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MEMORANDUM

TO: Mayor Jeff Scrima
Common Council

FROM: Curt R. Meitz, City Attorney

RE: Press release of June 1, 2010

DATE: June 8, 2010

This is in response to your press release memo to Dan Duchniak of June 1, 2010. You indicated that there was some information that needed clarification.

On April 8th the Common Council moved to submit the draft Application to the State of Wisconsin subject to non-substantial and/or organizational changes. The directive was clear and unequivocal. The directive was consistent with the scores of documents that over the years the Council has approved subject to review by the City Attorney's Office. In this case, myself and Attorney Don Gallo were integrally involved in the organizational and format changes to the Application.

The Application will be subject to an ongoing review process by the various states to determine whether certain legal criteria and standards of review have been met. Therefore, it was our task to organize the Application into a legal format prior to its filing. This is critical as the Application must be presented in a manner to withstand future administrative review and other potential legal challenges. Thus changing the format and making the appropriate organizational changes to the satisfaction of this office was necessary.

In your press release you further asked Dan Duchniak to supply you and the Common Council a "red-lined guide" as to the changes made between the April 8th Application and the Application submitted on May 20th.



We would be happy to prepare a red-lined version of the Application, however, I assume that the purpose, as stated in your press release, is to assist the Council in determining where changes were made. I believe preparing a red-lined version would be counterproductive and would not assist the reader in understanding what organizational changes were made. Red-lining could be useful if you were changing a sentence or a paragraph with different language. However, in this case, some of the provisions were moved to different sections and topics were rearranged and in some cases reworded. An attempt at red-lining would result in the creation of duplicitous, disjunctive text that would not be easy to read. As one can see from the final draft, we italicized the specific statutory criteria. This was followed by the technical facts supporting the criteria and legal standards of review. This organization assists in presenting an Application in a readable, flowing document that concisely and directly addresses all the relevant legal criteria.

To reiterate, the Application filed with the State contains no substantive changes from the Application approved April 8th. The reasoning behind the Application, as well as the facts and interpretations of the studies set forth therein, were not changed in any way. All the assertions contained in the draft approved by the Common Council on April 8th are contained in the Application filed with the State. Likewise, none of the changes that appear in the filed Application are contrary to the assertions set forth in the Application approved by the Council. Please see the attached memo from Linda Mohr, one of the engineering professionals that prepared the Application.

Had there been any substantive changes, I would have advised that the Application go back to the Common Council for explanation and approval. Since there were no substantive changes, the General Manager appropriately filed the Application with the State after the City Attorney reorganized the Application into the proper format. Any allegations that this matter was required to go back to the Common Council for action prior to the filing of the Application is a total mischaracterization of the clear direction given by the Common Council.

CRM/sp



April 8, 2010 draft Great Lakes Application Revisions

TO: Dan Duchniak, Waukesha Water
Utility
Curt Meitz, City of Waukesha

FROM: CH2M HILL

DATE: June 8, 2010

The April 8th draft of the Great Lakes Application was fully vetted by the offices of the City attorney to confirm the findings of facts and conclusions within the Application were consistent with the Great lakes – St. Lawrence River Basin Water Resources Compact (Compact), the Wisconsin Compact implementing statute (§281.346, Wis. Stats. and §281.348, Wis. Stats), and the Wisconsin Act 310. During the course of this review, the City attorney directed revisions to the document that prepared the Application for analysis by a broader audience of state and Great Lakes regional stakeholders. These revisions are reflected in the May 20th draft of the Application and include:

- Consistent application of terminology used in the Compact and the state implementing statutes
- Explicit expression of technical findings within the context of specific points of law
- Comprehensive reorganization of some sections to present technical information in direct correlation with respective provisions of the Compact and statutes

The revisions did not include substantive changes to the technical, economic, or environmental content of the Application. The April 8th and May 20th drafts include the same water supply alternatives, the same cost estimates, the same analyses and conclusions.

During the vetting process, several interim drafts were prepared and reviewed collaboratively by legal, utility management and engineering professionals. Because of the extensive reorganization of Application passages, multiple interim versions, and editorial discussions, a “red-lined” version of the Application will not be meaningful for a reader. For ease and efficiency, a page by page comparison of the April and May drafts is recommended to all interested parties. Both versions are posted to the water utility website at www.ci.waukesha.wi.us/web/guest/no_login.