

## WATER SUPPLY AGREEMENT

This agreement ("Agreement") is entered into as of this 1<sup>st</sup> day of February, 2002, by and between HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT, a municipal corporation ("HOVMSD"), and FOX ENERGY COMPANY LLC, a Delaware limited liability company ("User"). Collectively, User and HOVMSD are referred to as "Parties."

### WITNESSETH

WHEREAS, User intends to construct and operate a natural gas-fired combined cycle power plant to be located in the Town of Kaukauna, Wisconsin, or the Town of Freedom, Outagamie County, Wisconsin (the "Project"); and

WHEREAS, HOVMSD provides sewage treatment services to the City of Kaukauna, Villages of Little Chute, Kimberly, and Combined Locks, and the Darboy Sanitary District; and

WHEREAS, HOVMSD and User wish to enter into an agreement for supply of treated effluent for the Project on the terms and conditions set forth herein.

Now, therefore, HOVMSD and User agree as follows:

Section 1. Cooperation of the Parties. Each Party shall work together with the other Party in good faith using its reasonable best efforts in order to carry out the intent of this Agreement and perform all reasonable actions necessary to accomplish the purposes of this Agreement. Each Party agrees to execute any documents reasonably necessary to effectuate this Agreement.

Section 2. Water Supply. (a) Commencing on the date of commencement of service as provided in Section 8, HOVMSD shall make available to User, for receipt and use exclusively by the Project, up to one hundred percent (100%) of the wastewater effluent from HOVMSD's sewage treatment facilities, including any new or modified facilities (such facilities, the "Treatment Facilities" and such wastewater, the "Treated Effluent"), but not to exceed eight (8) million gallons per day unless HOVMSD and User determine otherwise. HOVMSD shall make the Treated Effluent available to User at the point where the Treatment Facilities connect to the Infrastructure (as defined below) (the "Point of Delivery"), at which point title, control, responsibility for, and risk of loss shall pass from HOVMSD to User. User shall limit its use of the Treated Effluent to its own use for the Project, unless HOVMSD has given its prior written consent to another use, which consent shall not be unreasonably withheld. The Treated Effluent made available by HOVMSD shall have undergone all of the treatment steps required by applicable law and by the WPDES Permit as described in Subparagraph 2(b)(1) for discharge of such Treated Effluent to the Fox River (except as otherwise described in Subparagraph 2(b)(1)), but instead shall be delivered to User rather than discharged to the Fox River. User shall have first priority over any other user with respect to the Treated Effluent, subject to the eight (8)

) million gallon/day limitation contained herein. Under no circumstances shall User return Treated Effluent to HOVMSD; however, some minimal amounts of Treated Effluent may be recycled as part of the normal operation of the Project. User shall be obligated to accept from HOVMSD only the quantity of Treated Effluent which User, in its sole discretion, chooses to accept. User shall make its flow information available to HOVMSD, so that HOVMSD is aware of whether User is taking the Treated Effluent and if so, how much it is taking. User shall be obligated to pay HOVMSD only for the quantity of Treated Effluent that User accepts. ✓

) (b)(1) Except as provided below in Subparagraph 2(b)(2) and except for the effluent limitations for chlorine, the Treated Effluent supplied to User by HOVMSD shall meet all the treatment requirements and effluent limitations set forth in HOVMSD's WPDES Permit No. WI-0031232-07-0, or any modifications, amendments or replacements to such permit, and to any new or renewal WPDES Permit issued for the Treatment Facilities for discharge to the Fox River. The determination of whether or not the Treated Effluent is in compliance with the WPDES Permit shall at all times be determined in accordance with the methodologies, periodic testing, reporting and other requirements as set forth in the WPDES Permit and applicable law. In the event of any dispute as to whether such Treated Effluent is in accordance with the requirements of such WPDES Permit, the final determination of the Wisconsin Department of Natural Resources (or any successor thereto) ("DNR") shall be binding upon the Parties hereto, subject to either Party's rights, if any, to seek administrative and/or judicial review of any such DNR determination. If so allowed in its WPDES permit, HOVMSD shall deliver the Treated Effluent to User after chlorination but prior to dechlorination, unless User elects otherwise by notice to HOVMSD. As to any effluent limitations for chlorine (i.e., the addition or removal thereof), User accepts the Treated Effluent in an "as is" condition. HOVMSD shall perform periodic tests on the Treated Effluent as required by its WPDES Permit to determine compliance with the foregoing, and shall reasonably notify User of any noncompliance. HOVMSD shall use its reasonable best efforts to expeditiously correct the problem causing any such noncompliance to the extent such noncompliance can be corrected. In any event, upon discovery of such noncompliance, HOVMSD shall cease delivery and shall notify User. User may request in writing that HOVMSD deliver such non-complying Treated Effluent, and HOVMSD shall resume deliveries, provided that continuing delivery is permitted by law, and in such event, User shall be deemed to have accepted the Treated Effluent in an "as is" condition. Upon request, and at a mutually agreeable time, HOVMSD shall make available for inspection by User the results of any Treated Effluent testing performed by HOVMSD.

) (b)(2) In the event HOVMSD's WPDES Permit is proposed to be modified in a manner which will change the quality and/or quantity of the Treated Effluent, HOVMSD shall notify User of the proposed modifications, their effective date, and the anticipated change in the quality and/or quantity of the Treated Effluent User receives from HOVMSD. Unless User notifies HOVMSD to the contrary, continued delivery by HOVMSD to User of the Treated Effluent as changed by compliance

with the permit modifications shall be deemed acceptable under this Agreement. In the further event that HOVMSD is unable to comply with the modified permit conditions in a timely manner, such that the Treated Effluent is not in compliance with the effluent limitations of HOVMSD's modified WPDES Permit for the period of time necessary for HOVMSD to install equipment or to take such other steps as are required for compliance, the Treated Effluent delivered by HOVMSD to User shall be deemed acceptable under this Agreement so long as the Treated Effluent continues to be of the quality and/or quantity required by the WPDES Permit prior to its modification. HOVMSD shall be solely responsible for compliance with the conditions of its WPDES Permit and User shall bear no obligations for compliance or consequences of noncompliance by HOVMSD with its WPDES Permit, unless the Parties agree otherwise in writing, unless otherwise provided for herein, or unless either Party's WPDES Permit requires User compliance as a condition precedent to the delivery of Treated Effluent.

(c) HOVMSD acknowledges the importance of an uninterrupted flow of Treated Effluent to User's operation. HOVMSD shall use its best efforts to avoid interrupting the flow to User of its Treated Effluent to the extent reasonably practicable. HOVMSD shall provide as much advance notice as reasonably practicable of any interruptions or upsets to the flow of Treated Effluent, whether planned or unplanned. HOVMSD shall provide User with copies of any plans for maintenance that would require a Treatment Facility shutdown or a significant reduction of flow to User, as those plans are finalized, no later than forty (40) days in advance of any such planned maintenance. HOVMSD and User shall take all reasonable actions to coordinate with each other regarding planned maintenance so as to limit disruption to each other's operation. HOVMSD shall provide User with reasonable notice of any unscheduled maintenance, outage, emergency or other condition that significantly interrupts or which has the potential to significantly interrupt the flow of Treated Effluent to User as soon as HOVMSD becomes aware of such outage or emergency. So long as HOVMSD reasonably complies with this Paragraph 2(c), HOVMSD shall have no liability to User for direct or indirect damages caused by any interruption in the flow of Treated Effluent to User.

(d) In the event User, for any reason, does not accept one hundred percent (100%) of HOVMSD's Treated Effluent or if the total Treated Effluent exceeds eight (8) million gallons per day, HOVMSD shall be allowed to discharge the excess Treated Effluent directly into the Fox River or may make any other use thereof, in accordance with HOVMSD's WPDES permits, without liability to User and without any liability of User.

(e) So long as HOVMSD complies with the provisions of Subparagraph 2(b)(1), HOVMSD shall have no liability to User for direct or indirect damages caused by HOVMSD's failure to satisfy the requirements of its applicable WPDES Permit. Except as provided for in Subparagraph 2(b)(1) above, HOVMSD makes no other warranties or representations of any kind or nature, express or implied, as to the quantity or quality of the Treated Effluent or its fitness for any purpose contemplated by User; and HOVMSD disclaims any liability or responsibility therefor.

Section 3. Infrastructure. (a) User shall construct all pipelines, pumping stations, meters and other infrastructure necessary for conveying the Treated Effluent to the Project from the Treatment Facilities (the "Infrastructure") in a manner reasonably satisfactory to User. HOVMSD shall have the right to review and approve specific site plans, engineering plans, specifications or drawings for the Infrastructure in advance. HOVMSD shall not unreasonably withhold its approval and, if necessary, shall work cooperatively with User to revise the site plans, engineering plans, specifications and/or drawings in a manner that is acceptable to HOVMSD and User. User shall pay all construction and operational expenses related to the Infrastructure, including associated engineering expenses. User shall make arrangements to pay the utility directly for any electricity, natural gas or other fuel required to operate any portion of the Infrastructure. User shall retain all its rights in and to the Infrastructure, including all warranties, and User shall maintain the Infrastructure. Flow meters for measuring the amount of Treated Effluent provided to User will be located near the Point of Delivery, and the cost of acquisition, operation, calibration and replacement thereof shall be borne by User.

(b) During the term of this Agreement, HOVMSD agrees to provide User and User's agents, at no cost, reasonable access to its Treatment Facilities and property as may be necessary and appropriate to enable User to construct and maintain the Infrastructure. Such access shall be provided in a manner so as not to interfere unreasonably with the ongoing business operations of HOVMSD.

(c) During the term of this Agreement, HOVMSD hereby grants to User and User's agents any necessary and reasonable access rights, licenses, and/or rights of way upon, over, under, and across lands owned or leased by HOVMSD for the construction and operation of the Infrastructure in accordance with the approved plans and specifications therefor. HOVMSD grants to User and User's agents the rights of reasonable ingress and egress to HOVMSD's Treatment Facilities for the purpose of installing, testing, reading, inspecting, repairing, operating, altering, or removing any of the Infrastructure located on, under or through HOVMSD's premises or for other purposes necessary to enable User to receive the Treated Effluent, suspend the receipt thereof, or determine or ensure HOVMSD's compliance with this Agreement. Unless the Parties agree otherwise in writing, no such access rights, licenses or rights of way are assignable or transferable independently of an assignment of this Agreement made in accordance with the provisions of Section 13; however, such access rights, licenses or rights of way shall apply to any agents, contractors or subcontractors hired by User to do work related to the construction, operation and maintenance of the infrastructure on behalf of User.

(d) Unless the Parties agree otherwise, upon termination of this Agreement, howsoever caused, User shall remove the Infrastructure from the HOVMSD premises and shall reasonably restore the area where such Infrastructure was located to the condition it was prior to installation of the same. Further, upon such termination of this Agreement, all rights of User, including but not limited to all rights of access, ingress, egress and other license rights, shall terminate.

Section 4. New Facilities. (a) HOVMSD may change, alter, expand or otherwise modify the Treatment Facilities or may build additional water treatment facilities such that some or all of the wastewater treatment conducted by HOVMSD is no longer conducted at 801 Thilmany Road, Kaukauna, Wisconsin. Subject to HOVMSD's obligations under any applicable s. 281.41, Wis. Stats. (or any successor thereto), Plan Approval and/or its WPDES Permits, HOVMSD shall cooperate reasonably with User to permit User, at User's expense, to connect to such other facilities so as to permit User to retain its right to the Treated Effluent from HOVMSD as provided in Section 2 above, to reduce the cost to User of such connection and to limit the duration of any associated outage. Any such change of, alteration or modification to operations by HOVMSD shall not unreasonably disrupt User's operations. In the event a change of location of the Treatment Facilities renders part or all of User's Infrastructure unnecessary to User, User grants a right of first refusal to HOVMSD to purchase such unnecessary Infrastructure if such Infrastructure would be useful to HOVMSD. If not so purchased, User shall, upon demand of HOVMSD, remove the Infrastructure and reasonably restore the premises to its condition prior to such installation.

