

WATER SERVICE AGREEMENT

This agreement is entered into as of the day of 2021, by and between the City of Manitowoc ("City"), Manitowoc Public Utilities ("MPU"), the Town of Newton and the Town of Manitowoc (together the "Town").

RECITALS

1. MPU provides retail water service within the City; and
2. City owns property located at 3130 Hecker Road in the Town of Newton, referred to as the Newton Gravel Pit, which is the subject of an active environmental remediation site; and Potable wells in Town are negatively impacted by groundwater contamination which may be emanating from the Newton Gravel Pit; and
3. The City is cooperating with the Wisconsin Department of Natural Resources ("DNR" or "WDNR") to remediate the site and investigate any groundwater impacts; and
4. DNR is requiring City to provide a long-term safe drinking water source to impacted property owners within Town; and
5. City wishes to extend MPU water service to impacted Town property owners whose wells have tested positive for groundwater contamination as part of the City's testing program; and Town does not have municipal water service that could serve these property owners; and
6. Town wishes to have these property owners provided with a long-term safe drinking water source; and
7. MPU is willing and able to provide water service to impacted property owners identified by the City and the WDNR; and
10. MPU water service has rates approved by the Public Service Commission of Wisconsin ("PSCW") and standards of service prescribed by the PSCW and DNR; and
11. Upon PSCW approval of the water main extension outside of City limits, City will have MPU construct a water main to serve impacted property owners in Town.

NOW, THEREFORE, the parties agree as follows:

1. Service Area. MPU shall provide water service to service properties identified by City and WDNR in Town that have groundwater contamination which may result from the Newton Gravel Pit. In the event that future sampling of wells within the service area and on properties located adjacent to MPU water main installed pursuant to this Agreement are determined to be impacted by groundwater contamination caused or attributable to the Newton Gravel Pit, those properties shall be provided water service by the City and MPU within one (1) year of the discovery of the contamination subject to the terms and conditions of this agreement. Water service to properties located outside the service area described by this Agreement that are

determined to be impacted by groundwater contamination caused or attributable to the Newton Gravel Pit will be addressed by future agreement of the parties.

2. Service Type. City and MPU will work to seek approval for retail service options by the PSCW.
3. Construction Plans. MPU shall construct the water main 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* (the "Contract") which is adopted and incorporated herein by reference, at the City's cost and expense, upon approval by the PSCW. The City and MPU have tentatively contemplated installing future phases, as shown in Exhibit C, and the Town grants preliminary approval to those plans.
4. Water Quality. MPU shall provide retail water service to the owners of the properties identified by City in Exhibit B. This water is safe for human consumption and meets 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 other MPU retail water customers.
5. Easements. Town agrees to grant City any easements necessary for construction of the watermain through Town property and right-of-way. City will attempt to obtain other necessary easements from private property owners. The easements obtained will be similar to those shown in Exhibit D.
6. Water Pressure. MPU shall provide water pressure in accordance with the standards established in NR 810.
7. Water Supply Rate. MPU shall provide water supply at rates in accordance with the standards established in NR 810, installing 8" mains designed to service residential and light commercial/industrial properties.
8. Fire Flow Demand. MPU shall provide fire flow demand as required by Wisconsin law.
9. Hydrants. MPU shall install hydrants along the water main every 600 feet, and shall permit rural volunteer services to connect as needed. MPU will provide the appropriate Fire Departments information on the requirements.
10. Cross Connection Control. Any property owners that maintain private wells shall be required to ensure there is no cross connection between the well and the municipal water system.
11. Permits. MPU shall follow all relevant code for installation of the water main and will pull appropriate permits.
12. Operation and Maintenance. Except for the cost of construction, which shall be borne by City, MPU shall, at its sole cost and expense, operate, maintain, repair, and replace all parts of the water infrastructure. MPU shall recover costs through its rate structure, as approved by PSCW.
13. Increase in Service Area. The parties agree that they will not request annexation of any property. However, should any property owner choose to annex to the City, they will be eligible for water service even if not impacted by the Newton Gravel Pit. Water will only be extended to properties along the water main if the City of Manitowoc or the WDNR identifies the property as a potentially impacted property after water sampling showing test results above the WDNR enforcement standard for the contaminants of concern.

14. No Obligation to Connect. Impacted property owners will be offered water service by the City three times. If they refuse connection, the WDNR will offer service one last time. No Town resident will be compelled to connect by the City.
15. Plumbing Connections to Water Main. The City, at its cost and expense, will install the water main, the lateral, and run water service into the house. Any plumbing inside the house 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 or water softeners) the homeowner chooses to make or that are necessary to bring the plumbing in the house to code. The City and MPU will complete all water connections required by this Agreement notwithstanding the plumbing system condition of any 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.
16. Water Rates. MPU shall charge water rates as established by the PSCW, as amended from time to time.
17. Role of PSCW. The parties acknowledge that by entering this 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 agreement.
18. Right to Appear Before PSCW. The parties agree that notwithstanding this 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 water main.
19. Termination. This agreement shall not terminate unless agreed to by the parties in writing. 20. Record Access. All parties agree that they are subject to Wisconsin's Public Records laws as set forth in Wis. Stat. Ch. 19, and will maintain appropriate records as required by law and the PSCW.
21. Insurance. All parties to this agreement shall be responsible for maintaining appropriate insurance coverage, including workers' compensation, at their sole expense.
22. Legal Relationship. Nothing in this agreement creates an employer/employee relationship, a joint venture relationship, or a principal/agent relationship.
23. Approval/Authority. Each Party represents that this 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 Agreement.
24. Agreement Subject to Rules. This Agreement is subject to the applicable rules and regulations of MPU and the City of Manitowoc, as may be amended from time to time. This includes filings made to the PSCW by MPU.
25. Waiver of Rights. The failure of any Party to insist on strict performance of any of the terms or conditions of this Agreement is not a waiver or relinquishment of any rights.
26. Severability. In the event that any portion of this Agreement is rendered invalid or unenforceable, the remainder of the Agreement will still be in effect.
27. Agreement Binding on Successors. This Agreement is binding upon any successor organization or political subdivision of the state that assumes the responsibilities of a Party.
28. Assignment. This Agreement shall not be assigned without the consent of all Parties.

