

AMENDED AND RESTATED INTERGOVERNMENTAL MUNICIPAL WATER SERVICE AGREEMENT

This amended and restated intergovernmental municipal water service agreement (the "Amended Agreement") is entered into as of the _____ day of July 2022 (the "Effective Date"), by and between the City of Manitowoc ("City"), the Town of Newton, and the Town of Manitowoc (the two towns are referred to collectively as the "Towns" and the Towns and the City are each individually a "Party" and together are the "Parties"). The City and Towns have statutory authority to enter into this Amended Agreement under Wis. Stat. § 66.0301(2).

RECITALS

WHEREAS, groundwater contamination was discovered in the City and the Towns and has affected properties in the Towns which rely on groundwater as the primary source for drinking water; and

WHEREAS, the City has responded to detections of contaminated groundwater in the Towns by offering and providing replacement water to affected households; and

WHEREAS, the City has further responded to these detections in groundwater by implementing significant efforts to install a new watermain to extend municipal water to affected areas (these efforts include: designing the watermain; obtaining Public Service Commission of Wisconsin ("PSCW") approval; obtaining financing for construction by applying for and receiving funding, with collaboration with Manitowoc County, through the American Rescue Plan Act; negotiating access agreements with affected property owners; obtaining approval of installation of the watermain as a remedial action with Wisconsin Department of Natural Resources ("WDNR"); and obtaining all local approvals); and

WHEREAS, the City, through its water utility, Manitowoc Public Utilities ("MPU"), intends to install the municipal water service to certain households within an area where there are detections of certain contaminants in potable groundwater wells as a permanent solution to the groundwater concern; and

WHEREAS, the Towns do not have municipal water service that could serve these properties and desire to have these properties provided with a long-term safe drinking water source; and

WHEREAS, MPU has been authorized to provide water service to certain properties in the Towns as provided in the January 25, 2022, Final Decision of the PSCW in Docket No. 3320-CW-115; and

WHEREAS, MPU has rates approved by the PSCW and standards of service prescribed by the PSCW and WDNR; and

WHEREAS, the Parties executed a water service agreement dated May 17, 2022 (the "Prior Agreement") that addresses the topic of this Amended Agreement, and the Parties now wish to amend and restate the Prior Agreement to more accurately capture their respective obligations;

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The above recitals are deemed to be true and correct.
2. Prior Agreement Validity. This Amended Agreement amends and restates the Prior Agreement, therefore said Prior Agreement shall be null and void as of the Effective Date of this Amended Agreement.
3. Service Area. The City shall make arrangements with MPU, and subject to any PSCW approval required, for MPU to provide water service to properties identified by the City in the Towns that have groundwater contamination which may be served by the watermain approved by the PSCW's Final Decision in Docket No. 3320-CW-115 (the "New Watermain" serving the "Service Area"). Any such service shall be subject to PSCW requirements, including approval of a MPU tariff in substantially the form attached as Exhibit D establishing eligibility for such service.
4. Future Service Area. In the event that future City sampling of wells on properties located adjacent to the New Watermain indicates groundwater contamination is present due to the hydrogeological flow of groundwater from the Newton Gravel Pit located at 1310 Hecker Road in the Town of Newton, those properties shall be provided water service by the City, through arrangement with MPU within one (1) year of the discovery of such contamination subject to the terms and conditions of this Amended Agreement and PSCW requirements (including eligibility). Any water service to properties located outside the Service Area that are determined to be impacted by the hydrogeological flow of groundwater from the Newton Gravel Pit will be addressed by future agreement of the Parties.
5. Service Type. It is the intent of the Parties that the properties taking water service pursuant to this Amended Agreement will be subject to MPU's retail water tariffs, as approved by the PSCW.
6. Construction Plans. MPU shall construct the New Watermain as shown in the City of Manitowoc Engineering Department Contract No. WU-22-10 Watermain Installation on South 15th St., South 19th St., South 26th St., South 42nd Street (CTH CR), Cimarron Ct., Elm Road, Jenny Road, Lissa Lane, Lone Oak Lane, Thunder Ridge Rd., & Blackhawk Ct. Special Conditions for Construction, dated May 3, 2022 (the "Contract"), and as conditioned and approved by the PSCW, which is adopted and incorporated herein by reference, at the City's cost and expense. The Parties have tentatively contemplated installing future phases, as shown in Exhibit A, and the Towns grant preliminary approval to those plans.
7. Initial Properties and Water Quality. Retail water service shall be provided initially to the properties identified by the City in Exhibit B, subject to compliance with any PSCW eligibility requirements. This water will be safe for human consumption and meet all primary drinking water standards established by the state and federal governments, as amended from time to

time. The water shall be of the same purity and quality as that provided to other MPU retail water customers.