(b) User will require a small parcel of land along the Fox River for the placement of a pumping station, comprising part of the Infrastructure (the "Pump Station Parcel"). User currently is discussing with International Paper Company ("IPC") the possibility of acquiring property rights in land at IPC's Thilmany plant, immediately adjacent to HOVMSD's premises. HOVMSD agrees to cooperate as reasonably necessary with User to obtain such property rights on behalf of User, including acting as User's agent or go-between, or executing any documents necessary to transfer such rights from IPC or its successor company to HOVMSD on User's behalf. HOVMSD is hereby authorized to enter into the Option Agreement with IPC in the form attached as Attachment A. User shall notify HOVMSD in writing if and when HOVMSD should exercise such option. User shall pay on HOVMSD's behalf, all costs involved in acquiring the Pump Station Parcel, including but not limited to option cost, option extension cost(s), purchase price, title insurance, attorneys' fees and other closing costs referred to in the Option Agreement and any attachment thereto. The Pump Station Parcel shall be owned by HOVMSD. HOVMSD shall then grant to User a lease for the use of the Pump Station Parcel for the balance of the term of this Agreement, including any extension thereof. Such lease shall be in the form attached as Attachment B. When executed, such lease shall form part of this Agreement, and shall be subject to and governed by the terms and conditions of this Agreement. Such use shall be restricted to the installation and operation of the pumping station and related Infrastructure. Upon termination of such lease, such additional lands and property rights shall remain with HOVMSD and User shall have no further interests or rights therein.

(c) User grants a right of first refusal to HOVMSD to purchase any pumping station equipment comprising part of the Infrastructure upon termination of this Agreement. If not so purchased, User shall, upon demand of HOVMSD, remove the pumping station equipment and reasonably restore the premises to the condition it was prior to such installation.

Section 5. Permits. (a) User shall exercise due diligence and its best efforts to obtain and maintain all necessary easements, rights of way, permits, authorizations and approvals for the construction, design, operation and maintenance of the Infrastructure, as well as all necessary permits, authorizations and approvals for the use of the Treated Effluent beyond the Point of Delivery. HOVMSD shall exercise due diligence and its best efforts to obtain and maintain all necessary permits, authorizations, approvals and renewals thereof for the provision of Treated Effluent by HOVMSD to the Project. Each Party's obligations to the other shall be contingent upon being able to obtain the necessary permits, authorizations and approvals to accomplish the intent of this Agreement. If either Party fails to receive all proper permits, authorizations and approvals to enable delivery of Treated Effluent to be provided under this Agreement by January 1, 2006, and if construction of the Project has not commenced by such date, this Agreement may be terminated by either Party upon thirty (30) days notice. This Agreement shall automatically terminate if deliveries of Treated Effluent to User have not begun by January 1, 2008.

(b)(1) Both Parties shall cooperate as necessary to coordinate the application for permits, authorizations and/or approvals, or to take any other action deemed necessary or appropriate by any regulatory body in order to effectuate the transactions contemplated by this Agreement.

(b)(2) As part of the various governmental approvals required for the Project, the Parties, as joint applicants, filed for a water loss approval ("Water Loss Approval") from DNR under s. 281.35, Wis. Stats. and NR 142, Wis. Admin. Code ("Joint Application"). User prepared and will process the Joint Application. The Parties shall reasonably cooperate in the preparation and obtaining of the Water Loss Approval, including, as needed, by providing pertinent information and participating in meetings or discussions with DNR.

(b)(3) This commitment to cooperate and to take necessary action includes, but is not limited to, User's Certificate of Public Convenience and Necessity application process under s. 196.491, Wis. Stats., necessary WPDES and related permits, authorizations and/or approvals pursuant to Ch. 283, Wis. Stats., the Water Loss Approval, any related requirements, any plan approval submittals or modifications pursuant to s. 281.41, Wis. Stats., and any local governmental zoning or other requirements pursuant to applicable state law and local ordinances or regulations. It is anticipated that in order to deliver the Treated Effluent to User, HOVMSD will have to obtain a modification to or replacement of its WPDES Permit. The Parties intend that any such modified or replaced Permit, or any renewal of any such Permit, shall not be made more stringent as a result of HOVMSD's deliveries of Treated Effluent to User hereunder. An example of such circumstance would be if any of HOVMSD's authorized BOD discharges were removed from its WPDES Permit and transferred for the benefit of User. If at any time during the term of this Agreement any changes are made to HOVMSD's WPDES Permit as a result of discharge rights or benefits, pollutant allocations or authorizations which are granted to User in User's WPDES Permit, which are related to use of the Treated

) Effluent and which result in a Loss of Rights, such event shall be deemed a "Detrimental Event." "Loss of Rights" shall be defined as (i) a change to HOVMSD's WPDES Permit which occurs prior to the date of commencement of construction of the Project and which results in a loss of discharge rights or benefits, pollutant allocations or authorizations which are granted to HOVMSD, or (ii) a change to HOVMSD's WPDES Permit which occurs after the date of commencement of construction of the Project and which results in the loss of any discharge rights or benefits, pollutant allocations or authorizations granted to HOVMSD to treat the wastewater discharges of the areas it serves. At any time within one (1) year of the occurrence of a Detrimental Event, HOVMSD may give notice to User of its desire to seek a solution and/or to renegotiate this Agreement, specifying in such notice the specific terms that it desires to renegotiate and describing the impact of the Detrimental Event on HOVMSD's operations or ability to serve its municipal wastewater customers. Within thirty (30) days of receipt of such notice by User, the Parties shall begin in good faith to seek a regulatory, judicial or economic solution that is reasonably satisfactory to both Parties, using their best efforts to conclude such actions and negotiations within six (6) months. If the Parties are unable to attain a solution satisfactory to HOVMSD or to successfully renegotiate this Agreement within such six (6) month period, HOVMSD may within thirty (30) days thereafter provide notice to User requesting arbitration under Section 19. Provided, however, such arbitration shall be limited as follows: (i) Such arbitration shall be restricted to terms in this Agreement which relate directly to equitable resolution of the conditions or changes imposed in the Permit which constituted the Detrimental Event; (ii) either Party shall be required to make any changes or accommodation which has a *de minimus* economic impact on that Party; (iii) either Party shall be required to make any changes or accommodation which would normally be made by a prudent operator of that Party's facilities as though this Agreement were not in effect; (iv) HOVMSD shall not be obligated to incur any capital or operating cost other than those related to Subparagraph 5(b)(3)(iii); provided, however, User shall have the right to elect to pay for any necessary modifications to HOVMSD's facilities and/or to compensate HOVMSD for any changes in its operating costs as set out in Subparagraph 5(b)(5), in which case HOVMSD shall proceed to make any such modifications and to meet its other obligations with respect to this Agreement; and (v) such arbitration shall take into consideration the relative economic risks of both Parties.

) (b)(4) User shall have the right to pay for all capital and operating costs associated with the resolution of issues related to a Detrimental Event as described in this Subparagraph 5(b)(4). If compliance with conditions or reduced entitlements resulting from a Detrimental Event requires the construction or installation of capital facilities and/or equipment and/or additional operating costs, User shall be entitled to pay for such capital and operating costs. If User does pay for such costs, then in the event of the termination of this Agreement through no fault of User, it is agreed that HOVMSD may be required to reimburse User a portion of the capital costs so paid by User in remedying a Detrimental Event. For purposes of the following, the date that the necessary capital facilities and/or equipment are installed to remedy



the Detrimental Event is the "Installation Date." The Parties agree that the capital costs of such facilities shall be amortized over a 20 year period on a straight-line basis commencing upon the Installation Date. In the event this Agreement is terminated as aforesaid, then in such event, HOVMSD shall reimburse to User the outstanding amount of the unamortized portion of the capital costs so paid by User for the necessary facilities for the period subsequent to the termination date of this Agreement. Notwithstanding anything to the contrary contained herein, User shall be under no obligation whatsoever to pay for the capital costs referred to above; if User does not elect to pay the same to remedy a Detrimental Event, HOVMSD may terminate this Agreement upon the expiration of ten (10) years following date of notice of such termination.

(b)(5) User shall pay all reasonable engineering, attorney and permit application fees and expenses related to such proceedings described in this Section 5 that may be incurred by HOVMSD, except that HOVMSD shall bear all such costs associated with its WPDES Permit or any modification or replacement thereto. Provided, however, the costs for any modification or replacement to HOVMSD's WPDES Permit arising (i) solely because of User's request to use Treated Effluent shall be borne solely by User, or (ii) substantially because of User's request to use Treated Effluent shall be apportioned fairly between the Parties.

(c) In the event any regulatory body establishes a condition or conditions in any permit, authorization, approval or modification or amendment thereto related to HOVMSD's provision of Treated Effluent to User which will have material and substantial adverse effect on either Party's ability to operate its facilities or on the capital or operating cost of doing so, or, in HOVMSD's case, any capital expenditure or operating cost for which User is not willing to reimburse HOVMSD ("Adverse Permit"), each Party reserves the right to renegotiate the terms of this Agreement. Provided, however, a Detrimental Event shall not be considered an Adverse Permit giving rise to either Party's right to request renegotiation and binding arbitration under this Subparagraph 5(c), but instead shall be governed by Subparagraph 5(b)(3). Within thirty (30) days of the issuance of an Adverse Permit, either Party may give notice to the other of its desire to renegotiate, specifying in such notice the specific terms which it desires to renegotiate. Within thirty (30) days of receipt of such notice by the other Party, the Parties shall begin in good faith to negotiate revised terms of this Agreement, using their best efforts to conclude such negotiations within sixty (60) days. Provided, however, such renegotiation shall be limited as follows: (i) Such renegotiation shall be restricted to terms in this Agreement which relate directly to equitable resolution of the conditions imposed in the Adverse Permit; (ii) either Party shall be required to make any changes or accommodation which has a *de minimus* economic impact on that Party; (iii) either Party shall be required to make any changes or accommodation which would normally be made by a prudent operator of that Party's facilities as though this Agreement were not in effect; (iv) HOVMSD shall not be obligated to incur any capital or operating cost other than those related to Subparagraph 5(c)(iii); provided, however, User shall have the right to elect to pay for any necessary modifications to HOVMSD's facilities or to compensate HOVMSD for any changes in its



) operating costs related to compliance with any condition imposed in the Adverse Permit, in which case HOVMSD shall proceed to make any such modifications and to meet its other obligations with respect to this Agreement; and (v) such negotiations shall take into consideration the relative economic risks of both Parties. If the Parties are unable to agree, the dispute shall be submitted to arbitration pursuant to Section 19 for equitable resolution, based on the standards set forth in Subparagraphs 5(c)(i)-(v) above.

