



MEMORANDUM

DATE: August 20, 2020

TO: Water Commissioners

FROM: Daniel S. Duchniak, P.E

RE: Recommend Approval to the Common Council of the Amendment to the Agreement between the City of Milwaukee and the City of Waukesha for the Purchase of Water at Wholesale

In December of 2017, the City of Waukesha and City of Milwaukee executed a contract to purchase water for the City of Waukesha at Wholesale from the City of Milwaukee. Since that time, we have been working through the permitting and design portion of the project.

During the permitting and design, a number of items have been modified and need to be addressed in the agreement. The areas that are being modified include:

- Definitions;
- The location of the Milwaukee Booster Pumping Station;
- The acquisition and transfer of the Milwaukee Booster Pumping Station Property;
- The construction procedures and payments for Milwaukee watermain;
- Contractor and Engineer responsibilities during construction; and
- Updated rate information, raised from \$1.45 per 1000 gallons to \$1.49 per 1000 gallons based on a rate increase for the City of Milwaukee Water Utility.

All of the modification were expected and were the result of unknowns at the time of the original contract development.

Once recommended by the Water Commission, the agreement will be forwarded to the Common Council for consideration as well as approved by the Milwaukee Common Council.

Please contact me with and questions or concerns.

Recommended Motion: Recommend Approval to the Common Council of the Amendment to the Agreement between the City of Milwaukee and the City of Waukesha for the Purchase of Water at Wholesale pending legal review.

August 14, 2020

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

This Amendment to the Agreement between the City of Milwaukee and the City of Waukesha for the Purchase of Water at Wholesale (“Amendment”) is made as of the _____ day of _____, 20__ (“Effective Date”) pursuant to Wis. Stat. §§ 66.0813(3)(b) and 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, Milwaukee and Waukesha executed an Agreement between the City of Milwaukee and the City of Waukesha for the Purchase of Water at Wholesale (“Water Service Agreement”) with an effective date of December 20, 2017 (Milwaukee Common Council File No. 171126); and

Whereas, The Water Service Agreement (Section II.A.1.) provided that Milwaukee shall design, construct, own, operate, and maintain a water supply pumping station in the vicinity of South 60th Street between West Howard Avenue and West Cold Spring Road; and

Whereas, the Water Service Agreement (Section II.A.2.) provided that Milwaukee shall design, construct, own, operate, and maintain the transmission main from the water supply pumping station to the Connection, which was to be located in the vicinity of South 84th Street and West Cold Spring Road; and

Whereas, During preliminary engineering, Milwaukee and Waukesha identified a preferred pumping station location that will enable Milwaukee and Waukesha to use an alternative route that will reduce the number of miles of transmission main necessary to supply water to Waukesha, resulting in savings to both utilities; and

Whereas, The preferred pumping station location will enable Milwaukee to decommission and replace an existing Oklahoma Avenue pumping station (“Oklahoma PS”) that does not conform to current state regulations and is at the end of its useful life; and

Whereas, The new pumping station will not only enable Milwaukee to supply water to Waukesha but will also include a 3.0 million gallons per day (“MGD”) capacity pump dedicated to Milwaukee’s distribution system; and

Whereas, The new pumping station will improve the efficiency of Milwaukee Water Works’ (“MWW”) distribution system by eliminating the need for a second independent pumping station solely for the purpose of replacing the non-conforming Oklahoma PS and providing additional operational flexibility, reserve capacity, and redundancy; and

August 14, 2020

Whereas, Waukesha has incurred, or will incur, substantial costs related to the acquisition of the real property and easements upon which the water supply pumping station and water piping will be located; and

Whereas, In a Final Decision dated March 10, 2020 in docket 6240-CW-117, the Public Service Commission of Wisconsin (“Commission”) granted a certificate of authority to Waukesha to construct a booster pumping station, two ground storage reservoirs, a water supply control building, and a water supply pipeline (“BPS Facilities”) to be owned by Waukesha; and