8. Easements. The Towns agree to grant City any easements necessary for construction of the New Watermain through Towns' property and right-of-way. The City will attempt to obtain other necessary easements from private property owners. The easements obtained will be similar to those shown in Exhibit C.
9. Chapter 810 Compliance. Water provided to properties pursuant to this Amended Agreement shall be provided in accordance with the applicable standards established in Wis. Admin. Code ch. NR 810.
10. Fire Flow Demand. Fire flow demand shall be provided as required by Wisconsin law.
11. Hydrants. Hydrants shall be installed along the New Watermain every 600 feet, and shall permit rural volunteer services to connect as needed. The City will provide the appropriate fire departments information on the requirements.
12. Cross Connection Control. Any property owners that maintain private wells shall be required to ensure there is no cross connection between those private wells and the MPU water system, including the New Watermain.
13. Permits. The City shall follow all applicable codes for installation of the New Watermain and will pull all required permits.
14. Operation and Maintenance. Except for the cost of construction and capital replacements, which shall be borne by City, MPU shall, at its sole cost and expense, operate, maintain, and repair all parts of the water infrastructure necessary to provide water service pursuant to this Amended Agreement, subject to any applicable PSCW requirements. MPU shall recover costs that it is responsible for through its rate structure, as approved by the PSCW.
15. Annexation. The Parties agree that they will not request annexation of any property in the Service Area as a result of this municipal water extension. However, should any Towns property annex to the City, that property will be eligible for water service even if not impacted by the hydrogeological flow of groundwater from the Newton Gravel Pit, if it is in proximity to the New Watermain.
16. No Obligation to Connect. Eligible property owners will be offered water service by the City three times. No Towns resident will be compelled to connect to the New Watermain by the City.
17. Plumbing Connections to Watermain. The City, at its cost and expense, will fund installation of the New Watermain, all laterals, and all connections to eligible properties. Any plumbing inside

each residence on an eligible property that needs to be changed to accommodate the water connection shall also be the City's responsibility. The City will not pay for any additional plumbing changes (such as water filters, water softeners, or connection to structures other than each residence) the property owner chooses to make or that are necessary to bring the plumbing in the house to code. The City will complete all water connections required by this Amended Agreement notwithstanding the plumbing system condition of any eligible property that may not be in compliance with current plumbing codes. The City will transfer ownership of the lateral to the property owner once construction is complete.

18. Role of PSCW. The Parties acknowledge that by entering this Amended Agreement they are mutually relying on the regulatory role of the PSCW. In the event the role of the PSCW changes materially or the PSCW ceases to exist, the Parties will meet and confer to discuss how to restructure this Amended Agreement.
19. Right to Appear Before PSCW. The Parties agree that notwithstanding this Amended Agreement, each of them shall have the right as provided under Wisconsin law to advocate before the PSCW, a court, a state administrative agency, or the Wisconsin legislature regarding this New Watermain.
20. Termination. This Amended Agreement shall not terminate unless agreed to by the Parties in writing.
21. Record Access. All Parties agree that they are subject to Wisconsin's Public Records laws as set forth in Wis. Stat. chapter 19 and agree to maintain appropriate records as required by law.
22. Insurance. All Parties to this Amended Agreement shall be responsible for maintaining appropriate insurance coverage, including workers' compensation, at their sole expense.
23. Legal Relationship. Nothing in this Amended Agreement creates an employer/employee relationship, a joint venture relationship, or a principal/agent relationship.
24. Approval/Authority. Each Party represents that this Amended Agreement was duly approved by their respective governing body on the date stated below in accordance with all applicable laws, and that such body has caused its duly authorized officers to execute this Amended Agreement.
25. Amended Agreement Subject to Rules. This Amended Agreement is subject to the applicable rules and regulations of MPU and the City, as may be amended from time to time.
26. Waiver of Rights. The failure of any Party to insist on strict performance of any of the terms or conditions of this Amended Agreement is not a waiver or relinquishment of any rights.

27. Severability. In the event that any portion of this Amended Agreement is rendered invalid or unenforceable, the remainder of the Amended Agreement will still be in effect.
28. Amended Agreement Binding on Successors. This Amended Agreement is binding upon any successor organization or political subdivision of the state that assumes the responsibilities of a Party.
29. Assignment. This Amended Agreement shall not be assigned without the consent of all Parties.
30. Choice of Laws. This Amended Agreement shall be governed by the laws of the State of Wisconsin. Any litigation related to this agreement shall be in Manitowoc County Circuit Court or the Eastern District of Wisconsin.
31. Notice. Any notice required to be given under this Amended Agreement shall be given upon delivery in person or by US mail to the following addresses:
- City of Manitowoc
900 Quay Street
Manitowoc, WI 54220
Attn: City Clerk
- Town of Newton
Attn: Town Clerk
6532 Carstens Lake Road
Manitowoc, WI 54220
- Town of Manitowoc
Attn: Town Clerk
1805 Lissa Lane
Manitowoc, WI 54220
32. Amendments. No amendments to this Amended Agreement shall be effective unless made in writing and duly approved and signed by the Parties.
33. Dispute Resolution. If a Party to the Amended Agreement believes another Party or Parties is in breach, the aggrieved Party shall serve written notice on the other Party consistent with this Amended Agreement. Representatives shall meet and confer to resolve any disputes. If the initial meeting does not resolve the dispute, the City Mayor and relevant Town of Manitowoc or Town of Newton Chair(s) shall meet within 30 days of the written notice in an effort to resolve the dispute.
34. Civil Actions. Each Party has the right and standing to challenge the actions of another Party under this Amended Agreement under any legal and equitable remedy available, subject to compliance with Article 35.

