

**GRANT F. LANGLEY**  
City Attorney

**MIRIAM R. HORWITZ**  
**ADAM B. STEPHENS**  
**MARY L. SCHANNING**  
**JAN A. SMOKOWICZ**  
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551  
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

**STUART S. MUKAMAL**  
**SUSAN E. LAPPEN**  
**PATRICIA A. FRICKER**  
**HEIDI WICK SPOERL**  
**GREGG C. HAGOPIAN**  
**ELLEN H. TANGEN**  
**JAY A. UNORA**  
**KATHRYN Z. BLOCK**  
**KEVIN P. SULLIVAN**  
**THOMAS D. MILLER**  
**ROBIN A. PEDERSON**  
**JEREMY R. MCKENZIE**  
**PETER J. BLOCK**  
**NICHOLAS P. DESIATO**  
**JOANNA FRACZEK**  
**JENNY YUAN**  
**KAIL J. DECKER**  
**ALLISON N. FLANAGAN**  
**PATRICK J. LEIGL**  
**HEATHER H. HOUGH**  
**ANDREA J. FOWLER**  
**PATRICK J. MCCLAIN**  
**NAOMI E. GEHLING**  
**CALVIN V. FERMIN**  
**BENJAMIN J. ROOVERS**  
**ELLENY B. CHRISTOPOULOS**  
**RACHEL S. KENNEDY**  
**TYRONE M. ST. JUNIOR**  
**HANNAH R. JAHN**  
**SAVEON D. GRESELL**  
**ROSE SIMON-SILVA**  
Assistant City Attorneys

January 19, 2018

Jennifer Gonda, Superintendent  
Milwaukee Water Works  
Zeidler Municipal Building, Room 402

Re: Agreement between the City of Milwaukee and the City of Waukesha  
for the Purchase of Water at Wholesale and Intergovernmental  
Cooperation Agreement between the City of Milwaukee and the  
City of Waukesha

Dear Ms. Gonda:

Enclosed for your records is one fully executed original of each of the above-referenced agreements. Please send a copy of each agreement to the Public Service Commission of Wisconsin. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Miller".

THOMAS D. MILLER  
Assistant City Attorney

TDM:mal

c: Ghassan Korban, DPW Commissioner (w/enc.)  
Mayor Tom Barrett (w/enc.)  
**James Owczarski, City Clerk (w/enc.)**  
Martin Matson, City Comptroller (w/enc.)

Enclosure

1048-2016-2324:246191



**AGREEMENT BETWEEN THE CITY OF MILWAUKEE  
AND THE CITY OF WAUKESHA FOR  
THE PURCHASE OF WATER AT WHOLESALE**

A red stamp with the word "COPY" in a bold, sans-serif font, preceded by a small square icon containing the letter "C".

This Agreement is made as of the 20<sup>th</sup> day of December, 2017 (“Effective Date”) pursuant to Wis. Stat. § 66.0301 by and between the City of Milwaukee, operating as a water public utility (“Milwaukee”) and the City of Waukesha, operating as a water public utility (“Waukesha”).

Whereas, Waukesha desires to purchase water from Milwaukee at wholesale; and

Whereas, Milwaukee wishes to provide adequate water supply to Waukesha at rates approved by the Public Service Commission of Wisconsin (“Commission”); and

Whereas, in the absence of a contract, under current law, Milwaukee has a right to establish the terms and conditions of service through the filing of rates with the Commission; and

Whereas, Milwaukee has facilities to ensure that Waukesha and other wholesale customers receive an adequate supply of water and continues to incur the obligation to maintain those facilities; and

Whereas, Milwaukee must be assured that purchasers of large quantities of water will continue to obtain their supply from Milwaukee so that it may prudently plan the expansion of its facilities and that the facilities when constructed will not be rendered either functionless or partially functionless; and

Whereas, Waukesha desires to be assured that Milwaukee continues to have the facilities necessary to provide Waukesha with adequate water service and a supply of water; and

Whereas, in a Final Decision dated June 21, 2016 (“Final Decision”), the Great Lakes-St. Lawrence River Basin Water Resources Council (“Compact Council”) approved Waukesha’s application for an exception to allow a diversion of Great Lakes water from Lake Michigan, subject to conditions contained in the Final Decision; and

Whereas, the Final Decision established and defined the “Approved Diversion Area” permitted to be served with water from Lake Michigan;

Now therefore, in consideration of the mutual covenants hereinafter expressed, it is agreed as follows:

**I. DEFINITIONS**

- A. Adequate Water Service – Except as otherwise provided in section III.B. of this Agreement, uninterrupted service of Standard Quality Water as set forth in Table 1:

Table 1: Adequate Water Service

Connection	Elevation (NAVD) (Center of Intersection)	Minimum Hydraulic Grade (NAVD)	Annual Average Day Demand (MGD)	Maximum Day Demand (MGD)
In the vicinity of S. 84th St. at W. Cold Spring Rd.	805	1,095	8.2	13.6

1. Refer to Section III of this Agreement for Water Supply Pumping Operations.
- B. Annual Average Day Demand - The total volume of water delivered to the Waukesha system over a year divided by 365 days. The average use in a single day expressed in gallons per day.
  - C. Maximum Day Demand - The largest volume of water delivered to the system in a single day expressed in gallons per day. The water supply, treatment plant and transmission lines should be designed to handle the maximum day demand.
  - D. Master Meter – The meter at the metering location downstream of the Milwaukee Control Valve where the water is being measured for sale from Milwaukee to Waukesha.
  - E. Milwaukee Control Valve – The valve located on the Milwaukee transmission main immediately upstream of the Master Meter’s setting or if meter bypass piping is installed, upstream of the meter bypass piping. The Milwaukee Control Valve is depicted on Exhibit B.
  - F. Projected Annual Volume – A projected volume in gallons per year that Waukesha anticipates being delivered to their system from Milwaukee. This volume will be utilized for planning purposes by both parties.
  - G. Meter Structure – The structure that houses the Master Meter.
  - H. Ccf – 100 cubic feet of water (748 gallons)
  - I. Commission – Public Service Commission of Wisconsin
  - J. Volume Charge – Charge for water on a quantity basis.
  - K. Emergency – An event beyond the reasonable control of Milwaukee and without the fault or negligence of Milwaukee, which prevents Milwaukee from delivering water to Waukesha. An Emergency includes, but is not limited to, acts of God (such as, but not limited to, fires, explosions,

earthquakes, tornadoes, floods, and extreme cold weather events); labor disputes and disturbances; riots; acts of terrorism; and war, rebellion, revolution, or insurrection, or military or usurped power, or civil war.

