

## OAK CREEK/WAUKESHA LETTER OF INTENT

This Letter of Intent ("LOI") is dated as of November 30, 2012 (the "Effective Date"), by and between the City of Waukesha, by and through its Waukesha Water Utility ("Waukesha") and the City of Oak Creek and its Water and Sewer Utility (collectively, "Oak Creek")

WHEREAS, Waukesha and Oak Creek desire to enter into a Letter of Intent ("LOI") for the provision of Lake Michigan water (the "Water") pursuant to a Water Supply Agreement (the "Agreement") and in accordance with provisions and restrictions of the Great Lakes Compact (the "Compact") and an approved water service area (the "Water Service Area") as delineated by the Southeastern Wisconsin Regional Planning Commission ("SEWRPC").

NOW THEREFORE, Waukesha and Oak Creek (collectively, the "Parties") agree as follows:

1. This LOI provides a basis and an outline of provisions that the Parties intend to include in an Agreement between Oak Creek and Waukesha pursuant to which Oak Creek will supply Water wholesale to Waukesha and Waukesha will purchase Water wholesale from Oak Creek.
2. Waukesha will construct any infrastructure necessary to distribute the Water to Waukesha's water service area, as identified and included herein by exhibit and reference. The alignment and route of any Water transmission mains infrastructure, which includes pumps stations and other improvements, that may need to be constructed to effectuate the Agreement will be the sole responsibility of Waukesha, provided, however, that Waukesha shall consult with Oak Creek regarding the location and construction of water transmission mains infrastructure within the boundaries that are currently under the jurisdiction of Oak Creek. Once such water transmission mains infrastructure is placed into service, it will become the property of Oak Creek and shall be operated and maintained as part of Oak Creek's system. Alternatively, Oak Creek may choose to construct required water transmission mains infrastructure within Oak Creek and incorporate the appropriate costs into the water rates charged to Waukesha and shall give written notice to Waukesha of its intentions. If Oak Creek chooses to construct the water transmission mains infrastructure, then Oak Creek shall determine the alignment and route of any water transmission mains infrastructure.
3. This LOI is also for the purpose of advancing Waukesha's Water application to the Wisconsin Department of Natural Resources (the "WDNR") and the Great Lakes Regional Body and that specific details regarding day to day operational issues will be addressed in the Agreement at a later date and time.

4. By executing this LOI, Waukesha agrees to negotiate exclusively with Oak Creek for the provision of Water, provided, however, that Waukesha shall be allowed to negotiate with other Water suppliers if Oak Creek provides written notice that it requires substantial modifications to the provisions of this LOI. Both Waukesha and Oak Creek shall negotiate in good faith.

5. The Parties agree in concept to the following provisions of Water service:

- A. **Water Quality, Quantity and Service Pressure:** Oak Creek shall provide, at its municipal border, Water to Waukesha which is safe for human consumption and which meets all primary drinking water quality standards from time to time established by State and Federal governmental entities. The Water shall be of the same purity and quality as the Water provided by Oak Creek to its individual retail and other wholesale customers and shall be at a pressure sufficient to satisfy all applicable requirements of the WDNR and the Public Service Commission of Wisconsin (the "PSC").

The minimum hge ("hydraulic grade elevation") shall be 870 (USGS datum) at the metering station measured at the downstream side of the meter based on a single pipe dedicated to Waukesha. This hge may change if the City of Franklin's distribution system is utilized for transferring water to Waukesha. The supply of water for the current areas served in Waukesha, are set forth in Exhibit A (the "Initial Service Area") attached hereto and incorporated herein, shall be at the rate needed by Waukesha but not to exceed eleven million gallons per day ("gpd") (11,000,000 gpd) measured at any point in time at the meter near the Oak Creek municipal border, as set forth above. During the term of this Agreement Oak Creek's supply of Water to Waukesha to serve the Water Service Area shall not exceed eighteen million five hundred thousand gallons per day (18,500,000 gpd) measured at any point in time, except with Oak Creek's consent to such exceedance. In the event Oak Creek is unable to satisfy Waukesha's request to supply more than 18,500,000 gpd (or such higher demand figure as agreed to by Oak Creek), Waukesha may obtain Water service from any other source without violating the terms of this LOI.