) (d) Both Parties agree to use their best efforts to assure that their actions do not cause the other to violate any effluent limitation or restriction in the other Party's WPDES Permit. HOVMSD agrees to operate its Treatment Facilities in accordance with generally accepted engineering and operating practices. If either Party has reasonable cause to believe the other Party is causing or may cause the first Party to violate any limitations or restrictions in any applicable permit as described in this Section 5, then the first Party shall give notice to the other Party within 120 days of the basis for the first Party's belief and the remedies the first Party requests the other Party implement. The Parties shall meet and work out an equitable solution that will enable the first Party to remain in compliance with its applicable permit. If the Parties are unable to reach a mutually agreeable solution within 120 days after presentation of the notice, the dispute shall be submitted to arbitration pursuant to Section 19. Among the remedies the arbitrator may impose if User is alleged to be the cause of the violation of HOVMSD's permit is the suspension of deliveries of Treated Effluent to User until the cause of the violation is resolved. Provided, however, if DNR or any other governmental authority having appropriate jurisdiction thereof, in order to remedy the alleged violation, orders the suspension of deliveries of Treated Effluent to User, the suspension shall be immediate and shall continue for so long as the applicable governmental authority so determines. In such event, the arbitrator shall have no authority to direct otherwise.

(e) In the event there is a violation of either Party's applicable permit due to the acts or omissions of the other, howsoever caused, the Party causing the violation shall indemnify, save and hold harmless the other Party from and against all liabilities, damages, fines, suits, claims, causes of action and expense of any kind or nature, including but not limited to reasonable attorneys' fees, that the other Party may sustain or be put to as a consequence thereof.

) **Section 6. Fees and Payments.** User shall pay to HOVMSD for the services described in this Agreement a usage charge of \$0.116 per thousand gallons of Treated Effluent taken by User at the Point of Delivery under this Agreement. Such usage charge shall be adjusted annually for each year of this Agreement, beginning on January 1, 2003, by the then most recent annual rate of change (from December to December) in the Consumer Price Index. For these purposes, "Consumer Price Index" shall mean the Consumer Price Index—Urban Wage Earners and Clerical Workers for Milwaukee-Racine, Wisconsin, not seasonally adjusted, as it appears in the periodical Consumer Price Indexes, as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index thereto. If the said Consumer Price Index shall ever cease publication, the Parties shall select a substitute therefor. If they cannot agree as to a substitute index, the matter shall be submitted to arbitration pursuant to Section 19

below. If this Agreement is extended for the Extended Term as provided in Section 8, then on the first day of the first year of the Extended Term the usage charge shall increase to \$0.1334 in real year 2002 dollars, and on the first day of the sixth year of the Extended Term the usage charge shall increase to \$0.145 in real year 2002 dollars. HOVMSD shall provide a monthly statement of these charges to User. Undisputed charges on the monthly statement shall be due and payable within thirty (30) days after receipt by User of the statement. If User disputes a charge on the monthly statement, User shall give notice and the particulars of such dispute to HOVMSD within thirty (30) days of receipt by User of the statement. If the Parties are unable to reach a mutually agreeable solution within 120 days after presentation of the notice, the dispute shall be submitted to arbitration pursuant to Section 19. If User does not provide such notice, then all such charges shown on the monthly statements are deemed undisputed.

Section 7. Waiver of Connection Fees. HOVMSD hereby waives all connection fees that might otherwise be required in connection with the Treated Effluent delivered by HOVMSD to User under this Agreement.

Section 8. Term and Termination. This Agreement shall become effective as of the date above and, unless terminated earlier as provided herein, shall continue in effect until twenty-five (25) years from the date of the commencement of the delivery of Treated Effluent to the Point of Delivery and subsequent conveyance thereof to the Project ("Initial Term"). User may begin to take Treated Effluent under this Agreement on the later to occur of (i) the date that the Infrastructure has been completed in a manner sufficient for User to take the Treated Effluent at the Point of Delivery or (ii) ninety (90) days after User provides notice to HOVMSD of its intention to commence taking Treated Effluent. The term of this Agreement may be extended for an additional twenty-five (25) year term ("Extended Term") by notice from User to HOVMSD, delivered at least two (2) years prior to the expiration of the Initial Term. Notwithstanding any other provision of this Agreement, if User determines that the Project shall not be constructed or commence operation, for whatever reason, User shall have the right to terminate this Agreement without liability of any kind by giving prior notice to HOVMSD. Additionally, User shall have the right to terminate this Agreement during or after construction of the Project, for whatever reason, upon notice to HOVMSD. Any such notice given before the date that User begins takes of the Treated Effluent shall be effective immediately. Any such notice given after the date User has begun takes of the Treated Effluent shall be effective as follows: (a) one calendar year following delivery of such notice, User shall be entitled to cease acceptance of the Treated Effluent, and HOVMSD's corresponding obligation to deliver shall cease; and (b) for a period following delivery of such notice and ending at the end of HOVMSD's subsequent fiscal year (the "Period"), User shall continue to be obligated to pay HOVMSD an amount equal to the payments made to HOVMSD during the twelve (12) calendar months prior to the date deliveries ceased; and (c) at the conclusion of the Period, this Agreement shall terminate. Following the effective date of such termination, neither Party shall have any continuing liabilities or obligations arising under or relating to this Agreement, except for any payment obligations or other liabilities that arise out of performances hereunder prior to the effective date of such termination.

Section 9. Indemnity. User shall hold and save harmless HOVMSD, including its commissioners, officers, agents, and employees, from liability of any nature or kind or on account of any claim for damages which may be filed or asserted as a result of any action or omission on the part of User in the construction of the Infrastructure, the maintenance of the portion of the Infrastructure not transferred to HOVMSD, User's use of Treated Effluent, or User's failure to comply with the terms of this Agreement, in each case except for damages due to the actions or omissions, negligent or otherwise, of HOVMSD or its commissioners, officers, agents, employees, managers or subcontractors. Each Party shall hold and save harmless the other, including its directors, officers, agents, and employees, from any liability related to the first Party's failure to obtain, maintain or comply with any necessary permits, approvals or authorizations, including any requirements of joint permits, approvals or authorizations given to the other Party with which a Party agrees in writing to comply. Any right of indemnification hereunder shall include reasonable costs and attorneys fees with respect to such indemnified claim.

Section 10. Interest and Default. (a) Default in Payment. User shall pay interest at an annual rate of 12% on all undisputed amounts that remain unpaid after the date such payment is due. Default in payment by User shall occur in the event that User shall fail to make any payment when due; provided, however, HOVMSD shall first give notice of such failure to pay and User shall then have a period of forty-five (45) days after receipt of such notice within which to cure such default by making payment in full. User's failure to cure its default within such forty-five (45) day period shall allow HOVMSD to terminate this Agreement after providing User with ten (10) days additional notice and a final right to cure within such ten (10) day period, and such termination shall entitle HOVMSD to cease deliveries of the Treated Effluent. During such ten (10)-day notice and cure period, User shall have a final right to cure the default by paying all principal and interest due, plus a late payment penalty of ten percent (10%) of the total amount due. If User cures the default, HOVMSD shall not terminate this Agreement or cease deliveries of the Treated Effluent. As an alternative to terminating this Agreement, HOVMSD may, in its sole discretion, submit the issue of User's default in payment to arbitration under Section 19 or may commence an action in a court of competent jurisdiction to recover such amounts. HOVMSD shall be entitled to recover all costs and expenses incurred (including but not limited to reasonable attorneys fees) if it prevails in collecting any amounts hereunder.

(b) Other Defaults. In the event of a default in the performance of any obligation contained herein (other than a failure to pay under Section 6 which is addressed in Paragraph 10(a) above), the non-defaulting Party shall give notice of such default (specifying the nature thereof). Thereafter, the defaulting Party shall have sixty (60) days (or longer if another provision of this Agreement expressly provides for a longer period) within which to cure the alleged default. In the event HOVMSD gives notice of default which cannot be cured solely by the payment of money and is (1) of such nature that it cannot be cured within such sixty (60) day period or (2) if the curing thereof cannot be completed within such sixty (60) day period due to causes beyond the control of User, then such default shall not be deemed to continue so long as User, after receiving such notice, proceeds to cure the default as soon as reasonably possible, but in no event longer than six (6) months after the date of default, and continues to take all steps necessary to

complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. If such default is not so cured, then the non-defaulting Party may proceed to exercise all rights and remedies provided for herein, including arbitration under Section 19 and including the right to terminate this Agreement where that remedy is specifically provided for. Any claim brought pursuant to this Agreement shall be barred unless brought within two (2) years of the date of the incident giving rise to the claim, provided the non-defaulting Party knew or should have known of the act or omission of the defaulting Party which gives rise to such claim. Neither Party shall be liable for punitive damages for any breach of this Agreement.

Section 11. Agreement Binding. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

Section 12. Confidentiality. (a) In performing the obligations under this Agreement, each Party may disclose to the other certain confidential, proprietary or trade secret information concerning its respective know-how, trade secrets, drawings, studies, projections, plans and technical, financial or marketing data ("Confidential Information"). All Confidential Information, which in good faith is specifically designated as such when initially provided to the other Party or when filed with a regulatory body, shall remain the sole property of the Party disclosing such Confidential Information, and the Party receiving such information shall receive no rights therein. Each Party agrees, on behalf of itself and its directors, officers, agents and employees, that it will reasonably protect the Confidential Information of the other Party from disclosure to third parties with at least the same degree of care as is accorded that Party's own Confidential Information.

(b) Each Party shall hold in confidence any and all Confidential Information unless compelled (1) to disclose such information by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement, or (2) to meet obligations imposed by any local, state or federal regulatory body. Information required to be disclosed under this paragraph does not, by itself, cause any information provided by either Party to lose its confidentiality. To the extent it is necessary for either Party to release or disclose such information to a third party in order to perform that Party's obligations herein, such Party shall (i) give notice to the other Party prior to making said disclosure, and (ii) advise said third party of the confidentiality provisions of this Agreement and use its best efforts to require said third party to agree in writing to comply with such provisions.

(c) The obligations imposed by this Section 12 shall remain in effect for a period of three (3) years after the expiration or termination of this Agreement. Upon termination or expiration of this Agreement, each Party shall return any Confidential Information provided by the other Party.

Section 13. Assignment. (a) Any Party that shall succeed in interest to User or HOVMSD shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. No assignment of this Agreement or any of the

) rights or obligations hereunder shall be made without the prior written consent of the non-assigning Party (which consent shall not be unreasonably withheld).

(b) Notwithstanding the foregoing, consent of the other Party shall not be required for: (i) assignment of this Agreement by User in connection with the sale of the Project as an operational entity; (ii) assignment of this Agreement by User to any subsidiary, parent or successor entity whose voting securities are at least fifty-one percent (51%) owned by User; or (iii) pledge or assignment of this Agreement by either Party to a trustee or trustees, individual, or corporate, under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for bonds or other obligations or securities and to any successors or assigns thereof, and without the necessity of such trustee(s), mortgagee or secured party assuming or becoming in any respect obligated to perform the obligations of the assignor under this Agreement arising prior to the time such trustee, mortgagee or secured party obtains possession of or assumes the right to exercise such assignor's rights or after such possession or assumption ceases, and, if any such trustee, mortgagee or secured party be a corporation, without its being required to qualify to do business in any state in which performance of this Agreement may occur. An assignment of this Agreement without consent under Subparagraphs 13(b)(i) or (ii) shall not release the assignor from liability hereunder. In the event any assignment is authorized by the other Party, the assignee shall perform all obligations of the assignor, as if originally named as a Party hereto.

) (c) A Party shall be deemed to have consented to an assignment if it does not otherwise advise the Party requesting consent of its objection to the assignment, including the reasons for its objection, in writing within sixty (60) days after receipt of notice of such request.