- L. Service Area – Area to be served with water. The Service Area is delineated in the map attached as Exhibit A and is identical to the Approved Diversion Area.
- M. Standard Quality Water - Water that meets the standards of federal and state agencies having authority to establish water quality standards that uniformly apply to Milwaukee and its customers and as those standards may be amended from time to time.
- N. Connection - The physical point, to be located in the vicinity of S. 84<sup>th</sup> Street and W. Cold Spring Road, at which the Milwaukee Control Valve meets the Waukesha transmission main.
- O. Two-Step Rate Methodology – The cost of service methodology employed in developing wholesale water service rates that first allocates costs between retail customers and wholesale customers, and then allocates retail costs among retail customer classes and wholesale costs among individual wholesale customers.
- P. Milwaukee Water Works (MWW) – Milwaukee Water Works.
- Q. Commencement of Service – The date upon which Waukesha begins receiving water from Milwaukee. Commencement of Service is anticipated to occur in 2022.
- R. Point of Pressure Measurement – The pressure sensor located in the vicinity of the Connection on the transmission pipe downstream of the Milwaukee Control Valve and upstream of the Master Meter.
- S. Filling Schedule – The schedule that Milwaukee shall establish in consultation with Waukesha for Milwaukee to fill Waukesha’s storage facility.

## II. WATER SUPPLY INFRASTRUCTURE

- A. Milwaukee Facilities
  - 1. Milwaukee shall design, construct, own, operate, and maintain a water supply pumping station (“pumping station”) in the vicinity of S. 60<sup>th</sup> Street between W. Howard Avenue and W. Cold Spring Road to supply Adequate Water Service to the Service Area. Milwaukee shall consult with Waukesha on the plans for the design, construction, and operation of the pumping station.



2. Milwaukee shall design, construct, own, operate, and maintain the transmission main from the vicinity of S. 60<sup>th</sup> Street between W. Howard Avenue and W. Cold Spring Road to the Control Valve located at the Connection upstream of the Master Meter. The Control Valve shall be the property of Milwaukee. Milwaukee shall consult with Waukesha on the plans for the transmission main.
3. In performing the work described in sec. II. A., Milwaukee shall use reasonable efforts to meet the schedule for bidding and construction established by Waukesha.
4. Milwaukee reserves the right to use the pumping station and transmission main referenced in sec. II. A. for purposes other than supplying water to Waukesha provided that such use shall not interfere with Milwaukee's provision of Adequate Water Service to Waukesha.
5. Meter Facilities.
  - a. Metering Requirement. All water furnished by Milwaukee to Waukesha shall be measured by the Master Meter.
  - b. Meter Structure. The Master Meter shall be housed in either the pumping station or a Meter Structure downstream of the Connection. Final location of the Master Meter will be as determined by the Superintendent and the General Manager. Except as described in sec. II.A.5.d, Waukesha shall design, construct, own, operate, and maintain the Meter Structure and associated appurtenances.
  - c. Waukesha Maintenance Responsibilities. Waukesha shall be responsible for maintaining at the Connection any and all appurtenances as may be designated as Waukesha's responsibility in Exhibit B. Should Waukesha fail to maintain the appurtenances shown in Exhibit B, Milwaukee may take reasonable steps to maintain the appurtenances and charge the reasonable cost of doing so to Waukesha. Prior to Milwaukee taking action to maintain the appurtenances, Milwaukee shall give Waukesha forty days written notice to complete the required maintenance. Notice to Waukesha shall not be required if, in Milwaukee's determination, there exists an emergency condition affecting the operation of the water system or if the health, safety and welfare of the general public may be jeopardized.
  - d. Master Meter. Milwaukee and Waukesha will collaborate on the type and size of the Master Meter that will reliably and effectively meter water provided to Waukesha. Waukesha shall purchase and install the Master Meter. Milwaukee shall own, operate and maintain the Master Meter pursuant to the provisions of Sec. II.D. of this Agreement.

6. New Facilities. All newly installed Milwaukee facilities shall be installed in a facility that is separate and upstream of the Connection.

B. Waukesha Facilities

1. Waukesha Transmission Main. Waukesha shall design, construct, own, operate, and maintain the transmission main downstream of the outlet side of the control valve located at the Connection as shown in Exhibit B. Alternatively, if the Master Meter is located in the pumping station, the Waukesha transmission main shall start at the Connection.
2. Waukesha shall pay all costs, charges, fees, and all expenses incidental to construction, maintenance, and operation of its own water distribution system located within the Service Area.
3. Waukesha shall notify Milwaukee of all plans and specifications for metering stations, storage facilities, and other major improvements to the Waukesha distribution system that have the potential to result in increased demands above the Adequate Water Service prior to the time contracts are awarded or materials purchased, to determine whether the improvements would require capital expenditures by Milwaukee and whether cost-sharing for Milwaukee's improvements is appropriate. In such case, the parties will mutually agree on cost-sharing for Milwaukee's improvements or will abide by a decision of the Commission as to cost-sharing. Technical issues will be resolved by the Superintendent and the General Manager.

C. Design and Construction Cooperation. Milwaukee and Waukesha, through the Superintendent and the General Manager, or their designees, agree to confer on an ongoing basis to facilitate the cooperative working relationship between Milwaukee and Waukesha for the design and construction and ongoing operations of the water supply pumping station, pipeline and Meter Structure for transmission from Milwaukee to Waukesha.

1. Design. The parties shall have the opportunity to review and provide timely feedback on the construction plans for the water supply infrastructure described in Sec. II.
2. Use of Rights-of-Way. Waukesha shall obtain all necessary permits for construction in rights-of-way. Milwaukee agrees to assist Waukesha to obtain permission to use streets, highways, alleys, and/or easements in the local governmental units within Milwaukee's water service area to the extent consistent with Milwaukee's existing wholesale and retail water service agreements. Waukesha shall give Milwaukee notice of any construction work in Milwaukee's jurisdiction. Waukesha shall comply with any of Milwaukee's ordinances that apply to the construction. Milwaukee shall inform Waukesha of the applicable ordinances within Milwaukee's jurisdiction. Milwaukee and Waukesha shall meet to review

the construction and its impact on their respective operations. Waukesha shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place.

3. Milestones. Milwaukee and Waukesha will work cooperatively to meet the design, permitting, construction and start-up milestones established by the Waukesha Water Utility or its representatives. Milwaukee and Waukesha will meet periodically, but no less than monthly to coordinate these activities.