29. Choice of Laws. This 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.

30. Notice. Any notice required to be given under this 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

Manitowoc Public Utilities
Attn: General Manager
1303 S 8th Street
Manitowoc, WI 54220

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

31. Amendments. No amendments to this Agreement shall be effective unless made in writing and duly approved and signed by the Parties, and approved by the PSCW if so required.

32. PSCW Standing. Any town resident provided with water service from MPU under this Agreement shall have the same standing to appeal or challenge an MPU decision as a City customer.

33. Dispute Resolution. If a Party to the Agreement believes another Party or Parties is in breach, the aggrieved Party shall serve written notice on the other Party consistent with this Agreement. Representatives shall meet and confer to resolve any disputes. [f the initial meeting does not resolve the dispute, the Mayor, MPU General Manager, and Town Chair shall meet within 30 days of the written notice.

34. Civil Actions. Each Party has the right and standing to challenge the actions of another Party under this agreement under any legal and equitable remedy available.

35. Limitation of Commencement of Civil Action. No civil action regarding a breach of this Agreement may occur until the following steps have been taken:

- a. The parties have met under Article 33 to attempt to resolve the dispute.
- b. Notice has been filed under 5893.80, to the extent that it is applicable.
- c. All available PSCW remedies have been pursued.

36. Well Abandonment Required. The City shall, at its cost and expense, properly abandon all wells located on properties connected to the MPU water system.

37. Landscaping Restoration Required. The City shall at its expense landscape and restore all private property disturbed by the water lateral installation.
38. Compliance with Codes and Statutes. Except as otherwise provided by this Agreement, City and MPU shall comply with all applicable codes of the Town of Newton, Town of Manitowoc and Manitowoc County, including all utility policies.
39. General Indemnity. City and MPU agree to indemnify and hold harmless the Town, and all of its 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 or MPU of this Agreement, the construction or operation of the water service extension described in this Agreement or the violation by the City or MPU of any federal or state law, regulation, administrative rule or ordinance. This Agreement of indemnification shall survive termination of this Agreement for a period of six (6) years. This Agreement of indemnity does not waive or forfeit any governmental or sovereign immunity of the Town with respect to the City, MPU or any third parties. The Town retains 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 Town in a sum not to exceed \$10,000.00 for the reasonable legal fees and costs incurred for the review and representation related to this Agreement and ancillary documents, as well as the enforcement of its terms and conditions. City's payment and reimbursement to the Town shall be due and payable within thirty (30) days from written invoice or demand by the Town.
41. Warranty. The City shall guarantee and warrant the restoration of all Town roads disturbed by the water service extension for a period of five (5) years from the date of acceptance by the Town 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 Agreement.
42. Construction Debris. MPU shall be responsible for cleaning up any debris resulting from construction by MPU, its contractors or its subcontractors within the project area. MPU shall clean up all debris within two (2) business days after receiving notice from the Town. If MPU fails to clean-up debris within said two (2) business day period, the Town may perform the clean-up and charge MPU for the costs incurred by the Town for the clean-up.
43. Construction Clean-Up. During construction of the improvements, MPU 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 improvements. MPU shall clean the roadways within two (2) business days after receiving notice from the Town. If MPU fails to clean-up the mud and dirt within said two (2) business day period, the Town may perform the clean-up and charge MPU for the costs incurred by the Town for the clean-up.
44. Environmental Law. City and MPU shall comply with all applicable environmental laws and regulations in the construction, operation, and maintenance of the water service extension,

including any and all requirements promulgated by WDNR as part of the Newton Gravel Pit remediation action (BRRTS # 02-36-000268).

45. Construction Videotape. Pursuant to section 1.10.A.a. of the Contract the Contractor is responsible to videotape all streets and easement areas included in the project area. City and MPU shall provide each Town with a copy of the videotape within ten (10) days of delivery by the Contractor.
46. Effective Date. This Agreement shall be effective as of the last date on the signature page.

signature page to follow

City of Manitowoc

Justin M. Nickels, Mayor

Date

Mackenzie Reed-Kadow, City Clerk

Date

Manitowoc Public Utilities

Troy Adams, General Manager

Date

Alex Allie, Commission President

Date

Town of Newton

Denise Thomas

Denise Thomas, Town Chair

5-11-2022

Date

Barbara Pankratz

Barb Pankratz, Town Clerk

5-11-2022

Date

Town of Manitowoc

Dale Markwardt

Dale Markwardt, Town Chairperson

5-9-2022

Date

Geraldine Gilbert

Geraldine Gilbert, Town Clerk/Treasurer

5-9-2022

Date