structure in which its meter is located. Subsequently the following transactions must be completed:

- a) The existing condominium agreements between CBCWA and the member communities must be terminated.
- b) CBCWA must issue bills of sale transferring its interests in the connection station buildings to the member communities.
- c) Easements must be provided by the member communities for CBCWA to maintain its facilities on the connection station properties.

PRIOR ACTION/REVIEW

Staff has reviewed this issue at previous Village Board Meetings and included information in several weekly reports. A joint CBCWA Board and Member meeting was held August 15th to answer any questions relating to the 5th Amendment.

FISCAL IMPACT:

- | | |
|------------------------------|------------|
| 1. Is There A Fiscal Impact? | <u>No</u> |
| 2. Is it Currently Budgeted? | <u>N/A</u> |
| 3. If Budgeted, Which Line? | <u>N/A</u> |
| 4. Amount? | <u>N/A</u> |

RECOMMENDED ACTION

The Administrator, Executive Staff and the Village Attorney have reviewed the 5th Amendment and the associated documents and recommend approval.

If the Village Board agrees with this action, the following motion could be used, ***“Motion to approve Resolution 2012-16 authorizing the 5th Amendment to the CBCWA Water Purchase and Sale Contract and subsequent transactions.”***

POLICY ALTERNATIVE(S)

The Village Board could take the following actions:

- Approve resolution 2012-16
- Table the resolution and request additional information
- Deny the resolution and decide how to proceed

ATTACHED INFORMATION

- I. Resolution 2012-16 adopting the 5th Amendment
- II. 5th Amendment
- III. Changes made by the 5th Amendment
- IV. Termination of Existing Condo Agreement
- V. Connection Station Bill of Sale to Howard
- VI. Connection station easements to CBCWA

RESOLUTION NO. 2012 - 16

**APPROVING THE FIFTH 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, and January 5, 2011; and

WHEREAS, it is proposed that the Contract be further amended to allow the Authority's meter for measuring the quantity of water delivered to an Authority Customer, and the Authority Customer's pressure increasing/reducing facilities, to be housed in one building owned by an Authority Customer; and

WHEREAS, it is also proposed that the Contract be further amended to clarify Section 2.8 related to the Authority's obligation to deliver Potable Water; 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 Howard is an Authority Customer, and is willing to approve this amendment;

NOW THEREFORE, IT IS HEREBY RESOLVED, as follows:

1. The Village of Howard approves the Fifth 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 Howard shall provide a certified copy of the resolution approving the amendment to the Secretary-Treasurer of the Central Brown County Water Authority.
3. The Fifth 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 _____ DAY OF _____, 20__.

VILLAGE OF HOWARD

Burt R McIntyre, Village President

ATTEST:

Chris Haltom, Village Clerk

Published: _____

**FIFTH AMENDMENT TO
CENTRAL BROWN COUNTY WATER AUTHORITY
WATER PURCHASE AND SALE CONTRACT**

This FIFTH AMENDMENT TO CENTRAL BROWN COUNTY WATER AUTHORITY WATER PURCHASE AND SALE CONTRACT is effective this _____ day of _____, 20____.

1. Section 2.8, the word "in" is replaced with the word "for," as follows:

2.8 Limits on Authority's Obligations. The Authority's obligation to each Charter Customer to deliver Potable Water under Section 2.7 shall be limited to a maximum rate of Potable Water for any one hour equal to 1.8 times such Charter Customer's Average Day Demand divided by 24.

2. Section 3.2 is revised to provide as follows:

3.2 Points of Delivery. The Point of Delivery where Potable Water delivered hereunder leaves the Authority's Waterworks System and enters a Unit System will be one foot downstream from the Authority's meter. The number and location of connections to each Charter Customer's system are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors.

3. Section 3.3 is revised to provide as follows:

3.3 Points of Connection. The Point of Connection where Potable Water moves from one Customer's Unit System to another Customer's Unit System will be one foot downstream from the Authority's meter. The number and location of the Points of Connection are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors.