D. Metering and Meter Structure Operations

1. Master Meter Calibration. Milwaukee shall be responsible for testing, and calibration, if required, of the Master Meter twice per year. Waukesha may request that the Master Meter be tested at any time based on a reasonable assumption of need. If the Master Meter is found to be within manufacturer's standards of accuracy, Waukesha shall be responsible for costs associated with testing beyond twice per year. If the Master Meter is found to be outside of the manufacturer's standards for accuracy, the Master Meter will immediately be recalibrated by Milwaukee. Milwaukee will then be responsible for the costs associated with testing and calibration of the Master Meter.
2. Monitoring. SCADA monitoring and metering signals from the Master Meter and Point of Pressure Measurement shall be sent to Milwaukee and Waukesha.
3. Master Meter Repair and Replacement. If Milwaukee initiates a Master Meter repair or meter replacement, Milwaukee shall pay the repair or replacement costs. If Waukesha requests a Master Meter replacement for reasons other than malfunction or disrepair, Waukesha shall pay the cost of the replacement.
4. Access. Milwaukee and Waukesha shall each have 24-hour access to the Master Meter. If the Master Meter is in a Meter Structure, the Meter Structure shall be locked and have 24-hour video surveillance.
5. Estimated Billing. If the Master Meter is not accurately recording water usage or is removed from service, Milwaukee shall bill by estimating Waukesha's usage based on the best available information including, but not limited to, pressure, duration of flow, and volume of water discharged from the pumping station. Milwaukee shall endeavor to limit the use of estimated billing to no more than 90 days.

E. Taxes and Permits

1. Neither party may tax water utility facilities owned by the other party within the taxing party's jurisdiction.
2. Each party shall grant permits at standard fees within its own boundaries that are necessary to effectuate the other party's construction, maintenance, alteration or operation with respect to service under this Agreement subject to applicable city codes, state statutes and administrative rules.

**III. ADEQUATE WATER SERVICE**

- A. Milwaukee shall provide Adequate Water Service to Waukesha.
- B. Milwaukee may place restrictions upon the use of water by Waukesha as a result of an Emergency or DNR-required maintenance activities. Any restriction so placed will be done in a manner consistent with the restrictions placed upon similarly situated customers. Milwaukee shall give Waukesha as much prior notice as is reasonably possible of any such restrictions.

C. Water Supply Pumping Operations.

1. Pressure Range. Milwaukee shall deliver water at Point of Pressure Measurement shown on Exhibit B within the following pressure range ("Pressure Range"):

Minimum pressure	128 pounds per square inch (psi)
Maximum pressure	224 psi

In the case of an emergency, where the water pressure at the Point of Pressure Measurement is more than 10% above or more than 10% below the Pressure Range, Milwaukee shall immediately implement corrective actions to supply Adequate Water Service within the Pressure Range.

If the water pressure is within 0-10% below the minimum or 0-10% above the maximum pressure more than 20% of the time as measured daily, Milwaukee and Waukesha shall meet within forty calendar days to discuss the potential reasons for the readings outside of the pressure range and, if agreed necessary, develop and implement a mutually agreeable written corrective action plan within sixty calendar days of the meeting, or as otherwise agreed. The corrective action plan shall include a timetable for resolution of the non-compliance issue(s).

2. Periodic Review. The Parties shall review annually the, Pressure Range, Filling Schedule and Projected Annual Volume.



3. Water Supply Pumping Station Operations. Milwaukee shall consult with Waukesha to develop an acceptable Filling Schedule. Milwaukee shall endeavor to fill Waukesha water storage facilities during a time period in which Milwaukee may maximize the practical usage of non-peak electric rates. Milwaukee may periodically require Waukesha to change or adjust the Filling Schedule. Nothing in this Section shall prevent Waukesha from operating its storage facility at any time.
- D. Water Quality. Milwaukee warrants that all water purchased or delivered under this Agreement has been treated in accordance with and meets all applicable state and federal regulations and local standards. There are no warranties provided that extend beyond the above description.
1. Milwaukee shall provide Waukesha with notice of changes to the water treatment process or additives that would affect the pH or quality of the water with sufficient time for Waukesha to evaluate the impact to Waukesha's system.
  2. Contamination. For the protection of the health of all consumers supplied with water from Milwaukee, Waukesha agrees to guard carefully against all forms of contamination. Should contamination occur, the area or areas affected shall immediately be shut off and isolated, and shall remain so until such conditions shall have been abated, and the water declared safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the area affected. Waukesha shall immediately notify Milwaukee, and Milwaukee shall immediately notify Waukesha, of any emergency or condition that may affect the quality of water in either Party's system.
  3. Co-mingling of Water Sources. Except in case of an Emergency, or at any other time Milwaukee does not supply Adequate Water Service, Waukesha will not permit water from any other source of supply to be mixed or mingled with water from Milwaukee without prior written approval from the Milwaukee. In such cases, only water from sources other than Milwaukee shall be used and only in such quantities as shall be necessary to relieve the Emergency or until such time as Adequate Water Service is restored. Milwaukee shall accept no responsibility for co-mingling of water sources.
  4. Emergency Connections. Whenever Milwaukee does not supply Adequate Water Service, Waukesha may obtain emergency water service from any other source or use water from its wells located in the Service Area, but only until such time as Adequate Water Service is restored. Waukesha shall be permitted to immediately make an emergency connection when the connection point to be used has been previously approved for emergency use by Milwaukee in writing, provided that Waukesha shall, after making the connection, promptly notify Milwaukee of such event. When Adequate Water Service has been restored, the emergency

connection must be severed as soon as practicable. Milwaukee, or its designee, must approve, in writing, the continuation of any emergency connection that is required for longer than seven calendar days. If an approved emergency connection continues for more than seven calendar days after Adequate Water Service has been restored, Waukesha must provide Milwaukee with weekly updates and a schedule for the discontinuation of the emergency connection that must be approved by Milwaukee in writing.

