

## Intergovernmental Agreement for Management of Wastewater Treatment Facility

This Intergovernmental Agreement is made and entered into effective the 1<sup>st</sup> day of January, 2019 by and between the City of Manitowoc, a Wisconsin municipal corporation (“City”), and the Manitowoc Public Utilities, a municipal utility owned and operated in accordance with Chapter 66 of the Wisconsin Statutes and Chapter 12 of the City of Manitowoc Ordinances (“MPU”).

### RECITALS

WHEREAS, City owns and operates a wastewater treatment facility serving the City of Manitowoc with a primary location at 1015 S. Lakeview Drive, Manitowoc (the “WWTF”); and

WHEREAS, MPU is a municipal utility currently providing water, electric, steam, and telecommunications utilities under the authority granted by City; and

WHEREAS, MPU currently provides billing services to the City’s wastewater customers; and

WHEREAS, the parties believe that efficiencies could be realized by transitioning management and oversight of the WWTF to MPU; and

WHEREAS, the parties have determined it to be in the public’s interest to enter into an intergovernmental agreement for the provision of such management and oversight services of the WWTF by MPU as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated below and with intent to be legally bound, the parties agree as follows:

- 1. Services and Term.** MPU shall provide general management and oversight services as identified on the attached Exhibit A (incorporated herein by reference) (the “Services”) to the WWTF during the Term (as defined in Section 9 herein)..
- 2. Authority of MPU Commission.** The MPU Commission shall have full and complete management and oversight authority of WWTF as identified in the Services and as set forth herein, including, but not limited to, the authority to approve all contracts, consultants, purchases, upgrades, improvements, procedures, regulatory agency communications and set utility rates. MPU has authority to approve filling positions and the City waives any hiring freeze resolution currently in place or enacted during this agreement. MPU will determine the staffing needs of the plant and work with the City to recruit and hire employees of WWTF, who shall remain City employees for the term of this agreement, and such employees will not be considered or deemed MPU employees for any purpose. MPU agrees to follow all City employee policies and to allow exempt employees to attend all mandatory City management trainings.

MPU Commission shall set the WWTF operation and capital budgets during the term of this Agreement as available rate funds and reserves allow.

- 3. MPU Performance Measures.** MPU shall strive to meet the following performance measures as part of its Services (subject to availability of resources as established in the WWTF budget):
- a. Complete automation of the WWTF facility to allow unmanned operations, including WDNR approval, by January 2021.
  - b. Ensure that 10% of WWTF designated mechanic and electrician time is being utilized by MPU by December 2021.
  - c. Complete an asset inventory at WWTF to incorporate into MPU's asset management system by March 2020.
  - d. Develop a five year capital improvement plan and a three year O&M budget by October 2020.
  - e. Complete the Chlorine Risk Management Plan for both WWTF and MPU and have prepared for EPA submission by December 2019.
  - f. Coordinate Annual Chlorine Safety training for all WWTF and MPU staff who handle or are exposed to chlorine by March 2020.
  - g. Coordinate Annual Confined Space training for WWTF and MPU personnel by December 2019.

If MPU is unable to achieve a performance measure by the stated time, the City shall consider this as a factor when determining if the WWTF shall be transitioned to MPU, as its sole and exclusive remedy.

**4. City Obligations.**

- a. **Employee Status.** All employees of WWTF will remain City of Manitowoc employees, subject to the City's employee policy manual, compensation plan, and performance evaluation system. All WWTF employee recruitment, recommendations from MPU relating to hiring, compensation, onboarding, and discipline shall be routed through the City's Human Resources Department, and all recommendations for terminations shall be routed through the City's Human Resources Director and the City Attorney. MPU shall not have liability or responsibility for any claims arising from the employment of any WWTF employees.
- b. **Benefits.** WWTF employees will be offered City benefits, including health insurance, PTO, and all other benefits as described in the City Employee Policy Manual.
- c. **Claims.** The City shall respond to all claims made against the WWTF through the City Attorney's Office.
- d. **Finances.** City shall maintain and invest all WWTF ratepayer funds, and MPU shall submit WWTF payables biweekly to the City Finance Director.
- e. **Sewer Maintenance.** Sewer maintenance, including lift stations, shall continue to be performed by City Department of Public Infrastructure staff at their customary hourly rates and WWTF shall be charged on a time,

labor, and materials basis. WWTF shall continue to pay its pro rata share of the equipment purchased by City for these purposes.

