



MEMORANDUM

DATE: March 15, 2019

TO: Water Commissioners

FROM: Daniel S. Duchniak, P.E

RE: Recommend Approval of an (Revised) Intergovernmental Cooperation Agreement
with the Town of Waukesha to the Common Council

As the Great Water Alliance progresses through the design and permitting stages, staff and our consultants have held several meetings with the communities the pipelines will be traveling through during construction.

During several of these meetings it has become apparent that we will need to enter into Intergovernmental Cooperation Agreements with several communities outlining the commitments by both entities during construction. We have already entered into an agreement with the City of Franklin for this program.

During the meetings with the Town of Waukesha, it became apparent that we would need to execute an Intergovernmental Agreement with the Town of Waukesha to outline the commitments for each entity.

The agreement basically allows for the City to construct and maintain the pipeline through the Town of Waukesha properties; provides water service to the Town residents along the pipeline route (note: the residents already have access to water in the areas of the project so there are no new properties gaining access as a result of this project); and it identifies the specifications for the paving we will be completing in the Town of Waukesha as a result of this project.

The attached Intergovernmental Cooperation Agreement has been reviewed by City Attorney Running. He is finalizing some of the legal language with the Town Attorney.

I look forward to discussing this item with you at the Water Commission meeting. Please contact me if you have any questions.

Recommended Motion: Recommend Approval of an Intergovernmental Cooperation Agreement with the Town of Waukesha to the Common Council pending legal review.

**City of Waukesha and Town of Waukesha
Intergovernmental Agreement
Great Water Alliance Return Flow Mains through the Town of Waukesha**

This Intergovernmental Cooperation Agreement, referred to herein as the Agreement, is entered into pursuant to Wis. Stats. §66.0301 by and between the Town of Waukesha, referred to herein as the Town; and the City of Waukesha, referred to herein as the City; together, the Town and the City are referred to herein as the Parties.

Recitals

The City intends to install Water Supply and Return Flow Pipelines, referred to herein as Mains. The Mains range from 30- to 36-inch nominal diameter. The Return Flow Pipeline will be installed between the City Clean Water Plant and a parcel located at 60th and Oakwood Road in the City of Franklin. The Water Supply Pipeline will be installed between a new Water Supply Pumping Station in the City of Milwaukee located at the intersection of Oklahoma Avenue and 76th Street and the connection to the Waukesha Water Utility's distribution system at the intersection of Les Paul Parkway and Sunset Drive.

Portions of the Return Flow Pipeline (shown in orange in **Figure 1**) and both Mains (shown in blue in **Figure 1**) will be installed beneath Sunset Drive within their respective rights-of-way, which lie within the jurisdictional boundaries of the Town of Waukesha.

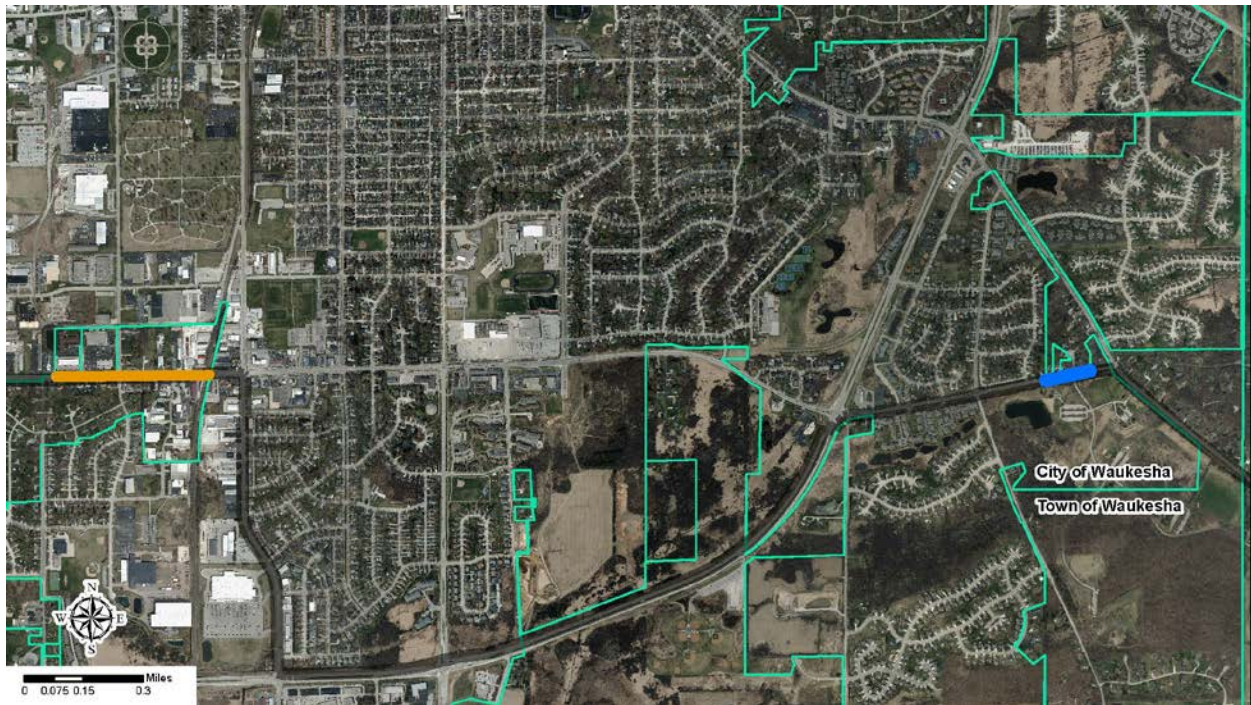


Figure 1 Mains through Town of Waukesha (from Waukesha County GIS)

The Town is willing to allow the City to install the Mains within the Town rights-of-way.