#### IV. SERVICE AREA

- A. Milwaukee agrees to provide Adequate Water Service to the Service Area, which is delineated in the map attached as Exhibit A and is identical to the Approved Diversion Area, established by the Compact Council's Final Decision. Milwaukee makes no profession of service beyond the Service Area delineated in Exhibit A. The Compact Council's Final Decision also established Waukesha's annual average day demand, which is limited to 8.2 million gallons per day ("MGD"), except as otherwise set forth in sec. IV.E.
- B. Waukesha shall obtain all of its water from Milwaukee for distribution in the Service Area, except as provided in sec. III.D.
- C. Consistent with Condition 2.B. of the Compact Council's Final Decision and except as provided in sec. IV.E., no water purchased by Waukesha under this Agreement may be resold or exchanged by Waukesha on a wholesale or retail basis outside the Service Area without the permission of Milwaukee. This restriction does not apply to water that is incorporated into products for wholesale or retail sale by entities that are not party to this Agreement. Consistent with Condition 2.D.-E. of the Final Decision, no water purchased by Waukesha under this Agreement may allow Waukesha to sell or exchange well water or ground water on a wholesale or retail basis to any other municipality or unincorporated areas or to any properties therein.
- D. Waukesha shall have the right to routinely exercise each of its wells located in the Service Area for maintenance purposes.
- E. Procedure to Adjust Service Area. In the event that an adjustment of the Service Area becomes necessary, the adjustment shall be accomplished through the procedure set forth in this section.
  - 1. The General Manager shall submit to Milwaukee's Commissioner of Public Works ("Commissioner") a report documenting the following:
    - a. The proposed additional service area has been approved by the Great Lakes Compact Council;
    - b. The proposed additional service area has a border agreement with Waukesha or is annexed by Waukesha; and

- c. The total average day demand approved by the Compact Council does not exceed 8.5 MGD.
  2. Additionally, the General Manager's report shall document that the proposed service area meets one of the following three criteria:
    - a. The proposed service area is developed and has one or more private wells in the proposed service area that classify as contaminated under Wis. Stat. § 281.75(1)(b) as determined by the DNR;
    - b. The proposed service area is developed and has one or more failing septic tanks and/or systems, as determined by the DNR that are within the proposed service area, and the DNR has determined that they shall be abandoned and connection be made to the municipal collection and treatment system; or
    - c. The proposed service area includes developable land and does not cumulatively exceed 1,704 acres of land that can be developed.
  3. Upon the Commissioner's verification of completion of paragraphs 1 and 2 and payment pursuant to the intergovernmental cooperation agreement between Milwaukee and Waukesha, the General Manager and the Commissioner shall amend this Agreement to adjust the average day demand and service area as approved by the Great Lakes Compact Council. If the adjustment involves an expansion of the Service Area, the approved diversion area shall be indicated on a map which shall then replace Exhibit A.
  4. In the event that Waukesha requests an increase in its average day demand above 8.5 MGD there shall be no duty or obligation under this Agreement on the part of Milwaukee to provide water to any area other than that delineated in Exhibit A. Milwaukee reserves the option, however, of providing water service to the enlarged area of Waukesha subject to approval of the expanded diversion area by the Compact Council or, in the case of a straddling community, the DNR.

## V. RATES

- A. The rates or charges for service at wholesale for water supplied to Waukesha shall be determined as follows:
  1. As of the Commencement of Service, the all-inclusive rate for water service shall be \$1.45 per 1,000 gallons (\$1.09 per Ccf) from the Connection until the Commission establishes an adjusted schedule of rates.

2. If, following Commencement of Service, the Commission adjusts Milwaukee's rates as a result of a simplified rate case under Wis. Stat. § 196.193, the all-inclusive rate stated in this Agreement will be adjusted by the same percent adjustment that applies to other wholesale customers of Milwaukee.
  3. In the next conventional rate case filed by Milwaukee following the Commencement of Service, Milwaukee and Waukesha will mutually support and request that the Commission establish water rates based on a Two-Step Rate Methodology to be negotiated by Milwaukee and its wholesale customers, including Waukesha.
  4. Except as expressly provided in this Agreement or the Intergovernmental Agreement executed concurrently with this Agreement, Milwaukee will not impose any other service charge, fee or charge for water service to Waukesha, other than that provided in Milwaukee's tariff approved by the Commission.
  5. If during the term of this Agreement, the Commission no longer has jurisdiction over Milwaukee's water rates to wholesale customers, a rate methodology that is consistent with generally accepted rate methodologies will be applied to any subsequent rate request by Milwaukee during the term of this Agreement.
- B. Waukesha shall pay to Milwaukee, in accordance with the billings of Milwaukee, the full and correct amount of such billings to be computed upon the prevailing rates and charges as provided in paragraph V.A.
- C. Milwaukee shall notify Waukesha of any proposed adjustment of its water rates through a conventional rate case at least 60 days before filing.

## **VI. GENERAL TERMS**

- A. The parties agree that this Agreement is subject to the approval of the Common Councils of Milwaukee and Waukesha, and after execution by both parties, Milwaukee shall file a copy of the Agreement with the Commission. Approval of the Common Council of Milwaukee and the Common Council of Waukesha shall be evidenced by adoption of appropriate resolutions approving this Agreement. Any modifications to this Agreement must be made in writing subject to the approvals of the Common Councils of Milwaukee and Waukesha, except as provided in Section IV.E.
- B. This Agreement shall be governed by, construed, and enforced under and in accordance with the laws of the State of Wisconsin.
- C. This Agreement shall remain in full force and effect for an initial period of forty (40) years from and after the effective date of this Agreement and shall automatically renew for subsequent ten (10) -year periods. Any party wishing



to not renew this Agreement at the conclusion of the initial term, or any ten-year term, must submit a written notice of non-renewal at least 60 months prior to the date the Agreement would otherwise automatically renew. The party to whom a notice of non-renewal is submitted shall acknowledge receipt of the notice in writing within 30 days of the date of the notice.

- D. Termination of this Agreement at any time other than renewal requires the mutual consent of both parties. A party shall give or withhold its consent in writing within 90 days of being formally requested to give its consent.
- E. In the event Waukesha breaches this Agreement by termination at any time other than at the conclusion of the initial term or a renewal period pursuant to Section VI.C. without the consent of Milwaukee, Waukesha shall reimburse Milwaukee for Milwaukee's undepreciated capital costs to design and construct the pumping station and transmission main referenced in paragraphs II.A.1 and 2 and shall pay to Milwaukee compensation in an amount equal to the sum of the total revenues from the sale of water to Waukesha in the two years of highest total revenues, including volume and general service charges, as reported in Milwaukee's annual report to the Commission. These amounts shall be paid to Milwaukee within 30 days of the termination.
- F. The parties agree to act in good faith and use due diligence in meeting their respective obligations under this Agreement.
- G. Each party agrees to defend and hold harmless the other party from any claims or causes of action of whatever nature arising from each party's own negligence, intentional actions, or breach of the expressed warranties and covenants contained in this Agreement or any liabilities which may be incurred by each party arising from the making of this Agreement. The indemnity provisions of this Agreement shall survive its termination and shall continue in full force and effect.
- H. This Agreement may be executed in counterparts, which together shall constitute a single contract.
- I. If the parties are unable to resolve a dispute over the terms and conditions of this Agreement, either party may submit the disputed matter to the Commission, a circuit court of competent jurisdiction or, upon mutual agreement, to an alternative dispute resolution method.
- J. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto, but neither this Agreement nor any of the rights, interest, or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party. Moreover, it is not intended by the parties hereto that this Agreement in any way inures to the benefit of any third party.