4. Section 3.4 is revised to provide as follows:

3.4 Back-Flows, Pressure. Each Charter Customer shall receive its supply of Potable Water downstream of the Authority's meter at pressures that will vary from time to time. Each Point of Delivery shall have pressure increasing/reducing facilities. Each Charter Customer is responsible for the siting, installation, operation, maintenance and replacement of the pressure increasing/reducing facilities needed to convey water from the Authority's Waterworks System into the Unit System. The Authority shall pay or reimburse each Charter Customer for reasonable costs of design and initial installation of such facilities, and of buildings needed to house such facilities; provided, that Charter Customers shall provide appropriate sites for these facilities without reimbursement. The Authority shall also pay or reimburse each Charter Customer for the electrical costs incurred in the operation of such facilities. Future modifications of such facilities shall be the responsibility of the Charter Customer.

Initial construction and future modification of plans and specifications of the pressure increasing/reducing facilities shall be submitted to the Authority for review and approval, which shall not be unreasonably withheld.

Each Charter Customer's operation of its pressure increasing/reducing facilities shall not cause surges or back-flows into the Authority's Waterworks System nor shall the operation of the Customer's pressure increasing/reducing facilities cause the Authority's Waterworks System pressure to drop below 20 psi. The Authority shall not be responsible for any damage to the Unit System caused by design, operation or maintenance of the Charter Customer's connection facilities to the Authority's Waterworks System.

5. Section 4.1 is revised to read 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. The Authority shall install the equipment in above-ground structures located at sites selected by each Charter 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 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. A Charter 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 Charter 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 a Charter Customer, the Authority will give the Charter Customer a copy of such journal or record book, or permit the Charter Customer to have access thereto in the office of the Authority during regular business hours.

6. Section 4.5 is revised to provide as follows:

4.5 Removal of Authority Meters. Within six (6) months after the termination of this Contract without renewal, the Authority shall at its own expense remove metering equipment from and restore the property of each Charter Customer to which such

termination without renewal applies. If the Authority fails to do so, the Charter Customer affected may elect to enforce its right to removal and restoration or to take title to such equipment.

7. Section 8.2 is revised to provide as follows:

8.2 Title to Potable Water. Title to all Potable Water supplied hereunder shall remain in the Authority to the points one foot downstream from the Authority's meters for each Unit System and thereupon shall pass to such 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.

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**CHANGES MADE BY
FIFTH AMENDMENT TO
CENTRAL BROWN COUNTY WATER AUTHORITY
WATER PURCHASE AND SALE CONTRACT**

*11/9/2011 Document
Provided for clarification as to changes made*

1. Section 2.8, the word "in" is replaced with the word "for" as follows:

2.8 Limits on Authority's Obligations. The Authority's obligation to each Charter Customer to deliver Potable Water under Section 2.7 shall be limited to a maximum rate of Potable Water ~~for~~ any one hour equal to 1.8 times such Charter Customer's Average Day Demand divided by 24.

2. Section 3.2 is revised to provide as follows:

3.2 Points of Delivery. The Points of Delivery where Potable Water delivered hereunder leaves the Authority's Waterworks System and enters a Unit System will be ~~ten feet~~ one foot downstream from the Authority's metering ~~stations~~. The number and location of connections to each Charter Customer's system are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors.

3. Section 3.3 is revised to provide as follows:

3.3 Points of Connection. The Points of Connection where Potable Water moves from one Customer's Unit System to another Customer's Unit System will be one foot ~~ten feet~~ downstream from the Authority's metering ~~stations~~. The number and location of the Points of Connection are shown on Exhibit C. Exhibit C may be amended by majority vote of the Authority's Board of Directors.

4. Section 3.4 is revised to provide as follows:

3.4 Back-Flows, Pressure. Each Charter Customer shall receive its supply of Potable Water downstream of the Authority's metering ~~stations~~ at pressures that will vary from time to time. Each Point of Delivery shall have a ~~pressure increasing/reducing facilities~~ station. Each Charter Customer is responsible for the siting, installation ~~design,~~ construction, operation, maintenance and replacement of the pressure increasing/reducing facilities ~~needed~~ stations to convey water from the Authority's Waterworks System into the Unit System. The Authority shall pay or reimburse each Charter Customer for reasonable costs of design and initial installation ~~construction~~ of such facilities, and of buildings needed to house such facilities ~~stations~~; provided, that ~~each~~ Charter Customers shall provide appropriate sites for these facilities without reimbursement. The Authority shall also pay or reimburse each Charter Customer for the electrical costs incurred in the operation of such facilities ~~stations~~. Future modifications of such facilities shall be the responsibility of the Charter Customer.