- f. Training.** WWTF staff shall participate in all City training events, including bloodborne pathogen, confined space entry, Mayor's listening sessions, and any other training designated as mandatory by the Mayor or Human Resources Director which shall be routed through the Wastewater Superintendent.
- g. Budgeting.** City shall set the annual WWTF budget as recommended by MPU and consistent with available ratepayer funds and reserves.
- h. Payroll.** The City shall handle all employee payroll, benefits and disciplinary actions for WWTF.

**5. Invoices, Payment, Hourly Rate, and Fees.**

- a. Invoices.** MPU shall issue invoices on a monthly basis for the Services on a time, labor, and materials basis. City shall pay such invoices within 30 days of receipt.
- b. Payment Amount.** City shall reimburse MPU at a rate of 1.8 times the actual employee hourly rate, as provided in Exhibit B attached hereto and incorporated herein by reference. MPU shall provide City with an annual written notice of applicable employee rates and a monthly breakdown of each employee's hours worked in performing services.
- c. Expenses.** All expenses of MPU shall be billed at cost and included on applicable invoices.

**6. Standards of Performance.** MPU agrees that Services provided shall reflect the degree of skill, knowledge, judgement and care required by industry accepted practices and procedures, provided, however, that MPU provides no other warranty or guaranty of performance. Upon receipt of a written notice from City of Services that are non-conforming, MPU shall take corrective action.

**7. Indemnity, Release, and Liability.**

- a. Liability limitations not waived.** The parties agree that any statutory limitations on the part of the City or MPU are not waived.
- b. City Indemnification.** Except for matters arising from the reckless or willful misconduct of MPU, City shall release, indemnify, and hold harmless MPU from and against any and all claims, losses, damages, expenses, penalties, fees or costs, including without limitation costs of defense, related to MPU's performance of the Services, including without limitation claims of City's employees, claims arising under local, state or federal laws, including but not limited to the Solid Waste Disposal Act, Clean Water Act, Comprehensive Environmental Response, Compensation and Liability Act, or Resource Conservation and Recovery Act, or directly or indirectly connected with the presence, discharge, release, disposal or escape of hazardous substances of wastes, pollutants, or contaminants of any kind at the WWTF.

**8. Insurance.**

- a. MPU Policies and Coverage.** MPU shall maintain the following policies of insurance to cover any MPU employees performing Services, listing City as an additional insured and providing certificates of coverage annually:
- i. Statutory workers' compensation coverage for MPU employees
  - ii. Employment practices liability coverage in the amount of \$1,000,000 per occurrence
  - iii. Commercial general liability insurance with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include, without limitation, specific coverage for contractual liability encompassing the indemnity provisions in this Agreement, personal injury liability, products/completed operations liability, and, where applicable, explosion, collapse, underground hazards coverage and watercraft (protection and indemnity) liability.
  - iv. Automobile liability insurance with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence covering vehicles owned, rented, hired or non-owned.
  - v. Umbrella or excess liability insurance with a single limit of Three Million Dollars (\$3,000,000) per occurrence in excess of the employer's liability, commercial general liability and automobile liability policies.
  - vi. Errors and omissions insurance with a single limit of Fifty Thousand Dollars (\$50,000) per occurrence.
- b. City Policies and Coverage.** City shall obtain and maintain all property, general liability, automobile and motorized vehicle liability, statutory workers' compensation and excess liability insuring City's facilities, employees, equipment and vehicles, consistent with the limits required of MPU in paragraph 8(a).
- c. Boiler and Machinery Coverage.** MPU shall continue to provide boiler and machinery coverage for WWTF as it has done in the past and City shall continue to reimburse out of WWTF rate funds.

- 9. Term and Termination.** This agreement shall commence January 1, 2019 and shall automatically terminate on December 31, 2021. The parties will meet in July 2021 to discuss whether they wish to transition WWTF to MPU, enter into a successor agreement, or terminate MPU's Services as manager of WWTF. A final decision shall be made by October 31, 2021. Notwithstanding the above, either party can terminate this agreement by providing 90 days advance written notice to the other party.

**10. Compliance with Laws.** Each party shall comply with all federal, state and local laws, rules, and regulations applicable to the performance of the Services including, without limitation, any rules, regulations or recommendations of regulatory authorities established by such laws.