K. To promote a cooperative working relationship with its wholesale customers, MWW commits to have regular communications with its wholesale customers regarding proposed capital improvements that will be included in Milwaukee's 6-year capital plan and that will likely affect the cost of service for Milwaukee's wholesale customers.

L. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to Waukesha:  
General Manager  
Waukesha Water Utility  
115 Delafield St.  
P.O. 1648  
Waukesha, WI 53187

If to Milwaukee:  
Superintendent  
Milwaukee Water Works  
841 N. Broadway  
Room 409  
Milwaukee, WI 53202

M. The parties acknowledge that the obligations of both Waukesha and Milwaukee under this Agreement are contingent on the Compact Council acknowledging that Waukesha can obtain its authorized amount of Great Lakes water from the City of Milwaukee.

N. Waukesha and Milwaukee agree that they are obligated to assist each other in retaining and producing records relating to the subject matter of this Agreement that are subject to the Public Records Law, to the extent that disclosure of records is required under Wis. Stat. § 19.36(3).

O. The failure of either party to insist on strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any right granted under this Agreement.

P. In the event that any portion of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other portions of this Agreement.

Q. This Agreement, along with the Intergovernmental Agreement executed concurrently with this Agreement, constitute the entire Agreement between the parties relating to the subject matter of this Agreement. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this Agreement.

IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

Shari Kraft

IN THE PRESENCE OF:

Joseph A. Yonda  
Steven Hennig

1048-2016-2324:245318

CITY OF MILWAUKEE, operating as a  
Water Public Utility

Tom Barrett  
Mayor

[Signature]  
City Clerk

COUNTERSIGNED:

[Signature]  
City Comptroller <sup>TV</sup>

CITY OF WAUKESHA, operating  
as a Water Public Utility

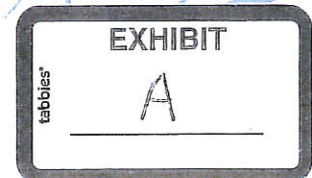
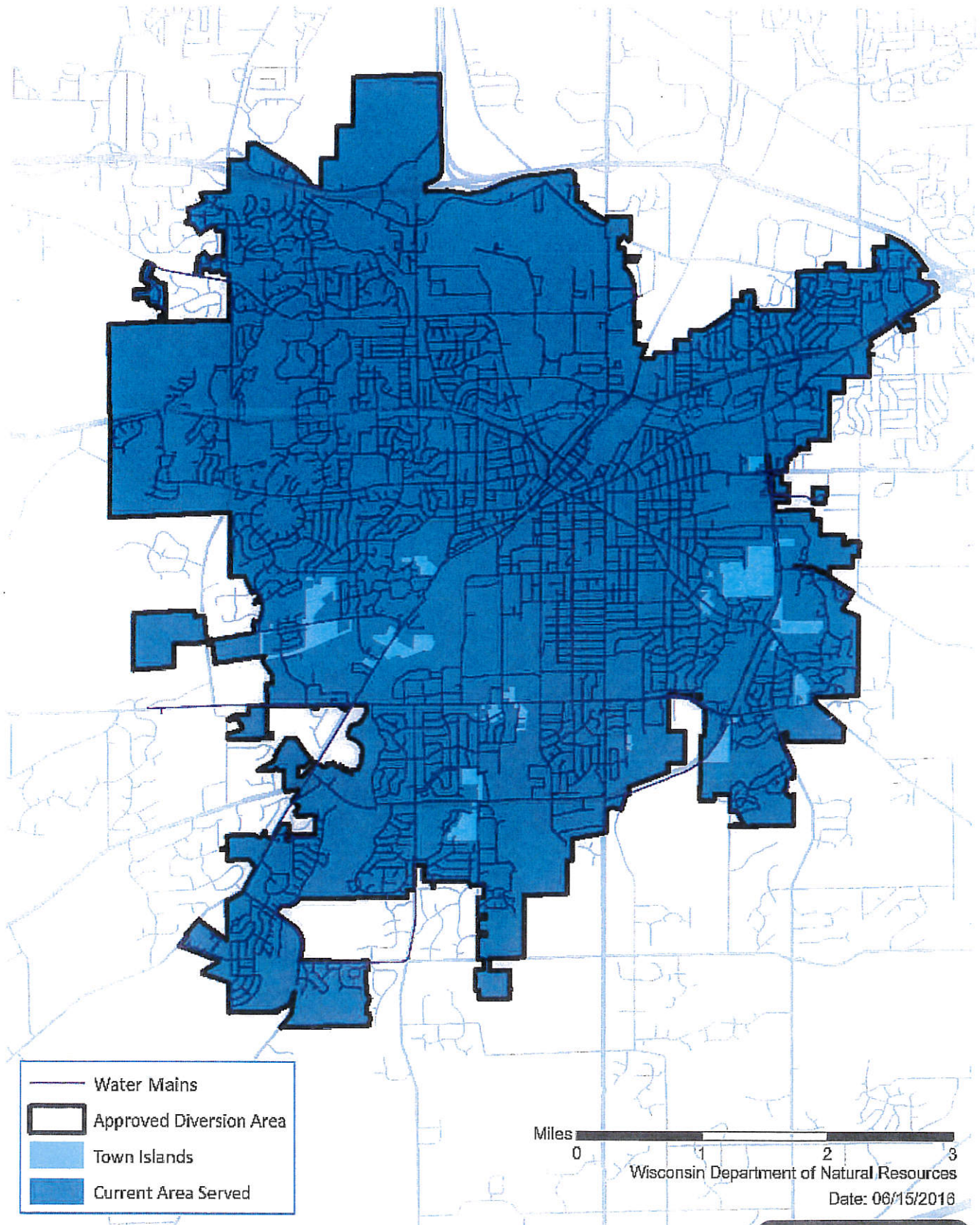
Shawn M. Keif  
Mayor