Initial construction and future modification of plans and specifications of the pressure increasing/reducing ~~facilities~~stations shall be submitted to the Authority for review and approval, which shall not be unreasonably withheld.

Each Charter Customer's operation of its pressure increasing/reducing ~~facilities~~stations shall not cause surges or back-flows into the Authority's Waterworks System nor shall the operation of the Customer's pressure increasing/reducing facilities cause the Authority's Waterworks System pressure to drop below 20 psi. The Authority shall not be responsible for any damage to the Unit System caused by design, operation or maintenance of the Charter Customer's connection facilities to the Authority's Waterworks System.

5. Section 4.1 is revised to read 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. The Authority shall ~~also furnish, install~~ the equipment in, own, operate, maintain, repair and replace, at its own expense, any above-ground structures the Authority deems necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Authority. Such structures and equipment shall be located at sites selected and provided by each Charter Customer, respectively, for Potable Water delivered to it, for such purpose. Such sites shall be subject to review and approval by the Authority, which shall not be unreasonably withheld. The Authority 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. ~~Each~~ A Charter 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 such structures and equipment during the term of this Contract. The Authority and each Charter 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 a Charter Customer, the Authority will give the Charter Customer a copy of such journal or record book, or permit the Charter Customer to have access thereto in the office of the Authority during regular business hours.

6. Section 4.5 is revised to provide as follows:

4.5 Removal of Authority Metering Station. Within six (6) months after the termination of this Contract without renewal, the Authority shall at its own expense remove metering equipment ~~and stations~~ from and restore the property of each Charter Customer to which such termination without renewal applies. If the Authority fails to do so, the Charter Customer affected may elect to enforce its right to removal and restoration or to take title to such equipment ~~and station~~.

7. Section 8.2 is revised to provide as follows:

8.2 Title to Potable Water. Title to all Potable Water supplied hereunder shall remain in the Authority to the points ~~one foot~~ ten feet downstream from the Authority's metering ~~stations~~ for each Unit System and thereupon shall pass to such Charter Customer.

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ATTACHMENT A

MUTUAL CONSENT TO TERMINATE AGREEMENT TO DESIGN AND CONSTRUCT PRESSURE INCREASING/REDUCING STATION

WHEREAS, the Village of Howard (the "Customer") purchases water from the Central Brown County Water Authority (the "Authority") pursuant to a Water Purchase and Sale Contract (the "Contract") effective November 24, 2003, and subsequently amended on December 20, 2004, November 14, 2007, September 22, 2008, January 5, 2011, and _____, 2012; and

WHEREAS, the Customer and the Authority entered into an Agreement to Design and Construct Pressure Increasing/Reducing Station ("Agreement"), effective June 28, 2004, for the design, construction and ownership of a building to house the pressure increasing/reducing station and meter structure related to the Authority's provision of water to the Customer; and

WHEREAS, under that Agreement, the Authority arranged and paid for all or some of the construction, remodeling and/or equipping of a building to house metering equipment owned by the Authority and pressure increasing/reducing equipment owned by the Customer; and

WHEREAS, under that Agreement, the Authority was also to own the portion of the building housing the meter equipment owned by the Authority, while the Customer was to own the portion of the building housing the pressure increasing/reducing equipment; and

WHEREAS, the connection station building contemplated by the Agreement now exists and is located on land owned by the Customer at 4165 Shawano Avenue, Green Bay, Wisconsin; and

WHEREAS, the Customer and the Authority seek to terminate their obligations under the Agreement, so that their obligations with respect to the connection station building going forward will be governed by the amended Water Purchase and Sale Contract.

NOW THEREFORE, in consideration of the foregoing recitals, and of the mutual covenants and agreements contained in the amended Water Purchase and Sales Contract, the Customer and Authority mutually agree to the termination of the Agreement to Design and Construct Pressure Increasing/Reducing Station effective as of _____, 2012.