Section 14. Insurance. (a) At all times during the term of this Agreement, both Parties shall purchase, at their own expense, and maintain with insurance companies in good standing in the state of Wisconsin and reasonably acceptable to the other Party, the following described insurance, if available, as will protect the other Party from liability and claims for injuries and damages which may arise out of or result from each Party's operations under this Agreement and for which either Party may be legally liable, whether such operations are by a Party or by a contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

(b) This Agreement also shall be one of indemnity, and such indemnification shall be covered by insurance, if so available. For the further protection of both Parties, but without restricting or waiving any obligations of either Party, both Parties shall insure the risks associated with this Agreement with minimum coverages and limits as set forth below:

) (b)(1) Workers' Compensation Insurance and Occupational Disease Insurance in accordance with statutory requirements of the state and/or Federal Regulations (FELA, USL&H, Jones Act) and Employers' Liability Insurance with limits of not less than:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Policy Limit
Bodily Injury by Disease	\$500,000	Each Employee

covering location of all work places involved in this Agreement.

(b)(2) Commercial General Liability Insurance, written on an Occurrence Basis, with limits of \$1,000,000.00 per occurrence/aggregate. Bodily Injury and Property Damage, including the following coverages:

- (i) Premises and Operations Coverage,
- (ii) Independent Contractor's Coverage,
- (iii) Contractual Liability covering liabilities assumed under this Agreement,
- (iv) Products and Completed Operations Coverage,
- (v) Coverage for explosion, collapse, and underground property damage,
- (vi) Broad Form Property Damage Liability endorsement,
- (vii) Personal Injury Liability, including Contractual,
- (viii) Sudden and Accidental Pollution Liability, as appropriate.

(b)(3) Comprehensive Automobile Liability Insurance covering owned, hired and non-owned vehicles with limits of \$1,000,000.00 per occurrence. Bodily Injury and Property Damage combined single limits, including Sudden and Accidental Pollution Liability, as appropriate.

(b)(4) Umbrella Liability Insurance with a minimum combined single limit of \$5,000,000.00 each occurrence/aggregate where applicable to be excess of the coverages and limits required in Subparagraphs 14(b)(1), (b)(2) and (b)(3).

(c) Each Party shall, on or prior to the date work commences on the Project, deliver to the other certificates of insurance evidencing valid coverage in effect as specified by this Section 14. If obtainable at commercially reasonable rates, all of the above described insurance policies shall contain provisions that the insurance companies shall have no right of recovery or subrogation against the other Party, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the parties that the insurance as effected shall protect both Parties, and each Party's carrier shall be primarily liable for any and all losses covered by the described insurance.

(d) User, its parent, divisions, affiliates, subsidiary companies, co-lessees, or co-venturers, agents, directors, officers, employees, and servants shall be named as an additional insured in each of HOVMSD's insurance policies, except statutory Workers'

Compensation. HOVMSD shall be named as an additional insured in each of User's insurance policies, except statutory Workers' Compensation.

(e) Any and all deductibles in the above-described insurance policies or inadequacy of limits shall be assumed by, for the account of and at each Party's sole risk, subject to the conditions set forth in this Agreement.

(f) All policies providing coverage hereunder shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days' written notice thereof to the other Party, if the insurer(s) so agree.

(g) Should either Party fail to provide or maintain any of the insurance coverages referred to in this Section 14, the other Party shall have the right, but no obligation, to provide or maintain such coverage, or coverage affording equivalent protection, at the other Party's expense, either by direct charge or set-off.

(h) Neither Party represents that the insurance coverages specified herein, whether in scope of coverage or amounts of coverage, are adequate to protect the obligations of the Parties, and each Party shall be solely responsible for any deficiencies thereof. Nothing in this Section 14 shall be deemed to limit either Party's liability under this Agreement.

(i) In the event any of the foregoing insurance coverages are not obtainable or obtainable by HOVMSD only at an added cost to its current coverages (whether by endorsement to or cancellation and replacement of existing policies), HOVMSD shall provide User with appropriate notice of such unavailability or documentation of such added costs. In such latter event, User shall pay such added costs upon demand. Either Party's inability to obtain any coverages or User's failure to pay HOVMSD's added costs shall relieve both Parties from any obligation to maintain that particular insurance coverage.

(j) Notwithstanding any provision to the contrary contained in this Section 14 or elsewhere in this Agreement, the Parties agree that HOVMSD's liability to User for any direct or indirect damages (of any kind or nature) sustained as a result of HOVMSD's acts or omissions in providing Treated Effluent to User or in otherwise performing its obligations hereunder, shall be limited to that dollar amount which may be recovered as set forth in s. 893.80, Wis. Stats., as amended from time to time.

Section 15. Federal and State Laws. In exercising and performing their rights and obligations hereunder, the Parties agree to comply with all applicable federal and state laws and regulations, including, without limitation, all environmental laws.

Section 16. No Third Party Beneficiary. Except for the rights of the Project lenders in Section 13, this Agreement shall not inure to the benefit of any person other than the Parties, their successors and assigns, unless agreed to in writing by both Parties.



Section 17. Authority. The Parties and the persons signing below represent and warrant that each of the undersigned persons has the power and authority to enter into this Agreement and bind the Party on behalf of whom such person is executing this Agreement.

Section 18. Governing Law. This Agreement shall be governed in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws provisions. The Parties agree that the Treated Effluent is a "good" as defined by the Uniform Commercial Code and that, to the extent this Agreement requires the application of law for its construction, Chapter 402 of the Wisconsin Statutes (the "Code") shall apply. Notwithstanding the foregoing, however, in the event of any conflict between the Code and any provision of this Agreement, this Agreement shall control.

Section 19. Dispute Resolution. (a) If a dispute (other than a default in payment as provided for in Paragraph 10(a) above) arises with respect to the performance or interpretation of this Agreement, including a claim by either Party that the other has breached this Agreement, the dispute shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and Expedited Procedures and the following terms: (i) the dispute shall be heard and determined in Kaukauna, Wisconsin by a single arbitrator who shall be independent, disinterested and experienced in the utility and wastewater industries; (ii) the arbitrator shall be selected by mutual agreement of the Parties, or if they are unable to agree, by AAA appointment; (iii) the arbitrator shall render an award that in his or her opinion is the resolution of the dispute that is fair and reasonable; and (iv) judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties agree to proceed on an expedited basis to seek a speedy resolution to their dispute, and to cooperate in a manner that enables such speedy resolution. HOVMSD hereby waives its procedural protection under s. 893.80, Wis. Stats., as amended from time to time, and waives its right to assert User's failure to comply with such statutory procedures as a defense in any proceeding hereunder brought by User. However, in the event there are procedural inconsistencies between the dispute resolution process set out herein and the provisions of s. 893.80, Wis. Stats., as amended from time to time, that as a matter of law cannot be waived and that preclude compliance with the provisions of this Section 19, the Parties shall comply with the procedural requirements of s. 893.80, Wis. Stats., as amended from time to time, with respect to claims by User against HOVMSD. The losing Party in arbitration shall be responsible for any reasonable attorneys' fees and legal costs of the other Party. Other than as provided in Paragraph 5(d), HOVMSD shall continue to deliver Treated Effluent in an uninterrupted flow during the pendency of any dispute.

(b) If any other provision of this Agreement prohibits the submission of a dispute(s) to arbitration under this Section 19 for ultimate resolution, then in such event such other provisions shall control and arbitration shall not be available.

Section 20. Notices. Any notice, demand, offer or other instrument required or permitted to be given pursuant to this Agreement shall be in writing and delivered: (a)

) personally, (b) by certified mail, return receipt requested, (c) by reputable overnight courier, with acknowledged receipt of delivery, (d) by facsimile machine or (e) by any other method mutually agreed to by the Parties in writing. Notice shall be addressed to the other Party at the following address:

If to User: Fox Energy Company LLC  
302 South 36<sup>th</sup> Street  
Suite 400  
Omaha, NE 68131  
Attention: General Counsel  
Facsimile no: 402-231-1658

If to HOVMSD: Heart of the Valley Metropolitan Sewerage District  
Attention: District Manager  
801 Thilmany Road  
Kaukauna, WI 54130  
Facsimile No.: 920-766-5733

Notices pursuant to Paragraph 2(c) regarding planned or unplanned outages or emergencies shall be communicated directly to the Project by telephone and followed up in writing delivered by facsimile machine or e-mail with a confirmed receipt to an individual(s) whose name and numbers will be provided as soon as available.

) Notices shall be effective when received. Each Party shall have the right to change the place to which notices shall be sent or delivered, in either case by similar notice sent or delivered in like manner to the other Party.

Section 21. Entire Agreement. This Agreement represents the entire agreement between the Parties and all prior negotiations and agreements of any kind between the Parties are superseded by this Agreement, with the exception of the "Memorandum of Understanding and Agreement," dated October 30, 2001, a copy of which is attached as Attachment C ("MOU"), executed by the Parties, and the MOU shall continue in effect as provided for therein. User shall reimburse HOVMSD for all reasonable engineering, attorney and permit application fees and expenses incurred in the drafting and negotiation of this Agreement, not to exceed the sum of \$20,000.

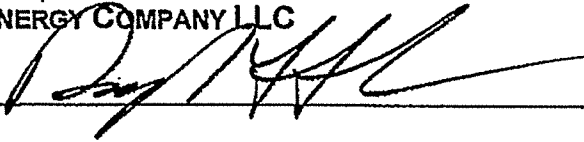
) Section 22. Miscellaneous. This Agreement shall not be amended, except by writing executed by both Parties. No waiver by either Party shall operate as a waiver of any future default, whether of like or different character or nature, nor shall any failure to exercise any right hereunder be considered as a waiver of such right in the future. The section headings appearing in the Agreement have been inserted for the purpose of convenience and reference. They shall not be construed as having any substantive significance or meaning whatsoever or as indicating that all of the provisions of the Agreement relating to any particular topic are to be found in any particular section. If any provision of this Agreement is declared to be unlawful, invalid or unenforceable by any appropriate authority with jurisdiction, the remainder of this Agreement shall remain in full force and effect. The language in this Agreement is the product of both Parties' efforts,

and each Party hereby irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of a contract or the drafter of specific language in a contract.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the date first set forth above.

**FOX ENERGY COMPANY LLC**

By: \_\_\_\_\_



Name: Douglas L. Anderson  
Title: Senior Vice President & General Counsel

**HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT**

By: \_\_\_\_\_



Name: Budd Vanden Hauvel  
Title: President

FIRST AMENDMENT TO  
WATER SUPPLY AGREEMENT

This Agreement is entered into as of this 9th day of April 2003, by and between HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT, a municipal corporation ("HOVMSD") and FOX ENERGY COMPANY, LLC, a Delaware limited liability company ("User").

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated as of February 1, 2002 (the "Agreement") that provides for the supply of Treated Effluent from HOVMSD to User under the terms and conditions stated therein; and

WHEREAS, User has obtained certain land access rights between the HOVMSD facility and the User's facility in which it intends to place portions of the Infrastructure (as such term is defined in the Agreement); and

WHEREAS, In order to complete construction of the Infrastructure, User may require certain occupancy rights for the use of public right-of-way within Wisconsin State Highway 96. Such occupancy rights shall be for property that is approximately three (3) miles in length within Wisconsin State Highway 96 as shown on the Outagamie County Land Atlas and Plat Book of 2002, page 12, extending from the Urban Micke property on the east side of the road to a point along the Lloyd Bowers' property on the west side of the road. Such occupancy rights shall be referred to herein as "Third Party Land Rights"; and

WHEREAS, in order to obtain the Third Party Land Rights, User would otherwise be required to obtain the consent of and to make payment to the Wisconsin Department of Transportation (the "Department") for any necessary occupancy permit therefor ("Permit Payment"); and

WHEREAS, HOVMSD, as a metropolitan sewerage district, has certain rights and entitlements that may allow it to use Third Party Land Rights more easily than User; and

WHEREAS, User may request HOVMSD's assistance in obtaining the Third Party Land Rights, and HOVMSD is willing to provide such assistance.