[Signature]  
City Clerk

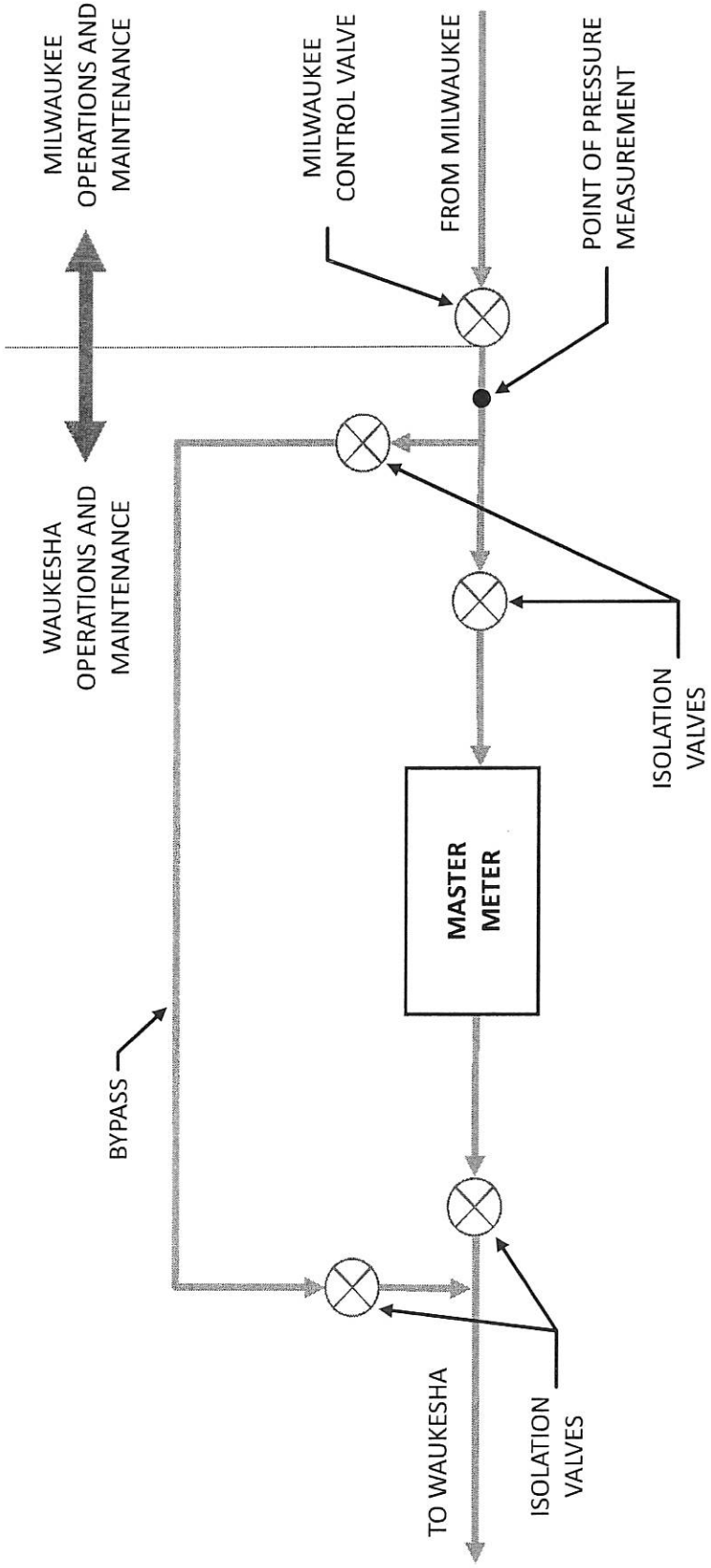
[Signature]  
FINANCE DIRECTOR



# Attachment 1: Approved Diversion Area







**NOTES:**

1. FINAL LOCATION OF MASTER METER, POINT OF PRESSURE MEASUREMENT AND MILWAUKEE CONTROL VALVE TO BE DETERMINED BY THE SUPERINTENDENT AND GENERAL MANAGER OR THEIR DESIGNEES.
2. MILWAUKEE SHALL OWN, OPERATE AND MAINTAIN THE MASTER METER.
3. THIS CONCEPTUAL LAYOUT IS FOR A MASTER METER IN A METER STRUCTURE. THE CONFIGURATION MAY CHANGE IF THE MASTER METER IS LOCATED IN THE PUMPING STATION.

**EXHIBIT B**

INTERGOVERNMENTAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF MILWAUKEE  
AND THE CITY OF WAUKESHA

This Agreement is entered into this 20<sup>th</sup> day of December, 2017, by and between the City of Milwaukee, a municipal corporation (“Milwaukee”), and the City of Waukesha, a municipal corporation (“Waukesha”).

WHEREAS, Milwaukee, operating as a public water utility, and Waukesha, operating as a public water utility, executed an agreement as of the 20<sup>th</sup> day of December, 2017 for the sale of water by Milwaukee to Waukesha at wholesale, which agreement is entitled Agreement Between the City of Milwaukee and the City of Waukesha for the Purchase of Water at Wholesale (“Water Service Agreement”); and

WHEREAS, in a Final Decision dated June 21, 2016 (“Final Decision”), the Great Lakes-St. Lawrence River Basin Water Resources Council approved Waukesha’s application for an exception to allow a diversion of Great Lakes water from Lake Michigan, subject to conditions contained in the Final Decision; and

WHEREAS, the Final Decision established and defined the “Approved Diversion Area” permitted to be served with water from Lake Michigan; and

WHEREAS, pursuant to the Water Service Agreement, Milwaukee will serve water to the area identified as the Approved Diversion Area; and

WHEREAS, a map of the Approved Diversion Area is found in Exhibit A to this Agreement and is identical to the map of the Service Area delineated in the Water Service Agreement; and

WHEREAS, in consideration of the extension of water service to the Approved Diversion Area, Waukesha has agreed to enter into this Agreement to compensate Milwaukee for the value of Milwaukee water to Waukesha’s residents and businesses within the Approved Diversion Area; and

WHEREAS, Milwaukee and Waukesha have a shared interest in furthering the public health of each community’s residents by reducing exposure to contaminants in drinking water; and

WHEREAS, Waukesha has authorized its proper City officials to enter into this Agreement pursuant to Resolution Number 17-1803 dated December 19, 2017; and

WHEREAS, Milwaukee has authorized its proper City officials to enter into this Agreement pursuant to Common Council Resolution Number 55-17, dated November 30, 2017; and

WHEREAS, Wisconsin Statute § 66.0301 authorizes municipalities to contract with each other for the receipt or furnishing of services.