Whereas, In compromise of litigation over the City of New Berlin’s denial of Waukesha’s application for a conditional use permit to construct the BPS Facilities, Waukesha notified the Commission on May 29, 2020 that Waukesha selected an alternate site for the BPS Facilities; and

Whereas, The alternate site for the BPS Facilities selected by Waukesha is currently before the Commission for review and is not anticipated to require project modifications that would increase the costs to design, construct, and operate the Milwaukee-owned water supply pumping station; and

Whereas, the Waukesha Common Council authorized the proper Waukesha officers to execute this Amendment pursuant to Resolution No. _____, dated _____, 20__; and

Whereas the Milwaukee Common Council authorized the proper Milwaukee officers to execute this Amendment pursuant to Resolution No. _____, dated _____, 20__.

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

1. Exhibit B. Exhibit B, attached to this Amendment, shall replace Exhibit B attached to the Water Service Agreement.

2. Section I of the Water Service Agreement is amended to read:

I. DEFINITIONS

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

Table 1: Adequate Water Service

Connection	Elevation (NAVD)	Minimum Hydraulic	Annual Average Day	Maximum Day
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	(Center of Intersection)	Grade (NAVD)	Demand (MGD)	Demand (MGD)
In the vicinity of South 100th Street and West Oklahoma Avenue	777	1,051	8.2	13.6

- 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. ccf** – 100 cubic feet of water (748 gallons).
- D. Commencement of Service** – The date upon which Waukesha begins receiving water from Milwaukee. Commencement of Service is anticipated to occur in 2022.
- E. Commission** – Public Service Commission of Wisconsin.
- F. Connection** - The physical point, to be located in the vicinity of South 100th Street and West Oklahoma Avenue, at which the Waukesha Supply Main Control Valve meets the Water Supply Pipeline, as shown on Exhibit B.
- G. 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.
- H. Filling Schedule** – The schedule that Milwaukee shall establish in consultation with Waukesha for Milwaukee to fill Waukesha’s storage facility.
- I. Master Meter** – The meter at which water is measured for sale from Milwaukee to Waukesha. The Master Meter is shown on Exhibit B.
- J. Master Meter Control Valve** – The valve located immediately upstream of the Master Meter, as shown on Exhibit B.
- K. Maximum Day Demand** - The largest volume of water delivered to the system in a single day expressed in million gallons per day. The water supply, treatment plant and transmission lines should be designed to handle the maximum day demand.

- L. Meter Structure – The structure that houses the Master Meter.
- M. Milwaukee Water Works (MWW) – Water public utility owned by the City of Milwaukee.
- N. Minimum Hydraulic Grade – The Hydraulic Grade Line (HGL) in feet that corresponds with a flow rate of zero (0) MGD
- O. Point of Pressure Measurement – The pressure sensor located in the Water Supply Pumping Station (“WSPS”) and upstream of the Master Meter.
- P. Projected Annual Volume – A projected volume in million gallons per year that Waukesha anticipates being delivered to its system from Milwaukee. This volume will be utilized for planning purposes by both parties.
- Q. Service Area – Area to be served with water. The Service Area is delineated in the map attached to the Water Service Agreement as Exhibit A and is identical to the Approved Diversion Area.
- R. 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.
- S. 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.
- T. Volume Charge – Charge for water on a quantity basis.
- U. Water Supply Pipeline – The 30-inch diameter water supply main through which water will be delivered from the MWW system to the WWU system.
- V. Waukesha Supply Main Control Valve – The valve at the Connection, as shown on Exhibit B.

3. Section II of the Water Service Agreement is amended to read:

II. WATER SUPPLY INFRASTRUCTURE

- A. Water Supply Pumping Station. Except as provided in sec. II.A.1 of this Amendment, Milwaukee, at its own expense, shall design, construct, own, operate, and maintain a water supply pumping station (“WSPS”) at or near West Oklahoma Avenue and South 76th Street 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 WSPS. Milwaukee shall decommission and deconstruct the Oklahoma PS.