CENTRAL BROWN COUNTY WATER AUTHORITY

CUSTOMER: VILLAGE OF HOWARD

By: _____ Larry Delo, President

By: _____

Date: _____

Date: _____

Attest:

Attest:

Randy Trembl, Secretary

_____, Clerk

BILL OF SALE

This Bill of Sale ("Bill of Sale") is made and entered into on this _____ day of _____, 2012, by and between the Central Brown County Water Authority (the "Authority"), and the Village of Howard (the "Customer") (collectively, the "Parties").

WHEREAS, the Customer purchases water from the Authority pursuant to a Water Purchase and Sale Contract (the "Contract") effective November 24, 2003, and subsequently amended on December 20, 2004, November 14, 2007, September 22, 2008, January 5, 2011, and _____, 2012; and

WHEREAS, the Customer and the Authority entered into an Agreement to Design and Construct Pressure Increasing/Reducing Station ("Agreement"), effective June 28, 2004, for the design, construction and ownership of a building to house the pressure increasing/reducing station and meter structure related to the Authority's provision of water to the Customer; and

WHEREAS, under that Agreement, the Authority arranged and paid for all or some of the construction, remodeling and/or equipping of a building to house metering equipment owned by the Authority and pressure increasing/reducing equipment owned by the Customer; and

WHEREAS, under that Agreement, the Authority was also to own the portion of the building housing the meter equipment owned by the Authority, while the Customer was to own the portion of the building housing the pressure increasing/reducing equipment; and

WHEREAS, the building ("Connection Station Building") contemplated by the Agreement now exists and is located on land owned by the Customer at 4165 Shawano Avenue, Green Bay, Wisconsin; and

WHEREAS, the Customer and the Authority have terminated their obligations under the Agreement, so that their obligations with respect to the Connection Station Building going forward will be governed by the amended Water Purchase and Sale Contract; and

WHEREAS, to comply with the amended Water Purchase and Sale Contract, the Authority is to transfer any interest it may have in the Connection Station Building to the Customer, and the Customer is to assume responsibility for operating and maintaining the Connection Station Building in the future.

NOW THEREFORE, in consideration of the mutual provisions, covenants and agreements contained in this Bill of Sale, and the amended Water Purchase and Sale Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Transfer of Interest in Connection Station Building.** Effective as of the date first written above ("Effective Date"), the Authority hereby transfers and conveys to the Customer all of Authority's right, title and interest, if any, in and to the Connection Station Building, with the exception of the Authority's metering equipment, data control equipment, and

EASEMENT AGREEMENT
[4165 Shawano Avenue, Green Bay, WI]

Document Number

Document Name

EASEMENT AGREEMENT between the Village of Howard a Wisconsin municipal corporation located in Brown County, Wisconsin ("**Owner**"), and the Central Brown County Water Authority, a Wisconsin joint local water authority and separate municipal corporation located in Brown County, Wisconsin (the "**Authority**").

BACKGROUND. Owner is the fee simple owner of certain real property described on Exhibit A and shown on Exhibit B (the "**Property**"). Owner desires to grant to the Authority a permanent easement benefiting the Authority to the portion of the Property shown on Exhibit C (the "**Easement Area**") for the purposes of allowing access to and the placement of certain facilities and equipment upon the Easement Area.

Recording Area

Name and Return Address:

Lawrie J. Kobza
Boardman & Clark LLP
P.O. Box 927
Madison, WI 53703

VH-14-3

Parcel Identification Number (PIN):

AGREEMENT. For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be bound, the parties agree as follows:

1. **Grant of Easement for Facilities.** Owner hereby grants to the Authority, and the Authority's successors and assigns, a perpetual easement over the Easement Area for the construction, installation, repair, replacement, reconstruction, supplementation, operation, maintenance, and safeguarding of:

- (a) an underground water pipeline and related water supply facilities,
- (b) an underground fiber optic cable,
- (c) the Authority's water meter that measures the volume of potable water delivered to Owner,
- (d) the Authority's supervisory control and data acquisition system,
- (e) any and all current and future underground fixtures, equipment, and appurtenances designated by the Authority for use in connection with the equipment described in Sections 1(a) and 1(b), and

- (f) any and all current and future aboveground fixtures, equipment, and appurtenances designated by the Authority for use in connection with the equipment described in Sections 1(c) and 1(d).

