



MEMORANDUM

DATE: November 4, 2016

TO: Water Commission

FROM: Dan Duchniak, General Manager

RE: Recommend approval of the Extension to Letter of Intent with the City of Oak Creek to the City of Waukesha Common Council

On November 30, 2012, the City of Waukesha executed a Letter of Intent (“LOI”) for the provision of Lake Michigan water pursuant to a Water Supply Agreement (the “Agreement”) and in accordance with provisions and restrictions of the Great Lakes Compact. The term of the LOI was set for forty-eight (48) months and is due to expire on November 30, 2016.

We have been working with the City of Oak Creek to complete the negotiation of the Agreement; however, it was necessary to have our engineering consultant, Greeley and Hansen, involved in those discussions. Due to the timing of their hiring and the term of the LOI, we have found it necessary to extend the LOI in order to provide staff with the time necessary to fully negotiate the Agreement with the City of Oak Creek.

We have exchanged contract language with the City of Oak Creek, have had a meeting regarding finances, and have a meeting scheduled on operations on November 15, 2016. Once we complete our discussions, those aspects will be incorporated into the contract for execution by both parties.

To this point, discussions have been productive and amicable and we do not expect that to change.

We have negotiated an extension to the LOI for a six-month period set to expire on May 31, 2017. We believe that will be an adequate amount of time to complete negotiations and the necessary approvals for execution by both parties.

The extension requires us to negotiate in “Good Faith” with the City of Oak Creek and also obligates us to pay for expenses directly related to engineering, financial, and legal services in the event that we do not come to an agreement and do not enter into an agreement to purchase wholesale water from Oak Creek. The expenses are limited to only those costs associated with our negotiations and are limited to the period from November 30, 2016 to May 31, 2017.

This agreement, attached, has been reviewed by our attorney.

Please contact me with any questions.

Recommended Motion: Move to recommend approval by the Common Council of the Extension to Letter of Intent with the City of Oak Creek for the wholesale purchase of Great Lakes water.

Enc.

**OAK CREEK/WAUKESHA
ADDENDUM TO LETTER OF INTENT**

The Letter of Intent (LOI) dated November 30, 2012, 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”) is hereby amended by this Addendum as follows:

1. Paragraph 4 of the LOI is revised to read as follows:

By executing this LOI, Waukesha agrees to negotiate exclusively with Oak Creek for the provision of Water. Both Waukesha and Oak Creek shall negotiate in good faith.

2. The “LOI Term” set forth in LOI paragraph 7 is extended by six (6) months so that the LOI will remain in effect for a period of fifty four (54) months from the November 30, 2012 Effective Date of the LOI.

3. The following paragraph shall be added to the LOI.

8. **Reimbursement of Oak Creek Costs if Waukesha Does Not Enter into an Agreement to Purchase Wholesale Water from Oak Creek.**

A. Waukesha agrees to reimburse Oak Creek for Oak Creek’s outside service costs as set forth below that are incurred between December 1, 2016 and May 31, 2017, if Waukesha, for any reason, does not enter into an agreement to purchase wholesale water from Oak Creek by May 31, 2017. Outside service costs are limited to those costs which Oak Creek would not have incurred but for the Waukesha’s proposal to purchase wholesale water and include, but are not limited to, the following services performed prior to May 31, 2017:

1. Engineering consulting services related to providing wholesale service to Waukesha (hydraulic modeling, alternatives analysis and route study);
2. Financial consulting services related to providing wholesale service to Waukesha (water rate alternatives analysis, rate modeling and funding alternative analysis); and

3. Legal services related to providing wholesale service to Waukesha (contract preparation, negotiation and contract research).

B. Oak Creek will segregate and account for outside service costs incurred after November 30, 2016 related to preparing to supply wholesale water to Waukesha. If Waukesha, for any reason, does not enter into an agreement to purchase wholesale water from Oak Creek by May 31, 2017, Oak Creek shall submit an invoice to Waukesha for the outside service costs incurred to prepare to supply wholesale water to Waukesha. Waukesha shall pay the invoice within 30 days of receiving the invoice. Waukesha's payment shall be made directly to Oak Creek. Oak Creek shall be solely responsible for paying the outside service providers.

4. All other terms of the LOI remain in effect

DATED this _____ of _____, 2016.

For:

Oak Creek Water and Sewer Utility:

City of Waukesha:

Ed Siira, Chairman

Shawn Reilly, Mayor

Gerald Wille, Secretary

Gina Kozlik, Clerk Treasurer