Now, therefore, in consideration of the mutual promises of the Parties stated herein and pursuant to the authority granted by Wis. Stats. §66.0301, the Parties agree and contract as follows:

- 1. Permission for Installation, Maintenance, Repair, and Replacement of Mains.** The Town grants permission, pursuant to Wis. Stats. §60.52, for the City to install, maintain, and to repair and replace as needed, the Mains within the Town's boundaries in Sunset Drive as shown in Figure 1, at the City's sole

expense. The City and its contractors may occupy the rights-of-way and place traffic-control equipment to divert traffic while such work is being done, according to accepted practices and any applicable regulations.

- 2. Town Responsibilities, Rights and Duties with Respect to Third Parties.** The Town shall have no responsibility for the work or the expense of the City's installation, maintenance, repair, or replacement of the Mains, but shall take all reasonable steps to avoid interfering with or damaging the Mains. The Town shall not excavate within the areas depicted in Figure 1, or allow any third party to excavate within the areas depicted in Figure 1, without the City's prior written approval. The City's approval shall not be unreasonably withheld, and any conditions placed upon approval shall be limited to what is reasonably required to protect the Mains, in the City's discretion. Requests for City approval shall be accompanied by a description of the proposed excavation, and plans and drawings of sufficient detail and specificity to allow the City to determine the risk to the Mains posed by the proposed excavation and to determine any conditions upon approval necessary to protect the Mains. The City shall respond to requests for approval within 10 days of the City's receipt of requests that contain the required information. If a claim is made by a third party against the Town solely or in part due to the City's denial of approval or conditions on approval, then provided the Town gives timely notice of the claim to the City, the City will defend, indemnify and hold the Town harmless from damages arising from the claim to the extent the damages are caused by the City's denial or approval or conditions on approval. This duty to defend and indemnify shall, with respect to claims brought by third parties, be subject to all notice requirements and liability limitations provided by Wis. Stats. §893.80, and nothing in this Agreement shall be deemed to be a waiver of any provisions of §893.80. The City shall have the right to, and shall be solely responsible for, enforcing any denial of approval or conditions on approval, and the Town shall have no enforcement responsibility of the City's denial of approval or conditions on approval. The Town shall have no responsibility for the Mains, except for the duty not to allow excavation in the areas depicted in Figure 1 without the City's prior written approval, or liability arising from the presence of the Mains in Town rights-of-way, which shall be the City's sole responsibility.
- 3. Ownership of Mains.** The Mains shall at all times remain the City's property.
- 4. Water Service to Town Residents.** Town residents whose properties abut the rights of way in which the Mains will be installed already have the ability to receive water utility service from the City without annexation. Therefore, the Mains will not be used to provide water utility service to those properties, and nothing in this Agreement shall be deemed to allow connection to the Mains by Town residents.
- 5. Restoration of Streets.** The City shall be responsible, at its sole expense, for the reasonable restoration of the rights-of-way of the streets under which the Mains are installed to the condition they were in prior to any installation, maintenance, repair, or replacement work; but not to an improved condition. In portions of the right of way where both the supply and return-flow mains are installed, the City shall restore the entire width of the entire roadway.
- 6. Inspection of Street Restoration.** Inspectors hired by the City at the City's sole expense will be responsible for the inspection of street restoration in accordance with Town specifications provided by the Town Chair or his designee. Written reports of the inspections shall be provided to the Town, in the format the Town customarily uses for its inspection reports.
- 7. Warranty.** The City shall ensure that Contractors hired by the City to restore the rights-of-way after any installation, maintenance, repair, or replacement work shall warrant the workmanship of the street restoration for a period of one year following acceptance of the work by both Parties.
- 8. Other Terms and Conditions.**
 - a. Authorization by Governing Bodies.** The Parties hereby represent and warrant to each other that the governing bodies of their own municipalities have taken all actions necessary to approve this

Agreement and to authorize the persons signing below to sign this Agreement on behalf of that municipality and that upon full execution of this Agreement it shall be binding on each Party.

- b. No Waiver of Immunities.** Noting in this Agreement shall be construed as a waiver of any governmental immunities, limitations of liabilities, or notice requirements granted or imposed by law.
- c. Severability.** If any provision of this Agreement is declared invalid by any Court of competent jurisdiction, then to the extent that invalid term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be severed, and the remainder of this Agreement will remain in effect and enforceable.
- d. Force Majeure.** Neither Party shall be in breach of this Agreement for acts or failures to act caused by unforeseeable causes beyond the Party's control, including unusual weather, floods, fire, seismic events, war, strikes, and civil unrest.
- e. Integration.** This Agreement embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
- f. Amendments.** No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing, signed by all of the Parties to this Agreement, and attached to this Agreement.
- g. Survival.** Unless specifically limited in this Agreement, any term, condition or provision of this Agreement will survive the execution of this Agreement or any stated time periods, to the extent necessary for their performance. This Agreement is binding upon, and inures to the benefit of, the Parties' successors and assigns.
- h. Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. The Parties agree that if legal action is necessary in any way with respect to this Agreement, it will be filed in the Circuit Court for Waukesha County, Wisconsin.

Dated the _____ day of _____, 2019.

City of Waukesha:

Town of Waukesha:

Shawn N. Reilly, Mayor

John Marek, Town Chairman

Attested by:

Gina L. Kozlik, City Clerk

Kathy Nickolaus, Town Clerk