1. Real Property Interest Acquisition.

- a. Real Property Interests Needed. The parties have identified the following real property interests (“Real Property Interests”) as needed and essential for acquisition, construction, placement and operation of the WSPS.

(1) 9,857 s.f. Fee Interest in 7501 W. Oklahoma Ave.¹

(2) 3,374 s.f. Permanent Access Easement (“PAE”) in 7501 W. Oklahoma Ave.

(3) 3,996 s.f. Permanent Limited Easement (“PLE”) in 7501 W. Oklahoma Ave.

(4) 9,311 s.f. Temporary Limited Easement (“TLE”) in 7501 W. Oklahoma Ave.

(5) 3,018 s.f. PLE in 7325 W. Oklahoma Ave.²

(6) 2,165 s.f. TLE in 7325 W. Oklahoma Ave.

The locations of the Real Property Interests are shown on Exhibit C.

- b. Waukesha is Acquiring Real Property Interests. Waukesha, at its sole expense (subject only to a payment from Milwaukee to Waukesha toward Waukesha’s documented actual costs associated with Waukesha’s acquisition of the Real Property Interests, which payment from Milwaukee shall not exceed \$182,000, and is herein called “Milwaukee’s Contribution”) is fully responsible for acquiring the Real Property Interests. Waukesha is using eminent domain powers to acquire the Real Property Interests. Waukesha shall keep Milwaukee apprised of its acquisition efforts, and promptly provide Milwaukee with copies of acquisition-related documents including: Waukesha Common Council resolutions; appraisals (government and owner); offers (whether accepted or not); accepted offers; jurisdictional offers;

¹ This parcel is: referred to in a draft Metropolitan Appraisal as being in the 7500 block of W. Oklahoma Avenue and as being part of the following tax key numbers, 528-0701-121, and 528-1123-100, and 528-1122-100, and 528-1121-100; and is owned by iStar Bowling Centers I LP (50% interest), PNC Bank as successor to St. Francis Bank (20% interest), Buena Vista Banquet Hall, LLC (20% interest), and 7509-7515 W. Oklahoma, LLC (10% interest). See also Knight Barry Title Commitment File # 995133.

² This parcel is referred to in a Metropolitan Appraisal as having tax key number 528-1007-211 and as being owned by U.S. Bank National Association. See also Knight Barry Title Commitment File # 1038310.

awards of damages; easements; as well as any documents concerning any taking or payment challenge. Waukesha shall exercise care to ensure that the Real Property Interests it acquires may be conveyed, transferred and assigned to Milwaukee as required by this Amendment.

- c. Waukesha Conveyance of Real Property Interests to Milwaukee. After Waukesha's acquisition of all of the Real Property Interests, and after Waukesha and Milwaukee have signed this Amendment, and before construction work is commenced relating to the WSPS, then, after Milwaukee pays to Waukesha the amount of Milwaukee's Contribution, Waukesha shall promptly convey, transfer, and assign to Milwaukee marketable title to all of the Real Property Interests in accordance with a deed and easement conveyance and assignment documents meeting Milwaukee's prior, reasonable approval.
- d. Environmental. After Milwaukee acquires the Real Property Interests from Waukesha, and without waiving any safe harbors or exemptions from liability that may be available under Wisconsin law (including under Wis. Stat. 292.11, 292.13 and 292.23), Milwaukee shall have an environmental engineer investigate and report environmental conditions to the Wisconsin Department of Natural Resources ("DNR"), and Milwaukee shall pursue DNR case closure concerning the fee interest that is part of the Real Property Interests..
- e. Reporting. Waukesha shall keep Milwaukee apprised regarding Real Property Interest acquisition efforts, and Waukesha shall promptly provide to Milwaukee copies of documents associated therewith, including: offers to purchase; counter offers; appraisals (government and owner); jurisdictional offers; awards of damages; title insurance commitments; closing documents; deeds and easement documents; and closing statements.
- f. Hold Harmless; Indemnification. Waukesha will indemnify and hold Milwaukee harmless concerning any damage, claim, cost, liability or expense associated, directly or indirectly, with any of the following: (1) the eminent domain procedure or process used by Waukesha or its agents to acquire the Real Property Interests, (2) just compensation litigation, expense or claims, associated with Waukesha's acquisition of Real Property Interests (Waukesha, as condemnor and acquirer, is solely responsible for any such litigation and for payment of just compensation), and (3) defect or failure by Waukesha and/or its agents to acquire Real Property Interests in a manner needed for, and suitable to, carry out, undisturbed, the construction of the Water Pumping Station (and facilities), and/or needed for, and suitable to, the undisturbed use of the Real Property Interests for occupancy, use,