1.1 All of the property described in this Section 1 will be called the "*Authority Facilities*." The property described in Section 1(c), (d) and (f) only will be called the "*Authority Equipment*."

1.2 The easement granted shall be non-exclusive except to the extent provided in Section 5.

2. **Access and Entry to Easement Area.** The Authority and its officers, managers, employees, agents, contractors, and invitees shall have the right to enter upon the Easement Area as reasonably necessary to exercise its rights under this Easement Agreement, including pedestrian and vehicular access.

3. **Maintenance of Easement Area.** Owner shall be solely responsible for maintaining the Property and Easement Area, except as provided in Section 5. Maintenance shall include mowing and plowing the grounds.

4. **Building for Authority Equipment.** Owner agrees to provide, keep, and maintain a building to house the Authority Equipment. The building shall meet the Authority's requirements for construction, size, safety, and security. Currently, the Authority Equipment is housed in the building located on the Easement Area that is identified on Exhibit C as the "*Joint Use Building*." The Authority agrees that the Joint Use Building meets the requirements of this Section 4. Owner agrees to keep and maintain the Joint Use Building in good condition and repair. If the Joint Use Building must be replaced, any replacement building shall meet or exceed the construction, size, safety, and security standards of the current Joint Use Building. The Authority shall pay for a proportionate share of the cost of the building shell, supporting and structural elements, and the basic electrical, heating and plumbing in the replacement building based upon the ratio of the square feet provided for the Authority's use, to the total square footage of the Joint Use Building. If the Authority requests an expansion or upgrade to the Joint Use Building, the Authority shall pay for the cost of that expansion or upgrade.

5. **Exclusive Access Area.** The Authority Equipment shall be located in the portion of the Joint Use Building identified on Exhibit D as the "*Exclusive Access Area*." The Authority shall be responsible for the cost of installing, repairing, replacing, operating, maintaining, and safeguarding the Authority Equipment located in the Exclusive Access Area. Owner shall only be obligated to provide, keep, and maintain the building shell, supporting and structural elements, and any basic electrical panel, heating and plumbing in the Exclusive Access Area. The Authority may separately lock and exclude Owner and others from the Exclusive Access Area. The Authority agrees to provide Owner with access to the Exclusive Access Area for the purpose of making any necessary maintenance or repair to the supporting structure.

6. **Minimization of Interference.** Any person performing any construction, repair, maintenance, or replacement under this Easement Agreement shall do so with diligence and in a manner to minimize interference with the rights granted by this Easement Agreement. Except in cases of emergency, Owner and Authority shall provide written notification of any construction or repair that it may schedule on the Property to the other party at least 5 business days before such work is scheduled.

7. **Restoration and Repair of Easement Area.** The Authority agrees to restore the portions of the Easement Area disturbed by the Authority or its agents, as nearly as is reasonably possible, to the conditions existing prior to the Authority's entry on the Easement Area. Restoration shall not include replacement of any item cleared or removed pursuant to Section 8 below.

8. **Limits on Obstructions in Easement Area.** Owner, for itself, its successors and assigns, agrees not to physically obstruct, disturb, or restrict the Easement Area or the Authority's full use of it, without the Authority's prior written consent. If Owner has not removed any such physical obstruction, disturbance, or restriction within a reasonable time after notice from the Authority, then the Authority shall have the right but not the obligation to do so. In cases of emergency, the Authority may remove any such impediment without notice or opportunity to cure.

9. **Markings.** At its expense, the Authority may establish aboveground marking or signage in the Easement Area to notify or provide information about the presence of the Authority Facilities. The Authority shall provide Owner's representative an opportunity to comment upon the sign and its location.

10. **Protection of Authority Facilities.** Except as provided in Section 12, the Authority and its employees, agents, and representatives shall be solely responsible for protecting and safeguarding all Authority Facilities located in the Easement Area.