Improvements to Oak Creek's water supplies (the "Improvements") will be required to enable Oak Creek to supply the Waukesha's Water demands. The Improvements will be installed based upon pre-described system demands as outlined in Table 1, attached as Exhibit B hereto and incorporated herein. To enable Oak Creek to

meet future Water service demands, Waukesha shall develop a five (5) year water projection for both average day demand and maximum day demand, to be reviewed by Oak Creek on an annual basis. By April 1 of each calendar year, commencing in the year following the date of final approval of the Application for Great Lakes Water, Waukesha shall notify Oak Creek of its updated five (5) year water projections. Oak Creek shall meet Waukesha's updated demands, provided that Waukesha's demand increases in any one year will not exceed one hundred fifty thousand (150,000) gpd measured at any point in time, unless both Parties agree to such exceedance. If Waukesha does not provide an update of its five (5) year projections by April 1st, Year 1 of the prior year's plan will become Year 1 of the updated plan. For planning purposes, Waukesha's 2012 average day demand is seven million (7,000,000) gpd and Waukesha's maximum day demand is eleven million (11,000,000) gpd.

B. **Service Area:** Oak Creek shall provide Water at wholesale Water rates for the Initial Service Area. The Initial Service Area may be expanded to provide Water to the Water Service Area provided the average day demand does not exceed 150,000 gpd per year measured annually on a cumulative basis. Such expansions may occur without the consent of both parties.

C. **Allocation of Shared System Costs (Source of Supply, Pumping, Water Treatment and Transmission Mains):** Shared system costs will be allocated per the following Two Step Method:

The allocation of Oak Creek's shared costs to wholesale customers will be determined in the first step of a Two-Step Cost of Service Study (COSS) prepared by Oak Creek. The second step will be developed by each Party for retail rates for each community. Under this Two-Step method, revenue requirements will be allocated between Oak Creek's wholesale and retail customers using a base-extra capacity methodology. Base shared costs will be allocated pro rata based on water consumption. Extra capacity maximum day (MD) shared costs will be allocated by applying relative system maximum day ratios to base flows. Customer costs will be allocated based on the number of equivalent-meters using standard PSC ratios.

1. Revenue requirements will be developed under the current method approved by the PSC. If Oak Creek or its treatment plant is no longer regulated by the PSC, then revenue requirements

- will be developed using guidance from the American Water Works Association's Manual of Water Supply Practices M1.
2. The base-extra capacity method used in step one of Oak Creek's Two-Step Method does not allocate any base or extra capacity costs to fire protection. All fire hydrant costs are allocated to Oak Creek retail customers.
  3. Transmission mains are considered to be all mains fourteen inches and larger plus fifty percent of twelve inch mains.
  4. Total system MD ratios are determined by using an average of the annual MD ratio for the previous four years.
  5. Actual individual wholesale customer metered data will be used to determine each wholesale customer's MD ratio. Oak Creek's MD flow will be determined by subtracting wholesale MD flow from total system flows. The allocation of base shared costs and extra capacity maximum day shared costs between Oak Creek and each of the wholesale customers will use the average of the annual MD ratio for the previous four years.

D. **Rates:**

1. Sufficiency of Rates

The Agreement shall provide for a wholesale water rate, approved by the PSC, to allow Oak Creek, at its discretion, to fully recover its total cost (not marginal cost) to provide wholesale water to its wholesale customers.

2. Estimated Rates

Waukesha shall be a wholesale customer of Oak Creek. The wholesale rate with Waukesha as a customer is estimated to be \$1.90 per 1000 gallons of water based on 2012 dollars with Waukesha purchasing an average of 7 million gallons per day (MGD) and a maximum day purchase of 11 MGD with Oak Creek installing the improvements identified in Exhibit B. Waukesha will be responsible for providing adequate water from its system storage to meet its maximum hour demand plus fire flows. Both Parties acknowledge that this rate is based on assumptions that may change between 2012 and 2018. This rate will not be guaranteed until the date on which Waukesha actually purchases the Water, which is estimated to occur in 2018.