NOW, THEREFORE, the Parties agree as follows:

(1) Amendment. The Parties agree to amend the Agreement by the addition of the following new Paragraphs to Section 3, as follows:

(e) At User's written request and upon payment by User to HOVMSD of an amount of money equal to the Permit Payments it would have otherwise paid to obtain

such rights directly from the Department, HOVMSD agrees to make reasonable attempts, using its best efforts, to acquire for itself the Third Party Land Rights necessary to construct, operate and maintain the Infrastructure that lies within the area subject to the Third Party Land Rights (herein the "HOV Infrastructure"). If in order to acquire such Third Party Land Rights it is necessary that HOVMSD acquire ownership of the HOV Infrastructure (or any other facilities associated therewith), then in such event HOVMSD agrees to own the HOV Infrastructure and/or the other facilities associated therewith (collectively the "Force Main Facilities"). Further and in such event, HOVMSD and User shall enter into a triple net lease agreement covering the Force Main Facilities, which lease shall provide for the maintenance and service of the said facilities, with a term coincident with the term of this Agreement, under which User shall operate and maintain the Force Main Facilities at no cost to HOVMSD, grant to User all necessary access rights upon, over, under and across the Third Party Land Rights, and containing such additional terms and provisions as the parties may agree. Such lease may be in addition to or in lieu of the Lease Agreement referred to in the Agreement.

(f) If, as a result of the User's election to require HOVMSD to acquire the Third Party Land Rights under subsection (e) above, then in such event, User shall pay directly all costs and expenses of construction, operation, maintenance and ownership of the Force Main Facilities, and all costs and expenses associated with obtaining such Third Party Land Rights.

(g) If, as a result of the User's election to require HOVMSD to acquire the Third Party Land Rights under subsection (e) above, and if it is also determined by the parties that HOVMSD must comply with Sections 200.11(5)(d) and 66.0901, *et seq.*, Stats. ("Public Contracts Act"), then, in such events the parties agree:

- (1) To take all steps reasonable and necessary to comply with the Public Contracts Act;
- (2) User shall pay any and all costs and expenses of such compliance, as well as all costs and expenses of the construction of the Force Main Facilities, and any other costs or expenses associated therewith; and
- (3) User shall reimburse HOVMSD for its administrative time in connection with such construction, in a reasonable amount to be determined by the parties in recognition of the time and effort to be expended by HOVMSD. Under no circumstances shall HOVMSD be obligated to incur any cost or expense, of any kind or nature, as a result of the User's election under subsection (e).

(2) Reimbursement. User shall reimburse HOVMSD for all costs and expenses incurred by HOVMSD in connection with the negotiation, drafting and execution of this Agreement, including but not limited to reasonable attorneys' fees and Commission meeting costs.



## SECOND AMENDMENT TO WATER SUPPLY AGREEMENT

THIS SECOND AMENDMENT TO WATER SUPPLY AGREEMENT is dated as of <sup>February</sup> ~~March~~, 2004 by and between HEART OF THE VALLEY METROPOLITAN SEWERAGE DISTRICT, a municipal corporation ("HOVMSD") and FOX ENERGY COMPANY LLC, a Wisconsin limited liability company ("User") (this "Amendment").

### WITNESSETH

WHEREAS, HOVMSD and User entered into that certain Water Supply Agreement dated as of February 1, 2002 (as such document has been or may be amended from time to time, the "Water Supply Agreement").

WHEREAS, HOVMSD has acquired the Pump Station Parcel as described in the Water Supply Agreement.

WHEREAS, HOVMSD desires to grant a limited term easement to User and User desires to accept such easement from HOVMSD for certain real property owned by HOVMSD including the Pump Station Parcel.

WHEREAS, HOVMSD and User desire to amend the terms of the Water Supply Agreement subject to the terms and conditions of this Amendment.

### AGREEMENTS

1. All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Water Supply Agreement.
2. All references to User as a Delaware limited liability company shall be amended to refer to User as a Wisconsin limited liability company.
3. All references to HOVMSD granting a lease in the Pump Station Parcel to User shall be amended to refer to HOVMSD granting a limited term easement in certain real property owned by HOVMSD including the Pump Station Parcel to User. Accordingly, Attachment B of the Water Supply Agreement shall be deleted in its entirety and shall be replaced with a new Attachment B attached to this Amendment as Exhibit A. Such Attachment B shall contain a more particular description of the HOVMSD real property over which the easements described therein are located.



4. All other terms and conditions of the Water Supply Agreement are ratified and shall remain in full force and effect.

5. This Amendment may be executed in counterpart and facsimile signatures shall be deemed originals.

HEART OF THE VALLEY METROPOLITAN  
SEWERAGE DISTRICT, a municipal  
corporation

By: Judd Vanden Heuvel  
Name: Judd Vanden Heuvel  
Its: President

FOX ENERGY COMPANY LLC, a Wisconsin  
limited liability company

By: James T. Shield  
Name: James T. Shield  
Its: Vice President

Approved as to form



Exhibit A

Limited Term Easement Agreement

Document No.

## LIMITED TERM EASEMENT AGREEMENT

Return to:  
Melanie S. Lee  
Reinhart Boerner Van Deuren s.c.  
P.O. Box 2018  
Madison, WI 53701-2018

See Addendum A

Parcel Number

## LIMITED TERM EASEMENT AGREEMENT

This Limited Term Easement Agreement (this "Easement Agreement") is entered into as of February 27, 2004 between Heart of the Valley Metropolitan Sewerage District, a municipal corporation ("Grantor"), and Fox Energy Company LLC, a Wisconsin limited liability company ("Grantee"). Collectively, Grantor and Grantee are referred to as "Parties."

### ARTICLE I

#### RECITALS

1.01 Title and Quiet Possession. Grantor covenants and warrants that it is the fee simple owner of the real property in Outagamie County, Wisconsin, more fully described in Exhibit A attached hereto (the "Easement Estate") which contains a certain parcel of land on which Grantee desires to construct a pump station more particularly described on Exhibit B (the "Pump Station Parcel") and a certain parcel of land which contains the force main (the "Force Main Easement") more particularly described on Exhibit C, free and clear of all liens and encumbrances (except as provided in Article 9); that it has full power to grant an easement over the Easement Estate and has full power and authority to enter into this Easement Agreement; and that by performing its obligations herein, Grantee shall peaceably hold and enjoy the Easement Estate during the term of this Easement Agreement, without interruption by Grantor or any person claiming by, through or under it.

1.02 Water Supply Agreement. The Parties have entered into a Water Supply Agreement (the "Water Supply Agreement") dated as of February 1, 2002. Under the Water Supply Agreement, Grantor will provide treated effluent to Grantee for use in Grantee's power plant to be constructed and operated in Outagamie County, Wisconsin. This Easement Agreement is made a part of the Water Supply Agreement and is subject to and governed by the Water Supply Agreement. In the event of any inconsistency between the Easement Agreement and the Water Supply Agreement, the terms of the Water Supply Agreement shall control. This Easement Agreement is intended to further clarify certain of the rights set forth in the Water Supply Agreement.

## ARTICLE II

### TERM

2.01 Grant of Limited Term Easement. Grantor hereby grants, conveys and warrants the Easement Estate to Grantee (a) for use in the installation and operation of a pumping station and related facilities on the Pump Station Parcel; (b) to install and maintain a 20-inch force main within the Force Main Easement; (c) to install and maintain all such pipes and other appliances necessary to pump treated effluent provided by Grantor to Grantee's power plant located nearby pursuant to the Water Supply Agreement and (d) a non-exclusive right of ingress and egress to and from the Pump Station Parcel and/or the Force Main Easement, over roads from time to time located on Grantor's adjoining premises, and as permitted under the Water Supply Agreement.

2.02 Term. The rights granted to Grantee under this Easement Agreement shall commence on February 27, 2004 ("Commencement Date"), at which time Grantor shall deliver to Grantee the rights to the Easement Estate as granted hereunder. This Easement Agreement shall remain in effect for a term ("Term") coincident with the term of the Water Supply Agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, this Easement Agreement shall automatically terminate and be of no further force and effect upon termination of the Water Supply Agreement.

## ARTICLE III

### LAWFUL USE

3.01 Use of Easement Estate. Grantee may use the Easement Estate and any improvements constructed thereon solely for the use specified in Section 2.01 or as set forth in the Water Supply Agreement. Grantee agrees to use the Easement Estate in an orderly fashion and not to violate any law or ordinance on such premises.

## ARTICLE IV

### ASSIGNMENT AND SUBLETTING

4.01 Assignment and Subletting. This Easement Agreement may be assigned under the same terms and conditions as specified in Section 13 of the Water Supply Agreement. Any mortgagee of Grantee ("Grantee Mortgagee") shall be entitled to the benefits of the covenants of Grantor to Grantee contained in this Easement Agreement.

## ARTICLE V

### CONSIDERATION

5.01 Initial Payment. As part of the acquisition price of the Pump Station Parcel, Grantor has been reimbursed by Grantee for all costs related thereto. The payment of such costs shall constitute full and complete consideration for this Easement Agreement. Except as expressly set forth herein, no additional consideration shall be due from Grantee to Grantor during the Term hereof.

## ARTICLE VI

### TAXES

6.01 Ad Valorem Taxes on Real Property. Grantor shall pay when due and payable, or arrange for the payment of, and Grantee shall reimburse Grantor for, when and as requested by Grantor, all taxes and/or special assessments covering the Pump Station Parcel, with such taxes and/or special assessments to be prorated at the beginning (based upon the year in which the Commencement Date occurs) and at the end of this Easement Agreement for the year of termination. Grantee shall not be responsible for reimbursement of late payment fees or penalties if Grantor fails to make timely payments. Grantor shall provide to Grantee copies of all documents, including valuation notices, assessments and tax payment receipts. Such documents shall be provided to Grantee prior to or at the same time as Grantor requests reimbursement for taxes and/or special assessments paid. Furthermore, Grantee shall have the right to review Grantor's records relative to such rendition and valuation if, in Grantee's judgment, such rendition and valuation are of too high a dollar amount and shall have the right to jointly contest with Grantor any such valuation by said appraisal district.

6.02 Ad Valorem Taxes on Personal Property. Grantee shall be responsible for the rendition and payment of the applicable ad valorem taxes covering any improvements and personal property placed upon the Pump Station Parcel by Grantee to the extent improvements and personal property are not covered by the ad valorem taxes referred to in Section 6.01.

6.03 Other Taxes. Except as provided above in Sections 6.01 and 6.02, Grantee shall pay, when due, assessments, levies, fees, water and sewer rents and all other taxes, fees and charges, whether general or special, ordinary and extraordinary, and whether or not the same shall have been within the express contemplation of the parties hereto, together with any interest and

penalties thereon, which are, at any time, imposed or levied upon or assessed against the Pump Station Parcel or any part thereof, or which arise in respect of the operation, possession, occupancy or use thereof. Grantor shall give Grantee prompt notice of any charges for which Grantee is responsible pursuant to this Section 6.03. In the event Grantor fails to promptly notify Grantee of charges otherwise unknown to Grantee, Grantor shall pay any penalty or interest due on such charges.

## ARTICLE VII

### SERVICES AND UTILITIES

7.01 Services and Utilities. Following the Commencement Date, Grantee shall pay for all services and utilities it may require in connection with its use and occupancy of the Pump Station Parcel, and Grantor shall have no obligation to furnish or pay for any such services and utilities.