11. **Liability Insurance Coverage.** For as long as the Authority is conducting activities on or otherwise accessing the Authority Facilities in the Easement Area, the Authority shall maintain liability insurance coverage to protect against injuries to person or property as a consequence of the Authority's acts or omissions, or the acts or omissions of the Authority's officers, directors, members, managers, employees, affiliates, or agents. The Authority shall carry such insurance in an amount consistent with prudent practice, but not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any one person, not less than Two Million Dollars (\$2,000,000.00) with respect to bodily injury or death to any persons in any one occurrence, and not less than One Million Dollars (\$1,000,000.00) for property damage to the Easement Area.

12. **Insurance Coverage for Joint Use Building.** Owner shall be responsible for carrying insurance coverage to protect the Joint Use Building and all contents located in or around the

Joint Use Building, including the Authority Equipment. Owner shall carry insurance coverage in an amount consistent with prudent practice. The Authority shall reimburse Owner for the portion of the insurance premium covering the Authority Equipment.

13. **Assignment.** All rights under this Easement shall be freely assignable, in whole or part, from time to time and to one or more assignees. Notice of such assignment shall be given to the other party in writing and the Assignment shall be recorded in the Office of the Register of Deeds for Brown County, but the failure of any party to do so shall not invalidate this Easement Agreement.

14. **Covenants Run with Land.** All of the terms and conditions in this Easement Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Owner and the Authority and their respective successors and assigns. The grantee of all or any part of the Property, by acceptance of a deed, easement, or other conveyance, whether from an original party to this Easement Agreement or from a subsequent owner, shall be conclusively deemed to have assumed and agreed to this Easement Agreement. In the event of any bankruptcy affecting any party hereto, this Easement Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person.

15. **No Merger.** The doctrine of merger of title shall not cause termination of this Easement Agreement.

16. **Governing Law.** The internal laws of the State of Wisconsin govern and control the interpretation and enforcement of this Easement Agreement.

17. **Amendment.** This Easement Agreement may not be changed except by a written document executed and acknowledged by all parties to this Easement Agreement and duly recorded in the office of the Register of Deeds of the County in which the Property is located.

18. **Notices.** All notices to either party to this Easement Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. Either party may change its address for notice by providing written notice to the other party.

19. **Invalidity.** If any term or condition of this Easement Agreement, or the application of this Easement Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Easement Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

20. **Waiver.** None of the rights granted under this Easement Agreement shall be lost by non-use or limited use. No delay or omission by any party in exercising any right or power arising

out of any default under any of the terms or conditions of this Easement Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Easement Agreement.

21. **Enforcement.** Enforcement of this Easement Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Easement Agreement, either to restrain or prevent the violation or to obtain any other relief. Either party shall be entitled to collect from any person that violates or attempts or threatens or intends to violate this Easement Agreement its reasonable attorney fees incurred in enforcing or protecting its rights under this Easement Agreement.

22. **No Termination.** Notwithstanding any other provision of this Easement Agreement or applicable law that may be to the contrary, no default under this Easement Agreement shall entitle Owner to terminate this Easement Agreement except by order of a court of competent jurisdiction.

<p>OWNER:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Subscribed and sworn to before me this ____ day of _____, 2012.</p> <p>_____</p> <p>Notary Public, State of Wisconsin</p> <p>My Commission expires: _____</p>
<p>CENTRAL BROWN COUNTY WATER AUTHORITY</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Subscribed and sworn to before me this ____ day of _____, 2012.</p> <p>_____</p> <p>Notary Public, State of Wisconsin</p> <p>My Commission expires: _____</p>

This document drafted by John Starkweather
Boardman & Clark LLP

EXHIBIT A—LEGAL DESCRIPTION

LOT ONE (1), VOL. 25 CERTIFIED SURVEY MAPS, PAGE 147, MAP NO. 4146; SAID MAP BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER (SE 1/4 OF SW 1/4), SECTION ONE (1), TOWNSHIP TWENTY-FOUR (24) EAST, RANGE NINETEEN (19) EAST, IN THE VILLAGE OF HOWARD, BROWN COUNTY, WISCONSIN, EXCEPTING THEREFROM THAT PART CONVEYED FOR ROAD PURPOSES IN DOC. NO 1858787, AND INCLUDING THAT PART OF THE VACATED ROAD DESCRIBED IN DOC. NO. 1820844.