Waukesha shall be solely responsible for billing and collection of all fees or charges from its retail and/or wholesale Water service customers. Subject to 1. above, the initial rate of charges for wholesale Water services supplied to Waukesha by Oak Creek shall be the current rates authorized by the PSC, which rates shall cover all commodity and fixed excess demand related charges inclusive of public fire protection charges. The schedule of water rates shall be subject to modification during the term of the Agreement based on the Two Step Method described above. Such changes shall be approved, as required, by the PSC. Oak Creek shall submit invoices to Waukesha on a monthly basis. A reasonable rental fee for the operation, maintenance and repair of metering and demand measuring devices will be charged to Waukesha and incorporated in the monthly service fee as approved by the PSC. All such invoices shall be payable to Oak Creek within twenty (20) days. If payments are not received within twenty (20) days a penalty of 1% per month on any delinquency shall be due and payable by Waukesha.

- E. **Reliance on PSC:** The Parties acknowledge that in entering into this LOI they are mutually relying on the current regulatory role of the PSC, as of the date of this LOI with respect to matters relating to Water service rates, rules and practices. If the responsibilities of the PSC or any successor agency with respect to such matters change materially, or if the level of involvement of the PSC or any successor agency in such matters changes materially or if the PSC ceases to exist or exercise regulatory authority regarding water service rates and practices and such authority has not been transferred to a successor agency, the provisions and procedures of Dispute Resolution outlining a binding arbitration process set forth in the Agreement will be invoked.
- F. **Regional Water Authority:** Both Parties agree to engage in discussions related to the creation of a Regional Water Authority ("RWA"), the purpose of which would be to own and operate a treatment facility and the facility's related infrastructure. Such discussions would investigate the potential for the RWA to serve Oak Creek and its wholesale customers and the ownership and governing structure of the potential RWA. If such RWA purchases Oak Creek's existing Water treatment facility and the facility's related infrastructure, Oak Creek will receive fair and equitable monetary compensation for the sale.

- G. **Operation and Maintenance:** Oak Creek and Waukesha may agree to enter into a separate agreement governing Oak Creek staff's proper operation and maintenance of Waukesha facilities located outside Oak Creek at a cost outlined in such agreement. In the event such an agreement cannot be reached, Waukesha would be solely responsible for operating and maintaining such facilities.

Facilities in Oak Creek shall be owned and maintained by Oak Creek and the cost of those facilities shall be incorporated into the Water rates as set forth in the Allocation of Costs described above.

- H. **Agreement Term:** It is intended that the Agreement shall be for an initial term of forty (40) years then automatically renew for four (4) ten (10) year terms unless both Parties agree otherwise. The Agreement shall terminate eighty (80) years from the date upon which it takes effect, which shall occur upon the Agreement being duly approved and signed by each of the Parties and approved by the WDNR as required by law.

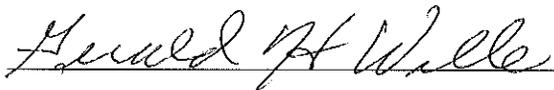
6. **No Obligation:** Except as expressly set forth herein, neither Party shall have any obligation to the other. No reliance, performance, change or loss of position or other action or expectation now or hereafter made based on this LOI shall be deemed to create any obligation or agreement of any type. There are no agreements or understandings between the Parties regarding supplying Water except as expressly set forth in this LOI.

7. **LOI Term:** This LOI shall remain in effect for a period of forty-eight (48) months from its Effective Date.

For:

Oak Creek Water and Sewer Utility:

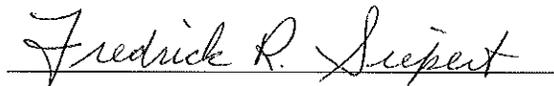
City of Waukesha:



Gerald H. Wille, Chairman



Jeff S. Scrima, Mayor



Fredrick R. Siepert, Secretary

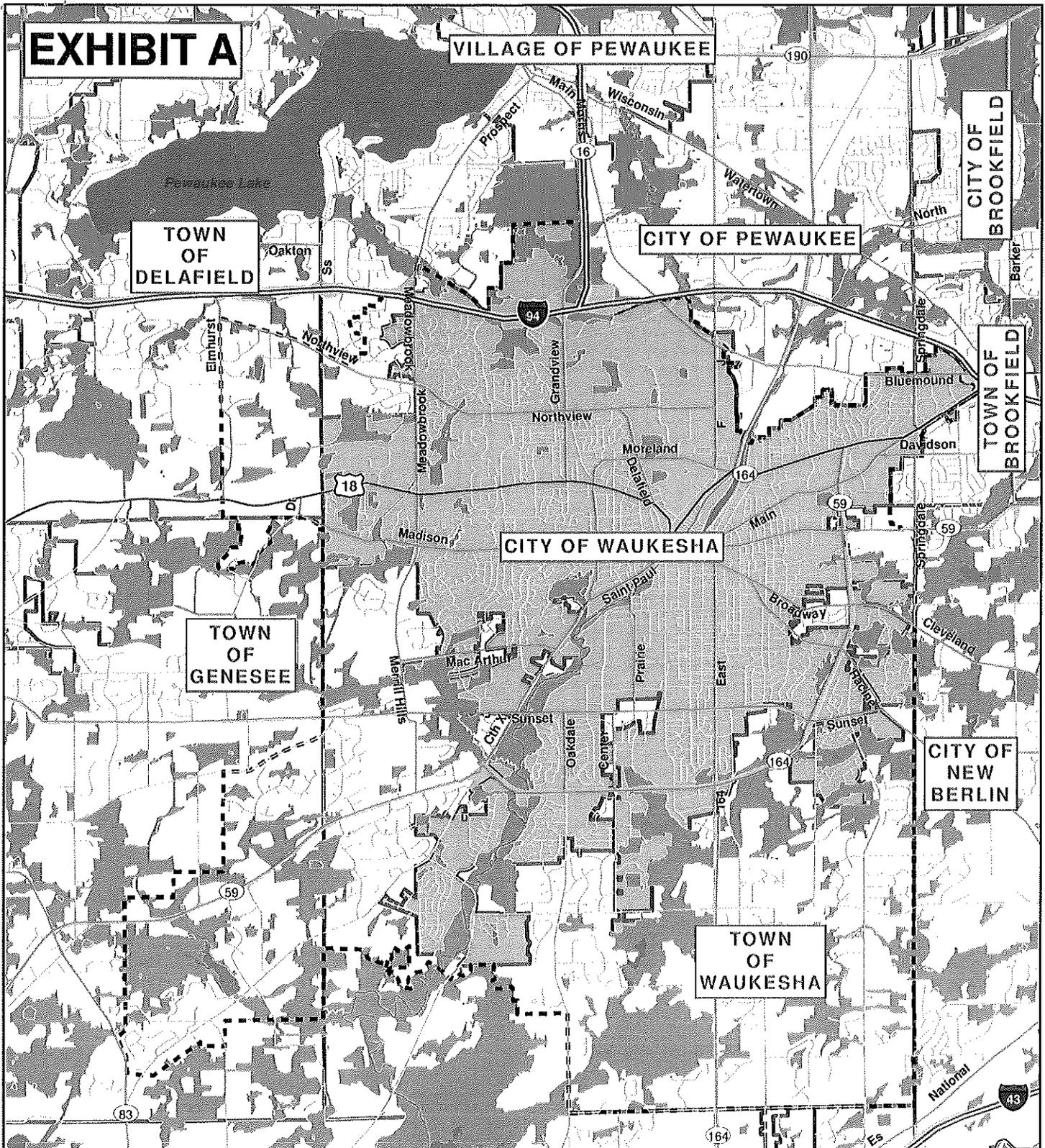


Thomas E. Neill, City Clerk/Treasurer

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City Attorney's Office 11-6-2012

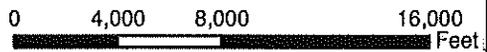
# EXHIBIT A



## LEGEND

- City of Waukesha - Water Service Area
- City of Waukesha - Initial Service Area
- Civil Divisions
- Wetlands and Environmental Corridors
- Water
- Freeway
- Highway
- Major Road
- Streets

Map Date: September 2012



**DATA** Data source for Planned Water Service Area, Wetlands and Environmental Corridors is SEWRPC.  
**SOURCES:** All other data is from the City of Waukesha.