

PROPOSAL FOR PROFESSIONAL SERVICES

October 3, 2017

Michael Lewis  
City of West Allis  
7525 W Greenfield Ave  
West Allis WI 53214-4688

Jim Hart  
City of New Berlin  
3805 S Casper Drive  
New Berlin WI 53151

Tom Nennig  
Village of Brown Deer  
4800 W Green Brook Drive  
Brown Deer WI 53223

David Simpson  
City of Wauwatosa  
7725 W North Ave  
Wauwatosa WI 53213

Mark Uecker  
Village of Greendale  
6500 Northway  
Greendale WI 53129

Tom Nennig  
City of Mequon  
11333 N Cedarburg Rd  
Mequon WI 53092

Jeffrey Nettesheim  
Village of Menomonee Falls  
W156N8480 Pilgrim Rd  
Menomonee Falls WI 53051

Leeann Butschlick  
Village of Shorewood  
3930 N Murray Ave  
Shorewood WI 53211

Kayla Chadwick  
Village of Butler  
12621 W Hampton Ave  
Butler WI 53007

***Subject: Milwaukee Water Works Wholesale Customer Group – Rate Case Order Assistance Professional Services***

Thank you for inviting Baxter & Woodman Inc. to propose professional services for this project. We also appreciate the information that you provided related to this project, which has helped us better understand your requirements and related issues. This proposal responds to your request, including a description of our proposed Scope of Services and budget information.

**Project Description**

We understand the final decision from Milwaukee Water Works (MWW) 2014 rate case (PSC Docket 3720-WR-108) included several rate order points that involve and affect MWW's wholesale customers (MWC). The two specific order points that require involvement and a response from MWC to MWW and/or the Wisconsin Public Service Commission (PSC) include Order Points #9 and #14 as follows:

**Order Point #9:** *MWW shall meet with its wholesale customers, Commission staff, and other stakeholders to determine a better methodology for revising customer demand ratios and shall report back to the Commission within 60 days with a mutually agreeable proposal as to how the Trilogy study will be revised, modified, or otherwise supplemented. The agreed upon methodology shall then be used to update the demand study, and the resulting demand ratios shall be used in MWW's next rate case.*

**Order Point #14:** *MWW and the Wholesale Customers shall work with Commission staff to further evaluate alternative methods for allocating fire protection costs for use in MWW's next rate case, including further analysis of Commission staff's proposal offered in this proceeding. The Commission shall also open a generic investigation to study further the methods of all water utilities in allocating fire protection costs.*

We understand that MWC has already had numerous meetings with your consultants since 2015, as well as with MWW and PSC staff in addressing Rate Order Points #9 and #14. We also understand that MWC desires to retain a team of water rate specialists to continue to assist the group in working with MWW and PSC in complying with the PSC rate order points described above.

The MWC group includes the water utilities for the following municipalities:

- Brown Deer
- Butler
- Greendale
- Menomonee Falls
- Mequon
- New Berlin
- Shorewood
- Wauwatosa
- West Allis

We have assembled a very qualified team to assist you with this project. All team members are immediately available to work on the project to meet the anticipated schedule required by the PSC rate order points.

### **Scope of Work**

The project team will perform the following scope of services to assist MWC in reviewing and responding to MWW's Rate Order Points #9 and #14.

1. Meet with MWC representatives to review current status of PSC Rate Order Points #9 and #14, and discuss MWW's proposed approach to comply with Order Point #9.
2. Meet with representatives of PSC and discuss MWC's proposed Two-Step cost allocation methodology.
3. Review MWW's proposed methodology prepared by its consultant (Trilogy) for the Two-Step Cost Allocation Approach.
4. Provide review comments on MWW proposed Two Step Cost Allocation methodology.
5. Request and obtain needed information from MWW and the MWC Group on their most recent water demands and usage pattern variations.
6. Meet with MWW and its consultants to discuss and review its Two Step Cost Allocation method, and any alternative cost allocation approaches.
7. Provide a common interface for communications with MWW and PSC during the project.

8. Submit information requests to MWW for information necessary for the project, and review responsive information.
9. Meet with MWC representatives as needed during the project to receive direction on negotiations with MWW.
10. Meet with MWW and PSC representatives as needed on behalf of MWC Group to discuss project.

### **MWC Responsibilities**

The MWC group, at its expense, shall do the following in a timely manner so as not to delay the Services.

1. **Information / Reports:** Furnish the Baxter & Woodman project team with relevant project-related information, all of which Baxter & Woodman may rely upon without independent verification in performing the Services.
2. **Representative:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define MWC's policies and make decisions with respect to the Services.
3. **Decisions:** Provide all criteria and full information as to MWC requirements for the Project, obtain (with Baxter & Woodman's assistance, if applicable) necessary approvals, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow the Baxter & Woodman project team to perform the Services.
4. **Other Responsibilities:** Pay directly any required fees associated with the Project.