EXHIBIT B

1257950

4146

CERTIFIED SURVEY MAP

SURVEYOR'S CERTIFICATE

I, David W. Mau, Registered Land Surveyor, do hereby certify that I have surveyed, divided and mapped part of the Southeast 1/4-Southwest 1/4, Section 1, T24N-R19E, Village of Howard, Brown County, Wisconsin, more fully described as follows:

Commencing at the south 1/4 corner of Section 1, T24N-R19E; thence S84°03'45"W, 322.28 feet along the south line of the Southwest 1/4, to the point of beginning; thence S84°03'45"W, 840.00 feet along said south line, also being the centerline of Milltown Road; thence N5°56'15"W, 474.19 feet; thence N42°42'58"E, 277.65 feet to the centerline of G.T.H. "C", also known as Shawano Avenue; thence 169.42 feet along said centerline being the arc of a 11,459.16 foot radius curve to the left whose long chord bears S47°42'27"E, 169.42 feet; thence S48°07'52"E, 280.56 feet along said centerline; thence 462.51 feet along said centerline being the arc of a 3886.39 foot radius curve to the left whose long chord bears S31°32'26"E, 462.24 feet to the point of beginning.

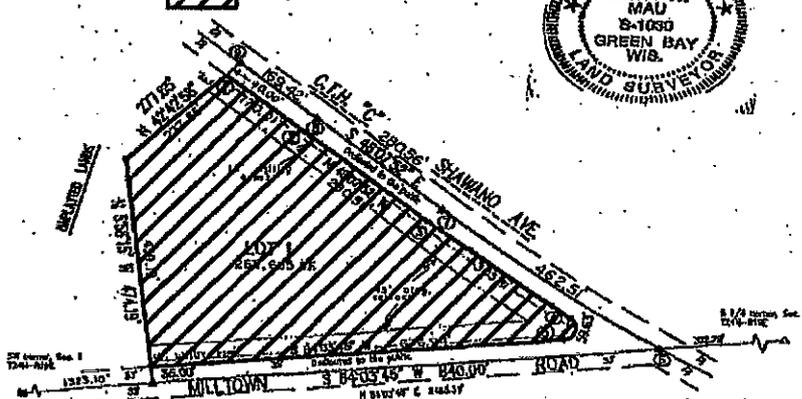
Parcel contains 316,810 square feet/7.27 acres, more or less.
Road dedication contains 63,125 square feet/1.43 acres, more or less.

David W. Mau
June 5, 1991
Revised July 15, 1991

S-1030

FEE
22-25 (12)
EXEMPT

 THE PROPERTY



SCALE: 1"=200'

NOTE: Bearings refer to the south line of the SW 1/4 Sec. 1, T24N-R19E assumed to be S84°03'45"W



- 1" x 24" iron pipe weighing 3.15 lbs/lin. foot set.
- ▲ P/N nail set.
- P/N nail found (Brown County Mon.)
- Brass cap in center (Brown County Mon.)