35. Limitation of Commencement of Civil Action. No civil action regarding a breach of this Amended Agreement may occur until the following steps have been taken:
 - a. The Parties have fully exhausted the dispute resolution provision of Article 33 of this Amended Agreement.
 - b. Notice has been filed under Wis. Stat. § 893.80, to the extent that it is applicable.
 - c. All available PSCW remedies have been exhausted.

36. Well Abandonment Required. The City shall, at its cost and expense, properly abandon all wells located on properties connected to the New Watermain, other than those that connect to the New Watermain as a result of annexation.

37. Landscaping Restoration Required. The City shall, at its expense, restore all private property disturbed by the New Watermain installation.

38. Compliance with Codes and Statutes. Except as otherwise provided by this Amended Agreement, the City shall comply with all applicable codes of the Town of Newton, Town of Manitowoc, and Manitowoc County, including all utility policies.

39. General Indemnity. The City agrees to indemnify and hold harmless the Towns, and all of their elected and appointed officers, employees, agents, and attorneys from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, including without limitation actual attorneys' fees and costs, which arise out of, relate to, or result from any breach by the City of this Amended Agreement, the construction or operation of the New Watermain described in this Amended Agreement or the violation by the City of any federal or state law, regulation, administrative rule or ordinance. This agreement of indemnification shall survive termination of this Amended Agreement for a period of six (6) years. This agreement of indemnity does not waive or forfeit any governmental or sovereign immunity of the Towns with respect to the City or any third parties. The Towns retain all applicable governmental immunities, defenses, and statutory limitations available, including but not limited to, Wis. Stat. §§ 893.80, 895.52, and 345.05. The Towns acknowledge that the City is not waiving any applicable immunities, defenses, or limitations available to it under law.

40. Reimbursement of Town Legal Fees. The City shall pay and reimburse the Towns in a sum not to exceed \$10,000.00 for the reasonable legal fees and costs incurred for the review and representation related to the Agreement, the Amended Agreement, and ancillary documents, as well as the enforcement of these agreements' terms and conditions. City's payment and reimbursement to the Towns shall be due and payable within thirty (30) days from written invoice or demand by the Towns.

41. Warranty. The City shall guarantee and warrant the restoration of all Town roads disturbed by the New Watermain for a period of five (5) years from the date of acceptance by the Towns

against defects in workmanship or materials. If any defect should appear during this warranty period, the City shall make the required replacement or repairs at its cost and expense. This paragraph and warranty shall survive termination of this Amended Agreement.

42. Construction Debris. The City shall be responsible for cleaning up any debris resulting from construction by MPU, its contractors, or its subcontractors, within the New Watermain project area. The City shall clean up all debris within two (2) business days after receiving notice from the Towns. If the City fails to clean up debris within said two (2) business day period, the Towns may perform the clean-up and charge the City for the costs incurred by the Towns for the clean-up.
43. Construction Clean-Up. During construction of the New Watermain, the City shall be responsible for cleaning the mud and dirt from the roadways within the project area and its abutting streets resulting from construction of the New Watermain. The City shall clean the roadways within two (2) business days after receiving notice from the Towns. If the City fails to clean up the mud and dirt within said two (2) business day period, the Towns may perform the clean-up and charge the City for the costs incurred by the Towns for the clean-up.
44. Environmental Law. The City shall comply with all applicable environmental laws and regulations in the construction, operation, and maintenance of the New Watermain, including any and all requirements promulgated by WDNR as part of the Newton Gravel Pit remediation action (BRRS # 02-36-000268).
45. Construction Videotape. Pursuant to section 1.10.A.a. of the Contract the New Watermain contractor is responsible to videotape all streets and easement areas included in the project area. The City shall provide each Town with a copy of the videotape within ten (10) days of delivery by the contractor.
46. Effective Date. This Amended Agreement shall be effective as of the Effective Date stated on the first paragraph of this Amended Agreement.

signature page to follow

City of Manitowoc

Justin M. Nickels, Mayor

Date

Mackenzie Reed-Kadow, City Clerk

Date

Town of Newton

Denise Thomas
Denise Thomas, Town Chair

7-12-22
Date

Barb Pankratz
Barb Pankratz, Town Clerk

7-12-22
Date

Town of Manitowoc

Dale Markwardt
Dale Markwardt, Town Chairperson

7-11-22
Date

Geraldine Gilbert
Geraldine Gilbert, Town Clerk/Treasurer

7/11/22
Date