**11. Permits and Licenses.** MPU shall obtain any licenses and permits which, under federal, state or local laws, rules or regulations, may be required to perform the Services under this Agreement or any attachment hereto. MPU shall hold and maintain such licenses and permits for so long as required to complete the Services.

**12. Notice.** Notice to the parties concerning this agreement shall be effective only when in writing and delivered personally, emailed, or mailed postage prepaid to the authorized representative of the other Party. For purposes of this agreement, notice shall be sent to the following addresses:

|                     |                                   |
|---------------------|-----------------------------------|
| <b>City</b>         | <b>MPU</b>                        |
| City of Manitowoc   | Manitowoc Public Utilities        |
| Attention: Mayor    | Attention: General Manager        |
| 900 Quay Street     | 1303 South 8 <sup>th</sup> Street |
| Manitowoc, WI 54220 | Manitowoc, WI 54220               |

All notices sent to the City shall have a copy to the City Clerk.

**13. Assignment and Subcontracting.** MPU may not assign rights or delegate duties without the consent of City.

**14. Unemployment Insurance Taxes, Contributions, and Assessments.** MPU shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, retirement benefits, life pensions, annuities and similar benefits which may now or hereafter be imposed by law, regulation or collective bargaining agreements with respect to persons employed by MPU for performance of the Services, whether measured by wages, salaries, remuneration paid or otherwise. MPU shall comply with all laws, rules and regulations applicable to compensation paid its employees. The City shall bear this responsibility for all WWTF employees.

**15. Governing Law.** This Agreement and all attachments hereto and the rights of the Parties hereunder shall be governed by, construed by and enforced in accordance with the laws of the State of Wisconsin. Any litigation regarding this agreement shall be in Manitowoc County Circuit Court.

**16. Non-Waiver of Rights.** The failure of either party to demand strict performance of the terms of, or to exercise any right conferred in, this Agreement or any attachment shall not be construed as a waiver or relinquishment of its right to

assert or rely upon such a term in the future, or consent to any continuing or subsequent failure or breach.

- 17. Severability.** If any provision of this Agreement or any attachment hereto shall under any circumstances be deemed invalid, inoperative, be declared unlawful, or otherwise unenforceable by a court of competent jurisdiction, this Agreement and all attachments hereto shall be construed as if the invalid or inoperative provision has been deleted and all rights and obligations of the Parties shall be construed and enforced accordingly.
- 18. Survival.** Neither completion of the Services nor any termination or cancellation of this Agreement shall be deemed to relieve MPU of any obligations hereunder that by their nature survive completion of the Services, including but not limited to all promises of indemnity and confidentiality obligations.
- 19. Independent Contractor.** MPU is an independent contractor with respect to the performance of the Services. Neither this Agreement nor any attachment hereto is intended to be a contract of hiring under the provisions of any workers' compensation or other laws and shall not be so construed.
- 20. Headings.** Article and paragraph headings contained herein are inserted for convenience and shall have no effect on interpretation or construction of this Agreement or any attachment hereto.
- 21. Successors and Assigns.** Subject to the terms and conditions contained herein, this Agreement and all attachments hereto shall be binding on the Parties hereto and their successors and assigns.
- 22. Conflicting Terms.** Terms and conditions set forth in any attachment to this Agreement which are in conflict with any term or condition set forth in this Agreement shall be of no force or effect and the Parties agree that any conflict between such terms and conditions and the terms and conditions hereof shall be resolved in favor of this Agreement.
- 23. Merger and Modification.** This Agreement and any attachment hereto embody the entire agreement between City and MPU with respect to the Services and supersedes any prior or contemporaneous agreement or understanding between the Parties. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement or any attachment hereto, nor be deemed to affect any amendment. This Agreement and the attachments hereto may only be amended or modified by a written document duly executed by both Parties and attached as an amendment hereto.

**24. Force Majeure.** A party shall not be liable for any failure of or delay in the performance of this Agreement (except for the payment of money) for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders, or any other force majeure event.

This agreement is executed by the persons signing below, who warrant that they have authority to execute the agreement.

**City of Manitowoc**

**Manitowoc Public Utilities**

\_\_\_\_\_  
Justin M. Nickels, Mayor

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Nilaksh J. Kothari, General Manager

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Deborah A. Neuser, Clerk

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Mark R. Seidl, MPU Commission President