## ARTICLE VIII

### ALTERATIONS AND IMPROVEMENTS

8.01 Alterations and Improvements. Following the Commencement Date, Grantee shall have the right to remove or demolish, at its expense, any improvements constructed upon the Pump Station Parcel and shall have the right to make such improvements to or alterations in the Pump Station Parcel or any of its pipes and appliances located within the Easement Estate as to it may deem necessary for its use and enjoyment of the same, including, but not limited to, the right to repair, alter, reconstruct, or renovate any structure now thereon or hereafter placed thereon and to alter the topography of the land itself. Any such major topographical alteration must be approved by Grantor prior to the onset thereof. Upon the expiration or termination of this Easement Agreement, Grantee shall remove all improvements, trade fixtures, equipment, furniture and other personal property placed or located on the Pump Station Parcel, returning the Pump Station Parcel to as similar a condition as it was in on the Commencement Date. Grantee will pay for all such work and indemnify and save Grantor harmless from any costs in connection therewith. Title to any buildings or improvements situated or erected on the Pump Station Parcel and the building equipment and other items installed thereon or contained therein and any alteration, change or addition thereto shall remain solely in Grantee even after termination of this Easement Agreement, and Grantee alone shall be entitled to deduct all depreciation on Grantee's income tax return for any such buildings, building equipment and/or other items, improvements, additions, changes or alterations. Grantee shall have the obligation to obtain all zoning authorizations, building permits and related approvals from governmental authorities having appropriate jurisdiction. Grantee must remove the aforesaid buildings and improvements from the described premises, if the same are not bought by Grantor pursuant to Paragraph 4 of the Water Supply Agreement.

8.02 Grantor's Obligations. Following the Commencement Date, Grantor shall not have any duty to repair or improve the Pump Station Parcel or any structure now located or hereafter placed thereon either prior to the commencement of or during the Term.

8.03 Grantee's Obligations. Grantee shall be responsible for obtaining any necessary land divisions, zoning rights, exemptions or any other authorizations needed so that Grantee may use the Pump Station Parcel for its intended use. Grantor makes no representation on whether Grantee's intended purpose is a permitted use of the Pump Station Parcel.

8.04 Grantor's Adjoining Facilities. In exercising any rights granted pursuant to this Easement Agreement and/or the Water Supply Agreement, the Grantee agrees to take all reasonable steps so as not to interfere with the operation of Grantor's waste water treatment facilities located on the real estate adjacent to the Pump Station Parcel. In pursuance of the foregoing, Grantee agrees to notify Grantor of any contemplated excavation or construction activities associated with the facilities it intends to construct within the Easement Estate; and to take all reasonable precautions to protect the facilities of the Grantor and not interfere with the operations thereof. Under no circumstances shall excavation of any portion of the Easement Estate occur without prior notice to Grantor so that Grantor may identify any facility, above or below ground, which may be affected by such excavation.

## ARTICLE IX

### ENCUMBRANCE AND DEFAULT

9.01 Grantee Mortgages and Liens. Grantee may at any time mortgage its interest in the Easement Estate in favor of any Grantee Mortgagee. If any claims for labor and materials in connection with the construction of the pumping station on the Pump Station Parcel result in the filing of liens against the fee interest of Grantor in the Pump Station Parcel, Grantee shall cause such liens to be removed with due diligence, provided that it shall not be required to remove any such lien so long as it is contesting the validity or proprietary of such lien in good faith through appropriate legal proceedings. Grantor shall provide such assistance as Grantee may reasonably request in connection with such proceedings.

9.02 Grantee's Default and Rights to Cure. If Grantee shall default in the performance of any of its obligations herein stated, Grantor agrees that it will give to Grantee written notice of the existence of such default or claimed default and the Grantee shall have a period of sixty (60) days within which to cure same. In the event Grantor gives notice of default which cannot be cured solely by the payment of money and is (1) of such nature that it cannot be cured within such sixty (60) day period or (2) if the curing thereof cannot be completed within such sixty (60) day period due to causes beyond the control of Grantee, then such default shall not be deemed to continue so long as Grantee, after receiving such notice, proceeds to cure the default as soon as reasonably possible, but in no event longer than six (6) months after the date of default, and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. In the event that any defaults of Grantee shall be cured in any manner herein provided prior to the cancellation of this Easement Agreement, such defaults shall be deemed never to have occurred and Grantee's rights hereunder shall continue unaffected by such defaults. In the event that the Grantee, during the term of this Easement Agreement, should mortgage ("Easement Estate Mortgage") or otherwise encumber Easement Estate or interest in any improvements hereafter situated upon the Easement Estate in accordance with the terms hereof, Grantee (or such Grantee Mortgagee) shall give Grantor written notice of the same and the name



and address of any such mortgagee and/or trustee and thereafter, while any such Easement Estate Mortgage or encumbrance is in force, Grantor shall give any such Grantee Mortgagee or trustee a duplicate copy of any and all notices of default or other notices in writing which Grantor may give or serve upon Grantee pursuant to the terms of this Easement Agreement, and any such notice shall not be effective until a duplicate copy is actually delivered to such Grantee Mortgagee or trustee at such addresses as such Grantee Mortgagee may from time to time designate. Such Grantee Mortgagee or trustee may change its address for notice by written notice delivered to Grantor from time to time. Any such Grantee Mortgagee and/or trustee may, at its option, at any time before this Easement Agreement has been cancelled and terminated by Grantor as provided for in this Easement Agreement, pay any sums of money herein stipulated to be paid by Grantee or do any other thing required of the Grantee by the terms of this Easement Agreement, and all payments so made and all things so done or performed by any such Grantee Mortgagee and/or trustee shall be as effective to prevent a termination of the rights of Grantee hereunder as the same would have been if done and performed by Grantee instead of by any such Grantee Mortgagee or trustee. Any such Grantee Mortgagee or deed of trust so given by Grantee may, if Grantee so desires, be conditioned to provide that, as between such Grantee Mortgagee or trustee and Grantee, said trustee or Grantee Mortgagee, on making good and correcting any such default or defaults on the part of Grantee, shall be thereby subrogated to any and all of the rights of the person or persons to whom any payment is made by said Grantee Mortgagee or trustee, and to all of the rights of Grantee under the terms and provisions of this Easement Agreement, but any such subrogation shall not impair Grantor's rights under this Easement Agreement. No such Grantee Mortgagee or trustee of the rights and interests of Grantee hereunder shall be or become liable to Grantor as an assignee of this Easement Agreement until such time as said Grantee Mortgagee or trustee shall by foreclosure or other appropriate proceedings in the nature thereof, or as the result of any other action or remedy provided for by such Grantee Mortgagee or deed of trust, or by proper conveyance from Grantee, either acquire the rights and interests of Grantee under the terms of this Easement Agreement or actually take possession of the Easement Estate, and upon such Grantee Mortgagee's or trustee's assigning such rights and interest to another party or relinquishing such possession, as the case may be, such Grantee Mortgagee or trustee shall have no further such liability.

9.03 Postponement of Easement Agreement Termination. Notwithstanding the provisions of this Easement Agreement, it is agreed that so long as there is a first mortgage on Grantee's interest in this Easement Agreement, the effective termination of this Easement Agreement by reason of the occurrence of any of the actions specified herein as events of default or reasons for Grantor to have the right to terminate this Easement Agreement shall be postponed provided that (i) within a period of six (6) months after such event of default the first Grantee Mortgagee or trustee shall complete the prosecution of a foreclosure proceeding or sale under its mortgage, (ii) all monetary obligations of the Grantee under and in connection with this Easement Agreement are timely paid in full or complied with, and (iii) title to such Easement Estate passes in due course (subject, in the case of Grantee's bankruptcy, to delay caused by enjoinder of such foreclosure by a bankruptcy court).

9.04 Default by Grantee and Grantor's Right to Terminate Easement Agreement. Notwithstanding any other provision herein, Grantor shall not have the right to terminate or attempt to terminate this Easement Agreement or take any other action against Grantee hereunder on account of any alleged default of Grantee during the pendency of any good faith arbitration,

litigation, or other legal proceedings (including appeals therefrom) determinative of whether such default did, in fact, occur. If it shall be finally determined that a default did occur, Grantee shall have a period of six (6) months after such determination to cure the same.

9.05 Termination of Water Supply Agreement. Notwithstanding anything to the contrary contained in this Easement Agreement, the Easement Estate shall terminate and be of no further force or effect upon termination of the Water Supply Agreement, howsoever caused.

## ARTICLE X

### COVENANTS RUN WITH LAND; COUNTERPART

10.01 Covenants Run With Land. All of the covenants, agreements and conditions contained in this Easement Agreement shall be construed as covenants running with the land described on Exhibits A and B and shall extend to and be binding upon the successors and assigns of the parties hereto.

10.02 Counterpart. This Easement Agreement may be executed in counterpart and when taken together, shall constitute one original.

[Execution Page Follows]

Executed as of the day first written above under seal.

**GRANTOR:**

HEART OF THE VALLEY METROPOLITAN SEWERAGE  
DISTRICT

By: Judd VandenHeuvel  
Name: Judd VandenHeuvel  
Title: President

(SEAL)

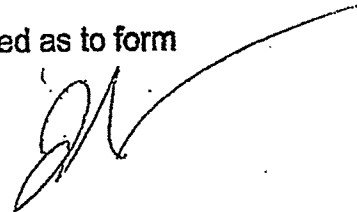
**GRANTEE:**

FOX ENERGY COMPANY LLC

By: James J. Shield  
Name: James J. Shield  
Title: Vice President

(SEAL)

Approved as to form



STATE OF WISCONSIN

SS.

COUNTY OF OUTAGAMIE

This instrument was acknowledged before me this 10th day of May, 2004, by Judd VandenHeuvel, President of Heart of the Valley Metropolitan Sewerage District, a municipal corporation, on behalf of said corporation.

Notary Public in and for  
The State of Wisconsin

Dawn D. Jandrey

My Commission Expires:

(Name - Typed or Printed)

11-11-07

Dawn D. Jandrey

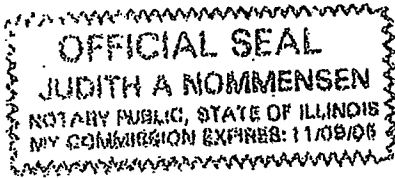
STATE OF ILLINOIS

SS.

COUNTY OF LAKE

This instrument was acknowledged before me this 2 day of June, 2004, by James J. Shield, Vice President of Fox Energy Company LLC, a Wisconsin limited liability company, on behalf of said company.

Notary Public in and for  
The State of Illinois



Judith A. Nommensen

My Commission Expires:

(Name - Typed or Printed)

11-9-05

Judith A. Nommensen

**EXHIBIT A**

**DESCRIPTION OF EASEMENT ESTATE**

[See Attached]

# PUMP STATION PARCEL —

A part of Block "A", in Private Claim 33 lying between the U.S. Government Canal and the Fox River, City of Kaukauna, Outagamie County, Wisconsin.