NOW, THEREFORE, In consideration of the mutual promises contained herein and for other good and valuable consideration, the parties agree as follows:

**ARTICLE I  
AGREEMENT ON BEHALF OF WAUKESHA**

A. In partial consideration of Milwaukee's agreement to extend water service to the Approved Diversion Area, and apart from and in addition to any obligations under the Water Service Agreement, Waukesha agrees to pay to Milwaukee a one-time Infrastructure Enhancement Payment of \$2.5 million payable by January 31, 2020. The parties expressly recognize that the Infrastructure Enhancement Payment shall not be considered tax receipts or revenues of Milwaukee's water utility. Milwaukee shall deposit the payment into the City of Milwaukee general fund.

B. If the Great Lakes Compact Council approves an adjustment of volume or service area under Sec. IV.E of the Water Service Agreement, Waukesha shall pay Milwaukee an additional Infrastructure Enhancement Payment in the amount of \$250,000 for the volume of water exceeding 8.2 MGD and up to 8.5 MGD before the Water Service Agreement is amended to incorporate the adjusted volume or service area.

**ARTICLE II  
AGREEMENT ON BEHALF OF MILWAUKEE**

A. It is expressly understood by the parties that, notwithstanding approval of the Water Service Agreement by the Public Service Commission of Wisconsin, Milwaukee's obligation to provide water service to the Approved Diversion Area is contingent upon the receipt of the Infrastructure Enhancement Payment.

B. It is expressly understood by the parties that this Agreement creates no obligation on the part of Milwaukee to provide water service at any time to any portion of Waukesha County that is not a part of the Approved Diversion Area, except in accordance with Section IV of the Water Service Agreement.

**ARTICLE III  
AGREEMENT ON BEHALF OF BOTH PARTIES**

A. Both parties agree that economic development generates local and regional benefits. In order to achieve local and regional economic development benefits, both parties agree to abide by the Code of Ethics adopted by the Milwaukee 7 on November 29, 2006 and attached as Exhibit B.

B. Both parties agree to hold an annual meeting with designees of both communities' mayors to discuss opportunities to collaborate on city services and to improve the availability of skilled workers in both communities and to improve the access of workers in each community to job opportunities.

C. Both parties agree that neither party shall take any action to solicit businesses to relocate from the City of Milwaukee to the City of Waukesha, or from the City of Waukesha to the City of Milwaukee.

**ARTICLE IV  
TERM**

This Agreement shall become effective upon execution by the parties and shall run concurrently with the term of the Water Sale Agreement.

**ARTICLE V  
AMENDMENT**

This Agreement may be amended at any time in writing upon mutual agreement of the parties.

**ARTICLE VI  
NOTICES**

All notices to be given by the parties shall be in writing and served by personal delivery, facsimile or United States mail, first class, postage prepaid, addressed as follows:

If to: City of Milwaukee

Commissioner of Public Works  
City of Milwaukee  
841 N. Broadway, Room 501  
Milwaukee, WI 53202

If to: City of Waukesha

General Manager  
Waukesha Water Utility  
P.O. Box 1648  
Waukesha, WI 53187-1648

**ARTICLE VII  
ENTIRE AGREEMENT**

With the exception of the terms of the Water Service Agreement, this Agreement sets forth all the covenants, provisions, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements, conditions or understandings either oral or written other than are herein set forth.

**ARTICLE VIII  
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.



In Witness Whereof, The parties hereto have executed this Agreement the day and year first above written.

IN THE PRESENCE OF:

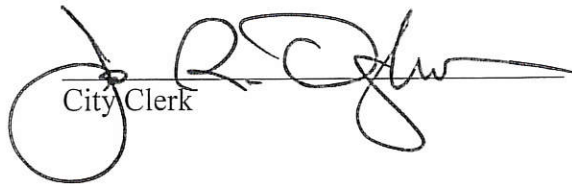
CITY OF MILWAUKEE,

\_\_\_\_\_



Mayor

\_\_\_\_\_



City Clerk

COUNTERSIGNED:





City Comptroller TO

Approved as to form, execution, and content  
this 4<sup>th</sup> day of January, 2018

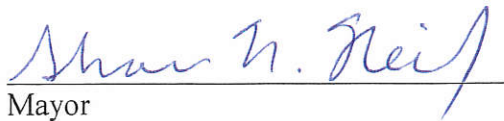


Assistant City Attorney

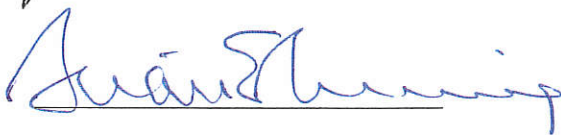
IN THE PRESENCE OF:

CITY OF WAUKESHA,





Mayor



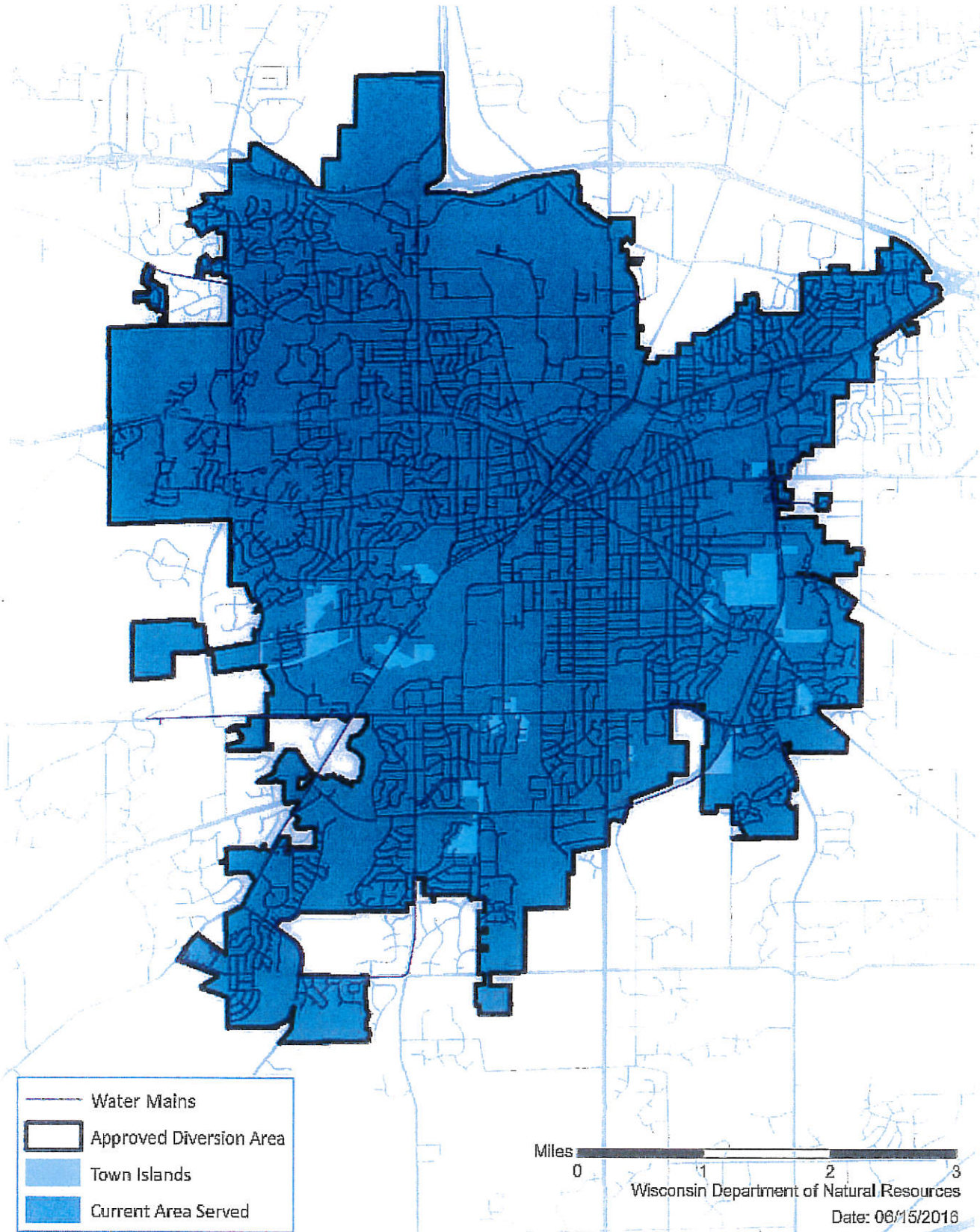


City Clerk

FINANCE DIRECTOR

1048-2016-2324:245614

# Attachment 1: Approved Diversion Area



Miles 0 1 2 3

Wisconsin Department of Natural Resources

Date: 06/15/2016

tabbles®

**EXHIBIT**

A





November 29, 2006

### MILWAUKEE 7 CODE OF ETHICS

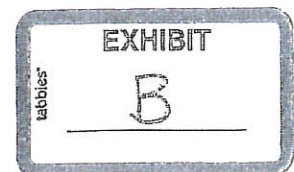
We, the members of Milwaukee 7, are committed to the economic prosperity of southeastern Wisconsin. Our mission is to support the development, retention, and attraction of world-class companies and talent in the region, which includes Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha counties.

The Milwaukee 7 economic development initiative brings together the interests of a broad range of private, public, and public/private groups to promote the region as a single economic entity. The variety of members and interests represented requires that certain standards of conduct be developed and adhered to for Milwaukee 7 to maintain a firm foundation. This Code of Ethics represents the standards that each member of Milwaukee 7 will support and practice in their daily conduct of business.

We, the members of Milwaukee 7, present the following principles of behavior and standards of conduct to guide our efforts in promoting the long-term economic health of the Milwaukee 7 region. We fully realize that a Code of Ethics is of little value without an inherent level of trust in the integrity of one another and a commitment from each of us to conduct ourselves at the highest levels of professional conduct. Milwaukee 7 is founded on the importance of respect and trust amongst its members.

In that spirit, we agree to adhere to the following:

1. We will carry out our mission with integrity, professional excellence and responsiveness to all.
2. We will work in partnership with other organizations to develop and promote the region's capabilities and talents and match them to the needs of those investing in the region.
3. We understand the importance of all members being knowledgeable about and committed to promoting the Milwaukee 7 regional assets and amenities. When working on behalf of a Milwaukee 7 regional recruitment effort, members shall commit to selling the region.
4. We are committed to sharing as much information as is necessary and prudent among our membership on any Milwaukee 7 economic development activity. Our guiding principle shall be that "more information is better than less." Any member undertaking a regional activity, such as the CEO Call Program, (targeted to or including companies in another member's community) will advise other members of the nature and purpose of the activity in advance.



5. We shall honor the confidentiality requested by our fellow Milwaukee 7 members and our prospects to the fullest extent permitted by law. Information shared with fellow Milwaukee 7 members in confidence shall remain in confidence.
  - Whenever appropriate, specific information on particular transactions shall be shared within the realm of Milwaukee 7 and appropriate state agencies. In those instances where prospects are dealing with individual communities, information will be shared only with the Milwaukee 7 members involved.
6. Any lead or prospect that comes to a Milwaukee 7 member as a result of Milwaukee 7 marketing and promotional efforts will be shared with the appropriate Milwaukee 7 members.
7. At no time shall any member of Milwaukee 7 solicit a fellow member's out-of-region prospects. If contacted by a fellow member's out-of-region prospect or if compelled by organizational mission to contact a publicly known prospect, the member shall first notify the fellow member.
8. When contacted directly by an out-of-state prospect, members shall fulfill their organizational mission to position their respective community as best meeting the needs of the prospect. If, during discussions with the prospect, it becomes clear that a regional approach is needed (for identifying sites, assets, resources or amenities that might not be available in the member community), the member shall contact the appropriate Milwaukee 7 representative to coordinate the project on a regional basis.
9. We understand the high priority that must be placed on growing, attracting and retaining investment in the Milwaukee 7 region. In the event our local community cannot meet the needs of a particular company, we shall contact our fellow members within 24 hours so the region can make its best effort to keep the company by meeting the company's needs elsewhere in the Milwaukee 7 area.
10. Members will not solicit intra-region company relocations. At no time shall any economic development organization member of Milwaukee 7 present derogatory information about another community or county in Wisconsin. "Selling against" another community or county in the Milwaukee 7 region or any Wisconsin community or region is prohibited.
11. We recognize the site selection process is driven by the client. In the event a member of Milwaukee 7 is aware of a company in the region choosing to relocate from one community to another, we will contact the originating community within two business days to make them aware of the situation. If the company has requested its project remain confidential, only generic information about the project will be shared with the originating community. Violation of this commitment shall be viewed as a breach of our membership pledge to Milwaukee 7.
12. Members are strongly discouraged from advertising within the region for prospects outside of their own market area.
13. Milwaukee 7 website lead requests generated by the ChooseMilwaukee.com website either by e-mail or phone will be answered in 48 hours or less by Milwaukee 7. Similarly, leads generated through the website will be distributed to the appropriate Milwaukee 7 members within 48 hours.