repair, maintenance, and replacement, of the Water Supply Pumping Station (and facilities), including access.

2. WSPS Suction and Discharge Piping.

- a. Except as provided in par. e., Milwaukee, at its own expense, shall design and fund the construction of suction piping that will connect the Milwaukee distribution system at South 74th Street and West Oklahoma Avenue to the WSPS (“Suction Piping”). The Suction Piping is identified on the attached Exhibit D. Waukesha, subject to sec. II.C.3 of this Amendment, shall construct the Suction Piping at Milwaukee’s expense. Upon Milwaukee’s approval and acceptance of the Suction Piping, Milwaukee shall own, operate, and maintain the Suction Piping.
- b. Except as provided in par. e., Milwaukee, at its own expense, shall design and fund the construction of a discharge pipeline, that will connect the WSPS to the MWW distribution system (“Discharge Piping”). The Discharge Piping is identified on the attached Exhibit D. Waukesha, subject to sec. II.C.3 of this Amendment, shall construct the Discharge Piping at Milwaukee’s expense. Upon Milwaukee’s approval and acceptance of the Discharge Piping, Milwaukee shall own, operate, and maintain the Discharge Piping.
- c. When referred to collectively in this Amendment, the Suction and Discharge Piping shall be referred to as “S/D Piping.”
- d. Except as provided in par. e., Milwaukee shall pay contracted costs associated with project management and inspections attributable to construction of the S/D Piping. MWW staff will periodically conduct inspections. Waukesha will instruct its project management and inspection contractors to work with MWW staff, as necessary, to ensure piping meets MWW specifications.

B. Water Supply Pipeline. As set forth in this section II.B, Milwaukee shall own, operate, and maintain all segments of the Water Supply Pipeline within the geographic boundaries of the City of Milwaukee.

1. Segment 3. Milwaukee, at its own expense, shall design and fund the construction of the segment of the Water Supply Pipeline from the WSPS to South 84th Street and West Oklahoma Avenue. This section of the Water Supply Pipeline is identified on Exhibit D as “Segment 3.” Waukesha, subject to sec. II.C.3. of this Amendment, shall construct Segment 3 at Milwaukee’s expense. Upon Milwaukee’s approval and acceptance of Segment 3, Milwaukee shall own, operate, and maintain Segment 3. Milwaukee shall pay contracted costs associated with project

management and inspections attributable to Segment 3. MWW staff will periodically conduct inspections. Waukesha will instruct its project management and inspection contractors to work with MWW staff, as necessary, to ensure piping meets MWW specifications

2. Segment 2. Waukesha, at its own expense, shall design and construct the segment of the Water Supply Pipeline from South 84th Street and West Oklahoma Avenue to the Connection at South 100th Street and West Oklahoma Avenue. This section of the Water Supply Pipeline is identified on Exhibit D as “Segment 2.” Upon Milwaukee’s approval and acceptance of Segment 2, Milwaukee shall own, operate, and maintain Segment 2. MWW staff will periodically conduct inspections. Waukesha will instruct its project management and inspection contractors to work with MWW staff, as necessary, to ensure piping meets MWW specifications.
3. Segment 1. Waukesha, at its own expense, shall design, construct, own, operate, and maintain the segment of the Water Supply Pipeline downstream of the outlet side of the Waukesha Supply Main Control Valve located at the Connection, as shown on Exhibit B. This section of the Water Supply Pipeline is identified on Exhibit D as “Segment 1.”