## PUMP STATION PARCEL

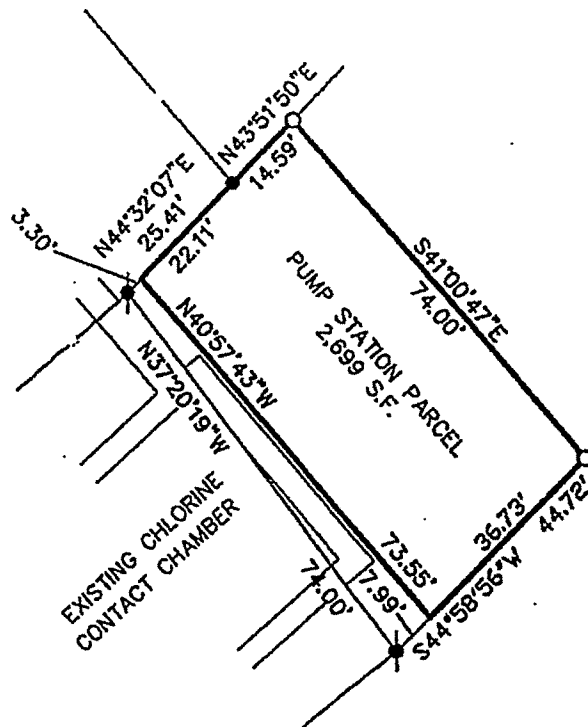
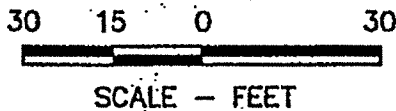
A parcel of land located in Block "A", in Private Claim 33 lying between the U.S. Government Canal and the Fox River, City of Kaukauna, Outagamie County, Wisconsin containing 2,699 Square Feet of land and more particularly described as follows:

Commencing at the Intersection of the South line of the U.S. Government Canal property and the Southwesterly line of Private Claim 33; Thence S40°16'00"E, 423.00 feet (Recorded as S49°29'09"E, 422.74 feet) along the Southwesterly line of Private Claim 33; Thence N50°41'00"E, 300.00 feet; Thence N40°16'00"W, 50.00 feet; Thence N49°44'00"E, 377.00 feet; Thence N44°32'07"E, 3.30 feet to the Point of Beginning; Thence continuing N44°32'07"E, 22.11 feet; Thence N43°51'50"E, 14.59 feet; Thence S41°00'47"E, 74.00 feet; Thence S44°58'56"W, 36.73 feet; Thence N40°57'43"W, 73.55 feet to the Point of Beginning. Subject to all easements and restrictions of record.

### LEGEND

- — 3/4" x 24" ROUND IRON REBAR WEIGHING 1.5 lbs./lineal ft. SET
- — 1" ROUND IRON PIPE FOUND
- ⊙ — 3/4" IRON REBAR FOUND
- S.F. — SQUARE FEET

BEARINGS ARE REFERENCED TO THE SOUTHWESTERLY LINE OF PRIVATE CLAIM 33, WHICH IS ASSUMED TO BEAR S40°16'00"E.



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**McMAHON** ■ ENGINEERS  
 ASSOCIATES, INC. ■ ARCHITECTS  
 ■ PROJ. MGRS.  
 ■ SURVEYORS  
 1445 McMahon Drive Neenah, WI 54956

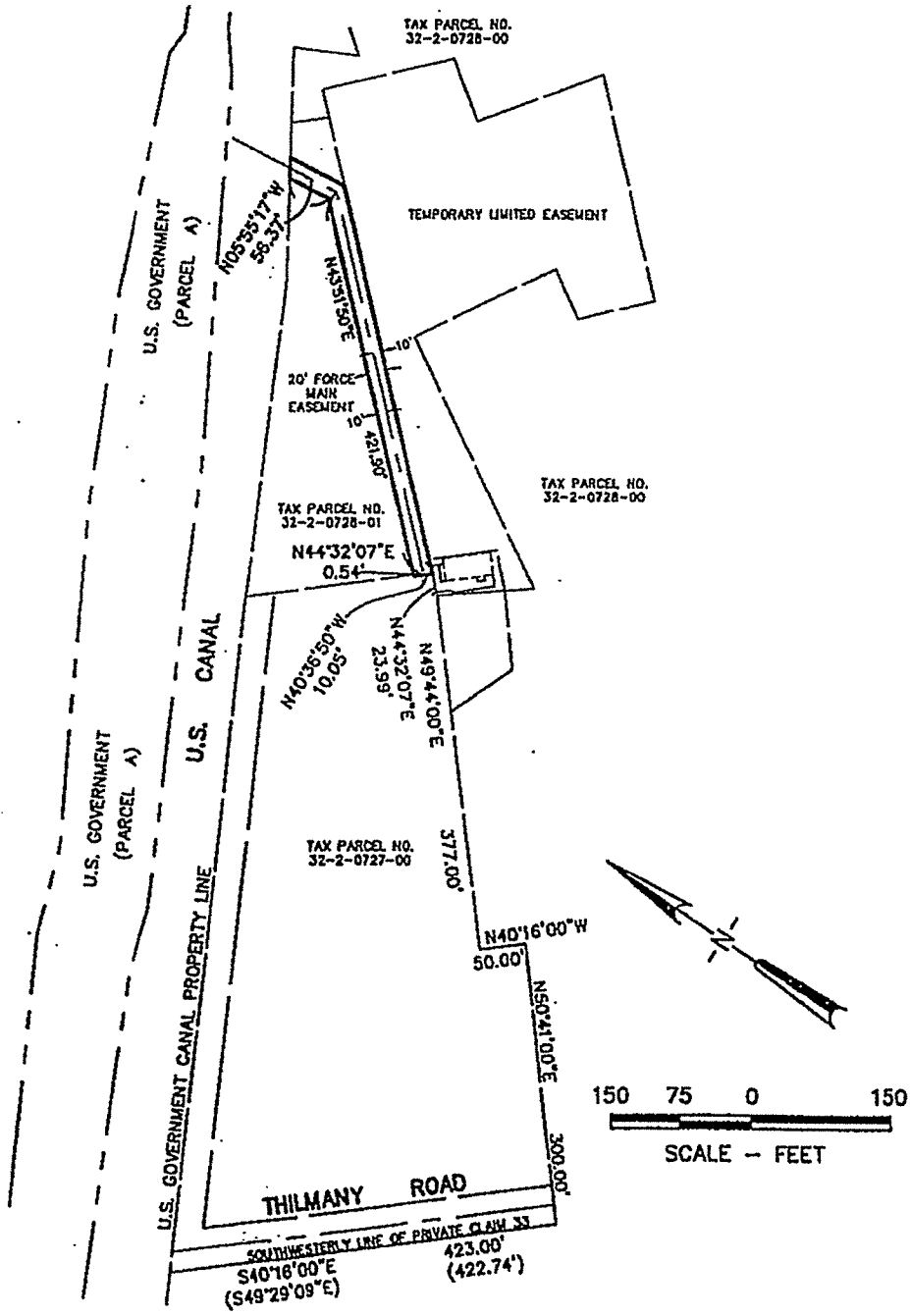
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 Mailing Address:  
 P.O. Box 1025 Neenah, WI 54957-1025  
 TEL: 920-751-4200 FAX: 920-751-4284

File No.  
CAD

**20' FORCE MAIN EASEMENT DESCRIPTION:**

A parcel of land located in Block "A", in Private Claim 33 lying between the U.S. Government Canal and the Fox River, City of Kaukauna, Outagamie County, Wisconsin containing 9,577 Square Feet of land and more particularly described as follows:

Commencing at the intersection of the South line of the U.S. Government Canal property and the Southwesterly line of Private Claim 33; Thence S40°16'00"E, 423.00 feet (Recorded as S49°29'09"E, 422.74 feet) along the Southwesterly line of Private Claim 33; Thence N50°41'00"E, 300.00 feet; Thence N40°16'00"W, 50.00 feet; Thence N49°44'00"E, 377.00 feet; Thence N44°32'07"E, 23.99 feet; Thence N40°36'50"W, 10.05 feet to the Point of Beginning of the centerline of a 20 foot wide Force main Easement lying 10 feet on both sides of the following described centerline; Thence N44°32'07"E, 0.54 feet; Thence N43°51'50"E, 421.90 feet; Thence N05°55'17"W, 56.37 feet to the Southerly edge of the U.S. Government canal property and the Point of Termination said Point being N63°11'56"E 1185.38 feet from the intersection of the South line of the U.S. Government Canal property and the Southwesterly line of Private Claim 33.



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**McMAHON** ■ ENGINEERS  
 ■ ARCHITECTS  
 ASSOCIATES, INC. ■ PROJ. MGRS.  
 ■ SURVEYORS  
 1445 McMahon Drive Neenah, WI 54956

Project No. C0925-930500.02 Date 3/2004 Scale 1"=150'  
 Drawn By MJA Field Book \_\_\_\_\_ Page \_\_\_\_\_  
 Mailing Address:  
 P.O. Box 1025 Neenah, WI 54957-1025  
 TEL: 920-751-4200 FAX: 920-751-4284

CAD File No.



**EXHIBIT B**

**DESCRIPTION OF PUMP STATION PARCEL**

[See Attached]

# PUMP STATION PARCEL – EXHIBIT B

A part of Block "A", in Private Claim 33 lying between the U.S. Government Canal and the Fox River, City of Kaukauna, Outagamie County, Wisconsin.

## PUMP STATION PARCEL

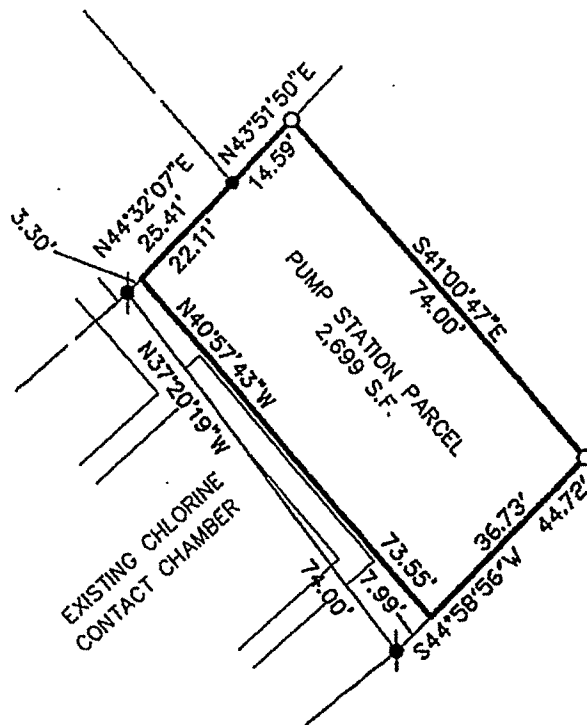
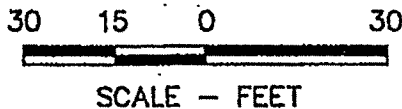
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## LEGEND

- – 3/4" x 24" ROUND IRON REBAR WEIGHING 1.5 lbs./lineal ft. SET
- – 1" ROUND IRON PIPE FOUND
- ✱ – 3/4" IRON REBAR FOUND
- S.F. – SQUARE FEET

BEARINGS ARE REFERENCED TO THE SOUTHWESTERLY LINE OF PRIVATE CLAIM 33, WHICH IS ASSUMED TO BEAR S40°16'00"E.