Sheet One of Three
Project No.: H-3491

Drawing No.: L-2897A

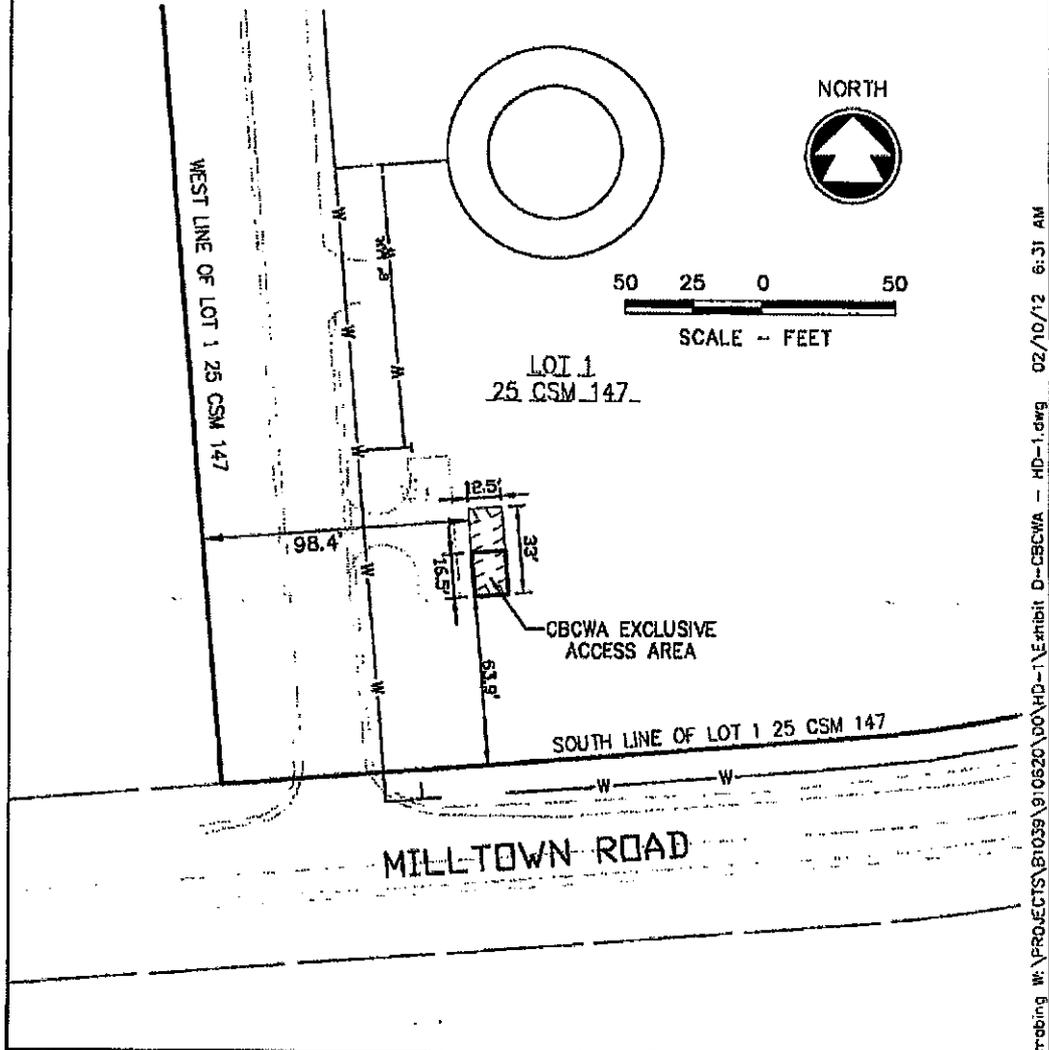
VOL. 25 PAGE 147

BROWN COUNTY REGISTER OF DEEDS DOC# 1257950 PG 1

mapping *:\PROJECTS\B10309\B10620\00\HD-1\Exhibit B HD-1.dwg 02/10/12 6:27 AM

EXHIBIT D

NOTE: THIS EXHIBIT MAP HAS BEEN PREPARED WITH THE USE OF CENTRAL BROWN COUNTY WATER AUTHORITY RECORD DRAWINGS LABELED (CONTRACT "F" REVISED PUMPING AND METERING/PRESSURE ADJUSTING STATIONS) AS CTE PROJECT NO. 40686 PREPARED BY CONSOER TOWNSEND ENVIRODYNE ENGINEERS, INC - CONSULTING ENGINEERS CHICAGO, ILLINOIS. NO FIELD MEASUREMENTS WERE PERFORMED BY MCMAHON TO VERIFY ACCURACIES.



File No. 81039-910620.00 Exhibit D-CBCWA - HD-1.dwg 02/10/12 6:31 AM
 Drawing W:\PROJECTS\81039-910620\00\HD-1\Exhibit D-CBCWA

McMAHON
ENGINEERS ARCHITECTS

Project No. 81039-910620.00 Date DEC, 2011 Scale 1"=30'
 Drawn By MJA Field Book _____ Page _____
 1445 McMAHON DRIVE NEENAH, WI 54958
 Mailing: P.O. BOX 1026 NEENAH, WI 54957-1026
 Tel: (920) 751-4200 Fax: (920) 751-4284