C. Specifications, Bidding, Contracting, and Billing for the Water Supply Pipeline and S/D Piping.

1. Milwaukee contracting requirements shall apply to Segments 2 and 3 and the S/D Piping. Waukesha shall design and construct Segment 2 and shall construct Segment 3 and the S/D Piping according to Milwaukee’s specifications.
2. If the lowest overall bid obtained by Waukesha to construct the entire Water Supply Pipeline (Segments 1-3) and S/D Piping includes costs to construct Segment 3 and the S/D Piping that are greater than ten percent (10%) more than Segment 3 and the S/D Piping, as proposed in the second lowest overall bid, then Milwaukee may rebid Segment 3 and the S/D Piping as a separate project at its discretion as long as rebidding this work does not result in construction delays. [Note: Hold this item]
3. Milwaukee reserves the right to advertise bids and issue contracts for the construction of any portion of Segment 3 and the S/D Piping if Milwaukee determines that Milwaukee can contract for such work at a lower cost than that obtained by Waukesha.
4. Waukesha shall submit to Milwaukee all contractor applications for payment for S/D Piping, Segment 2, and Segment 3 immediately upon receipt from contractor. Milwaukee will review and authorize the amount

of payment for the S/D Piping, Segment 3, and associated agreed-upon change order requests, within eight (8) days of receipt of the application for payment. Waukesha will invoice Milwaukee the authorized amounts quarterly beginning April 1, 2021 and each following July 1, October 1, January 1, and April 1 until project completion. Milwaukee agrees to pay the authorized amounts within 30 days of receipt of invoice.

D. Milwaukee Use. Milwaukee reserves the right to use the WSPS, S/D Piping, and those segments of the Water Supply Pipeline located within the City of Milwaukee geographic limits (Exhibit D, Segments 2 and 3) 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.

E. Meter Facilities

1. Metering Requirement. All water furnished by Milwaukee to Waukesha shall be measured by the Master Meter, which shall be owned by Milwaukee.
2. Meter Structure. The Master Meter shall be housed in the Meter Structure, which shall be located on the 9,857 s.f. Fee Real Property Interest. Except as described in sec. II.E.3 of this Amendment, Waukesha shall, at its own expense, design and construct the Meter Structure and appurtenances associated with water supply to Waukesha. Upon approval and acceptance of the Meter Structure by Milwaukee, Milwaukee shall own the Meter Structure. Milwaukee shall maintain the Meter Structure and associated appurtenances, provided that Waukesha shall reimburse Milwaukee for Milwaukee's costs to maintain the Meter Structure as well as costs to maintain appurtenances within the Meter Structure associated with water supply to Waukesha. Milwaukee's southwest district meter and associated appurtenances shall be located in the Meter Structure.
 - a. Milwaukee reserves the right to make modifications to the Meter Structure provided that such modifications shall not interfere with Milwaukee's provision of Adequate Water Service to Waukesha.
 - b. Waukesha's responsibility to pay for maintenance of the Meter Structure shall include, but not be limited to the following: reconstruction of the Meter Structure; cleaning debris from the Meter Structure; repair leaks in the Meter Structure; paint pipe, vent and supports; repair or replace sump pump, valves, piping, grating and supports; repair or replace hatches; repair or replace ladder; replace light bulbs; repair or replace exterior light fixture and pole; and repair or replace electrical junction boxes, conduit, and wiring.