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**McMAHON** ■ ENGINEERS  
 ■ ARCHITECTS  
 ■ PROJ. MGRS.  
 ASSOCIATES, INC. ■ SURVEYORS  
 1445 McMahon Drive Neenah, WI 54956

Project No. C0925 930500.24 Date 01-29-04 Scale 1"=30'

Drawn By CWK/DEW Field Book \_\_\_\_\_ Page \_\_\_\_\_

Mailing Address:  
 P.O. Box 1025 Neenah, WI 54957-1025  
 TEL: 920-751-4200 FAX: 920-751-4284

File No.  
 CAD

**EXHIBIT C**

**DESCRIPTION OF FORCE MAIN EASEMENT**

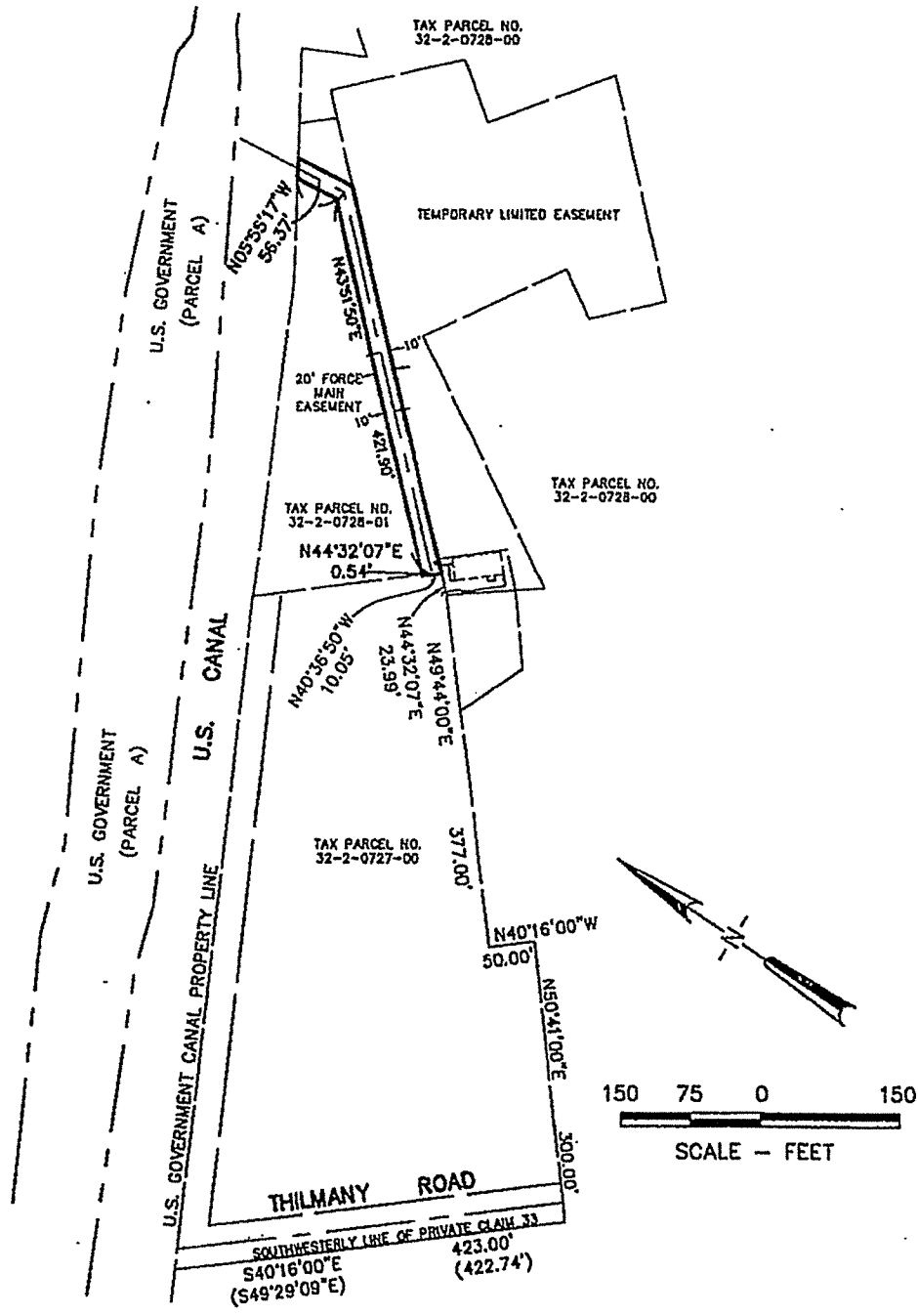
[See Attached]

# EXHIBIT C

## 20' FORCE MAIN EASEMENT DESCRIPTION:

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**McMAHON ASSOCIATES, INC.**  
 ■ ENGINEERS  
 ■ ARCHITECTS  
 ■ PROJ. MGRS.  
 ■ SURVEYORS  
 1445 McMahon Drive Neenah, WI 54956

Project No. C0925-930500.02 Date 3/2004 Scale 1"=150'  
 Drawn By MJA Field Book \_\_\_\_\_ Page \_\_\_\_\_  
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 TEL: 920-751-4200 FAX: 920-751-4284

File No. GAD

### THIRD AMENDMENT TO WATER SUPPLY AGREEMENT

This Third Amendment to Water Supply Agreement is dated as of ~~August~~ <sup>Sept</sup> 2, 2004, by and between Heart of the Valley Metropolitan Sewerage District, a municipal corporation ("HOVMSD") and Fox Energy Company, LLC, a Wisconsin limited liability company ("User") (this "Third Amendment").

#### WITNESSETH:

WHEREAS, HOVMSD and User entered into that certain Water Supply Agreement dated as of February 1, 2002 (as such document has been or may be amended from time to time, (the "Water Supply Agreement"); and

WHEREAS, HOVMSD has acquired the Pump Station Parcel as described in the Water Supply Agreement; and

WHEREAS, HOVMSD has granted unto User a "Limited Term Easement Agreement" entered into as of February 27, 2004 (the "Easement"), relating to User's use of the Pump Station Parcel; and

WHEREAS, User has conducted a limited Phase II soil investigation relating to the Pump Station Parcel, a 36-foot by 73-foot lot, and the parcel subject to the Forcemain Easement (jointly "Easement Estate"), which investigation indicates that lead was detected in thirteen (13) of fourteen (14) soil samples of which two were at concentrations that exceeded the Wisconsin Department of Natural Resources' (WDNR's) residual contamination level for lead on industrial property ("RCL"); and

WHEREAS, in order for User to make use of the Easement Estate pursuant to the terms of the Easement, it is necessary that User excavate, install below ground surface pump station foundations and pipelines associated therewith, backfill said excavations and properly manage any excavated soils which have lead levels that exceed the RCL per a plan submitted to WDNR entitled "Soil and Wastewater Management Plan, Fox Energy Center Permit Station Site, Kaukauna, Wisconsin" (the "Plan"); and

WHEREAS, HOVMSD and User desire to amend the terms of the Water Supply Agreement, subject to the terms and conditions of this Third Amendment.

NOW, THEREFORE, for and in consideration of all mutual covenants contained herein, and all other good and valuable consideration moving from each party to the other, it is hereby agreed as follows:

1. Recitals. The recitals hereto are hereby incorporated by reference.
2. Capitalized Terms. All capitalized terms not defined herein shall have the meaning ascribed to such terms as set forth in the Water Supply Agreement.
3. Soil Management Plan. Because of the soils contamination discovered on the Easement Estate, the HOVMSD, as the fee simple owner of the Pump Station Parcel and the parcel subject to the Forcemain Easement, notified the WDNR. The parties hereto recognize and agree that the provisions of Section 5 of the Water Supply Agreement relating to "Permits" shall also apply to the notification and approvals described in this Section 3 of this Third Amendment. User caused to

be prepared the Plan and submitted same to WDNR. The Plan was subject to the reasonable review and approval of HOVMSD prior to its submission to the WDNR. The User shall implement the same in accordance with the terms and provisions thereof, at its sole cost and expense. Under no circumstances shall HOVMSD incur any liability for costs or expenses incurred in connection with the foregoing notification, submittal or implementation. HOVMSD agrees to sign any manifests (or equivalent tracking documents) as generator of solid waste to be disposed pursuant to the Plan. HOVMSD also agrees to accept for treatment and discharge all groundwater required by the Plan to be disposed of as wastewater.

4. Indemnity. In addition to any other provisions set forth in the Water Supply Agreement, the User agrees to indemnify, save and hold harmless HOVMSD from and against any and all claims, suits, demands, causes of action or expenses, including but not limited to reasonable attorneys' fees, arising out of or in any way relating to User's failure to perform in compliance with the Plan all excavating and backfilling at the Easement Estate or disposing of residual soils.

5. Expenses. User shall reimburse HOVMSD upon demand in the event HOVMSD incurs any costs or expenses in connection with the subject matter of this Third Amendment, including but not limited to reasonable attorneys' or consultant's fees required to enforce this Third Amendment or the payment of any fines or penalties levied against HOVMSD for User's (or its agent's) non-compliance with the Plan.

6. Ratification. All of the terms and conditions of the Water Supply Agreement are hereby ratified and confirmed in all respects.

7. New Amendment Counterparts. This Amendment may be executed in counterparts and facsimile signatures will be deemed originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

HEART OF THE VALLEY METROPOLITAN  
SEWERAGE DISTRICT, a Wisconsin municipal  
corporation

By: \_\_\_\_\_  
Name: Judd L. Vander Neusel  
Title: PRESIDENT, HOVMSD

FOX ENERGY COMPANY LLC, a Wisconsin  
limited liability company

By: \_\_\_\_\_  
Name: James J. [Signature]  
Title: VICE PRESIDENT

Approved as to form

[Signature]

## Estoppel Certificate

Reference is made to that certain Water Supply Agreement, dated as of February 1, 2002, between Fox Energy Company, LLC, a Wisconsin limited liability company (the "Company"), and Heart of the Valley Metropolitan Sewerage District, a municipal corporation (the "Contractor"), as amended by the First Amendment thereto, dated as of April 9, 2003, between the Company and the Contractor, the Second Amendment thereto, dated as of February 27, 2004, between the Company and the Contractor and the Third Amendment thereto, dated as of September 2, 2004, between the Company and the Contractor. The Agreement was entered into in connection with the Company's approximately 593-megawatt dual-fueled, combined cycle natural gas-fired electric generating facility located in Kaukauna, Wisconsin (the "Project").

Fox Energy OP, L.P. and Fox River Power, LLC (together with Fox Energy OP, L.P., "Sellers") and Wisconsin Public Service Corporation ("WPSC") have entered into a Purchase and Sale Agreement, dated as of September 28, 2012, pursuant to which Sellers agreed to sell all of the membership interests in the Company to WPSC. In connection with that sale, Contractor does hereby certify as follows to WPSC:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Agreement and any and all amendments thereto.
2. The Agreement is in full force and effect and has not been modified or amended in any way except as reflected by any amendments attached to Exhibit A, and the Agreement constitutes the entire agreement between the Contractor and the Company with respect to the matters described therein.
3. The Contractor has not transferred or assigned any interest in the Agreement.
4. To Contractor's knowledge, no party to the Agreement is in default thereunder or has breached the Agreement.
5. There are no legal or other proceedings pending or, to the Contractor's knowledge, threatened against or affecting the Contractor in any court or by or before any court or governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Agreement.
6. The Contractor has no existing claims, counterclaims, offsets or defenses against the Company under the Agreement, and there are no disputes between the Contractor and the Company, and the Contractor has submitted no indemnity claim to the Company under the Agreement that has not been paid or otherwise resolved.
7. The Company, WPSC and any subsequent purchaser or assignee of the Company, and any lender who extends credit to the Project or otherwise provides financing to the Company, will be relying on this certificate in connection with the acquisition, ownership, financing and operation of the Company and the Project, as applicable, and accordingly, this certificate binds the Contractor and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has caused this estoppel certificate to be  
duly executed and delivered by its duly authorized officers as of [ 2/18, 2013].

**HEART OF THE VALLEY  
METROPOLITAN SEWERAGE DISTRICT**

By: Mark D. Surwillo  
Name: Mark D. Surwillo  
Title: District Manager