### **Engineering Fee**

Our engineering fee for the above stated scope of services will be based on our hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses, including travel costs. Current billing rates are summarized below.

Hourly billing rates for the key project team members is as follows:

Baxter & Woodman, Project Manager	\$210
Lawrie Kobza, Project Attorney	\$310
Christopher Kaempfer, Project Engineer	\$150

Because of the uncertainty of the project duration and PSC/MWW interactions required to address the Rate Order Points, Baxter & Woodman has provided an estimate of the costs for services in this Proposal. Our team's level of effort for services in this Proposal is estimated to be \$50,000.

It is agreed that after 90 percent of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10 percent of the estimated compensation, Baxter & Woodman will notify MWC Group and confer with representatives of the MWC Group to determine the basis for completing the work.

**Other Provisions Concerning Payments**

1. Invoices will be prepared in accordance with Baxter & Woodman’s standard invoicing practices and will be submitted monthly to MWC by Baxter & Woodman, unless otherwise agreed.
2. The cost for our team’s services will be apportioned as previously agreed to by the MWC Group for the 2014 MWW Rate Case project. This apportionment of project costs is summarized below.

<b>Water Utility</b>	<b>2014 Cost Breakdown</b>
West Allis	24.172%
Wauwatosa	22.022%
Menomonee Falls	14.661%
New Berlin	12.379%
Shorewood	6.995%
Brown Deer	6.808%
Greendale	6.260%
Mequon	5.185%
Butler	1.518%
<b>Total</b>	<b>100.00%</b>

**Schedule**

The Baxter & Woodman project team is available to begin this work immediately. Baxter & Woodman will coordinate a project schedule with the MWC Group based upon information availability and schedule needs.

**Summary**

This letter proposal represents the entire understanding between the MWC Group and Baxter & Woodman in respect to providing services for this project, and may only be modified in writing signed by both parties. If it satisfactorily sets forth your understanding of our services, please sign below in the space provided. Please sign two copies keeping one for your files and returning one to us.

We appreciate this opportunity to work with the MWC Group. If this Proposal is acceptable, please sign and return one copy for our files. The attached Standard Terms and Conditions apply to this Proposal. Please do not hesitate to contact Jerry at (815) 444-3264 if you have any questions or if you need additional information.

Sincerely,

BAXTER & WOODMAN, INC.  
CONSULTING ENGINEERS



Derek J. Wold, P.E., BCEE  
Executive Vice President



Jerry Groth, P.E.  
Regional Manager

SIGNATURE PAGE FOLLOWS

**CITY OF WEST ALLIS**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**VILLAGE OF SHOREWOOD**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF WAUWATOSA**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**VILLAGE OF GREENDALE**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**VILLAGE OF MENOMONEE FALLS**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**VILLAGE OF BROWN DEER**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF NEW BERLIN**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF MEQUON**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**VILLAGE OF BUTLER**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# STANDARD TERMS AND CONDITIONS

**Agreement** - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the Owner and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

**Owner's Responsibility** - Provide BW with all criteria and full information for the Project. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner including its consultants, contractor, specialty contractors, manufacturers, suppliers and publishers of technical standards without independently verifying that information. The Owner warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the proposal.

**Schedule for Rendering Services** - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

**Invoices and Payments** - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the Local Government Prompt Payment Act.

**Opinion of Probable Construction Costs** - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs of contractor's methods of determining prices, or over competitive bidding, of market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

**Standards of Performance** - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no guarantees or warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work, nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) Engineer is not acting as a municipal advisor as defined by the Dodd-Frank Act. Engineer shall not provide advice or have any responsibility for municipal financial products or securities. (8) BW is not responsible for the acts or omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (9) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (10) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

**Insurance** - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability:	\$1 million per claim	Professional Liability:	\$5 million per claim
	\$2 million aggregate		\$5 million aggregate
Automobile Liability:	\$1 million combined single limit		

BW's liability under this Agreement, based on any theory of liability or for any cause of action, shall not exceed the total amount of BW's contract amount for the project. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

**Indemnification and Mutual Waiver** – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of BW or its officers, directors, employees, agents, or consultants; (2) Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death of to injury or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or its officers, directors, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project; (4) In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the ENGINEER and OWNER, they shall be borne by each party in proportion to its negligence; (5) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

**Termination** - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

**Use of Documents** - BW documents are instruments of service and BW retains ownership and property interest (including copyright and right of reuse). Client shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Client shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. BW's document retention policy will be followed upon Project closeout, and project documents will be kept for a period of 14 years after Project closeout.

**Successors, Assigns, and Beneficiaries** – Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Client and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

**Dispute Resolution** - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

**Miscellaneous Provisions** – (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.