- c. Prior to Milwaukee taking action to maintain the Meter Structure and appurtenances associated with water supply to Waukesha, Milwaukee shall give Waukesha 30 days written notice for any repairs estimated to exceed \$5,000. 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.

3. 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. Upon approval and acceptance of the Master Meter by Milwaukee, Milwaukee shall own the Master Meter. Milwaukee shall operate and maintain the Master Meter pursuant to the provisions of Sec. II.H. of this Amendment.

F. Waukesha Water System

1. Waukesha shall pay all costs, charges, fees, and all expenses incidental to construction, maintenance, and operation of its own water system west of the Connection.
2. Waukesha shall notify Milwaukee of all plans and specifications for metering stations, storage facilities, and other major improvements to the Waukesha water 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.

G. 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 WSPS (including S/D Piping), Water Supply Pipeline, and Meter Structure for water supply 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. of this Amendment.

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.

H. 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. Testing and calibration consist of validating the Differential Pressure (DP) cell output signals and verifying the SCADA programming logic associated with the DP cell output signals. 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 shall provide access to the Meter Structure to Waukesha upon 24 hours' notice except that access shall be provided as soon as reasonably feasible if, in Milwaukee's determination, there exists an emergency condition affecting the operation of the water system. Milwaukee personnel shall accompany Waukesha personnel at all times.
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 WSPS. Milwaukee shall endeavor to limit the use of estimated billing to no more than 90 days.

I. 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.

4. Section III.C.1 of the Water Service Agreement is amended to read:

C. Water Supply Pumping Operations.

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

Minimum pressure (0 MGD at 1051 feet HGL): 133 pounds per square inch (psi)

Maximum pressure (13.6 MGD at 1178 feet HGL): 188 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).

5. Section V. of the Water Service Agreement is amended to read:

V. RATES

- A. The rates or charges for service at wholesale for water supplied to Waukesha shall be determined as follows:
1. Subject to secs. V.A.2 and 3 of this Amendment, as of the Commencement of Service, the all-inclusive rate for water service shall be \$1.49 per 1,000 gallons (\$1.12 per ccf) until the Commission establishes an adjusted schedule of rates.
 2. If, following the Effective Date, 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 Amendment will be adjusted by the same percent adjustment that applies to other wholesale customers of Milwaukee.
 3. In the event that Milwaukee, through a conventional rate case, is granted an adjustment of its rates for other customers before the Commencement of Service or, if after the Commencement of Service, before sufficient data is available for the Commission to establish a schedule of rates for Waukesha, the all-inclusive rate stated in this Amendment shall be adjusted in the same proportion as the average adjustment of volume rates for other wholesale customers of Milwaukee.
 4. 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.
 5. Except as expressly provided in this Amendment or the Intergovernmental Agreement executed concurrently with the Water Service 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.
 6. If during the term of the Water Service Agreement, the Commission no longer has jurisdiction over Milwaukee's water rates to wholesale

August 14, 2020

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 the Water Service 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.

6. Council Approval and Filing with Commission. The parties agree that this Amendment 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 Amendment with the Commission. Approval of the Common Council of Milwaukee and the Common Council Waukesha shall be evidenced by adoption of appropriate resolutions approving the Amendment.

7. Effect on Other Provisions. All other provisions of the Water Service Agreement not amended by this Amendment remain in full force and effect.

Dated as of the Effective Date.

**CITY OF MILWAUKEE, operating
as a Water Public Utility**

**CITY OF WAUKESHA, operating as a
Water Public Utility**

Mayor Tom Barrett

Mayor Shawn N. Reilly

City Clerk, James R. Owczarski

City Clerk, Gina Kozlik

COUNTERSIGNED:

COUNTERSIGNED:

City Comptroller, Aycha Sawa

Finance Director, _____

CITY ATTORNEY APPROVAL (MCO
304-21)

Assistant City Attorney Thomas D. Miller

1048-2016-2324:269985