



## MEMORANDUM

DATE: July 13, 2020

TO: Water Commissioners

FROM: Daniel S. Duchniak, P.E

RE: Recommend Approval of an Intergovernmental Cooperation Agreement with the City of Muskego to the Common Council

The Great Water Alliance has progressed through the design and permitting stages and we are now entering the construction phase of our program. Staff and our consultants have held several meetings with the communities the pipelines will be traveling through.

During meetings with the City of Muskego, we identified a number of areas that should be addressed in an intergovernmental agreement. The areas include items such as: permitting requirements; warranty requirements; use of the pipeline; use of the return flow water; restoration requirements; inspection and indemnification.

The agreement will work to minimize conflicts during construction and define the requirements Waukesha has placed on the contractors.

The attached Draft Intergovernmental Cooperation Agreement (IGA) defines the responsibilities of each party for the project. The IGA is subject to review and approval by City Attorney Running and the Common Council as there may still be some minor language modifications needed.

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 City of Muskego to the Common Council, subject to review by the City Attorney.

**City of Waukesha and City of Muskego**  
**Intergovernmental Agreement**  
**Great Water Alliance Return Flow Pipeline through the City of Muskego**

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

**Recitals**

Waukesha intends to install Water Supply and Return Flow Pipelines. The Return Flow Pipeline will be installed between the City of Waukesha Clean Water Plant and a parcel located at S. 60<sup>th</sup> Street and W. Oakwood Road in the City of Franklin. The Return Flow will be a 30-inch nominal diameter.

A portion of the Return Flow Pipeline (shown in **Exhibit 1**) will be installed within the rights-of-way of Moorland Road, Durham Drive, N. Cape Road, and Ryan Road, which lie within the jurisdictional boundaries of the City of Muskego.

Muskego is willing to allow Waukesha to install the Return Flow Pipeline within Muskego's 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 Return Flow Pipeline.** Muskego grants permission, pursuant to Wis. Stats. §60.52, for Waukesha to install, maintain, and to repair and replace as needed, the Return Flow Pipeline within Muskego's boundaries as shown in Figure 1, at Waukesha's sole expense. Waukesha 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 per Muskego's review and acceptance.
- 2. Waukesha's responsibilities.** Waukesha will be responsible at Waukesha's sole expense for all damage caused to private or public property due to the construction, maintenance, repair, or replacement of the return flow pipeline. All restoration work will be at Waukesha's sole expense, will follow the latest City of Muskego standards and will be completed to the satisfaction of Muskego before being accepted. Waukesha or Great Water Alliance (GWA) shall be responsible for notifying public entities such as: Muskego Police, Fire, garbage collection, Muskego Norway School District and bus company, about the construction schedule and construction location in accordance with the approved Specification 01 31 00 and 32 95 00.
- 3. Muskego Responsibilities.** Muskego shall have no responsibility for the work or the expense of Waukesha's installation, restoration, maintenance, repair, or replacement of the Return Flow Pipeline, but shall take all reasonable steps to avoid interfering with or damaging the Return Flow Pipeline. Muskego shall not excavate within the rights-of-way in which the Return Flow Pipeline are located, or allow any third-party to excavate within the rights-of-way in which the Return Flow Pipeline are located, without prior notification to Waukesha.
- 4. Ownership of Return Flow Pipeline.** The Return Flow Pipeline shall at all times remain Waukesha's property.

5. **Use of Return Flow Water.** The treated effluent in the return flow pipeline cannot be used for any potable water use by Muskego residents. Should Muskego wish to use some of the return flow water for non-potable uses, it can at its expense undertake an engineering analysis of the pipeline's capacity and any modifications that would need to be performed to accommodate such use. Muskego would need to obtain all necessary federal, state and local permits for such use. Muskego would also need to enter into a written agreement with Waukesha specifying the terms and conditions of such use and to ensure Waukesha would be able to continue to meet its obligations under existing permits and approvals.
6. **Restoration of Streets.** Waukesha shall be responsible, at its sole expense, for the restoration of the rights-of-way of the streets under which the Return Flow Pipeline are installed to the condition they were in prior to any installation, maintenance, repair, or replacement work; but not to an improved condition. All restoration work will follow the latest City of Muskego standards and will be completed to the satisfaction of Muskego before being acceptable.
7. **Restoration of Trails.** Waukesha shall be responsible, at its sole expense, for the restoration of the trails to Muskego standards that have been damaged as part of the installation of this return flow pipeline.
8. **Inspection of Street Restoration.** Inspectors hired by Waukesha at Waukesha's sole expense will be responsible for the inspection of street restoration in accordance with Muskego specifications provided by Muskego Mayor or designee. Written reports of the inspections shall be provided to Muskego, in the format Muskego customarily uses for its inspection reports.
9. **City of Muskego expenses.** Waukesha will be responsible for the cost of City of Muskego staff and consultants time to review construction plan adjustments.
10. **Warranty.** Waukesha shall ensure that Contractors hired by Waukesha 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 (1) year following acceptance of the work by both Parties.
11. **As-Constructed Drawings.** Waukesha will provide an electronic copy and pdf of the as-constructed drawings of the Return Flow Pipeline.
12. **Relocation/adjustment.** If a future City of Muskego requires for the GWA return flow pipeline to be adjusted or relocated, it will be at Waukesha's cost, provided that Waukesha reserves the right to perform an alternatives analysis for the proposed adjustment or relocation of the GWA pipeline to determine a cost effective and mutually beneficial solution for both Muskego and Waukesha. If the alternatives analysis reveals that the adjustment or relocation of the Muskego project is more cost effective, Waukesha's cost will be limited to the more cost effective alternative.
13. **Indemnification.** Subject to the procedures and limitations provided in Wis. Stat. § 893.80, Waukesha agrees to indemnify, defend, and hold harmless Muskego, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all claims, demands, damages, suits, and actions, including attorney's fees, caused by reason of any act, omission, fault, or negligence, whether active or passive, of Waukesha, its contractors or subcontractors or anyone acting under its direction or control or on its behalf arising out of the Return Flow Pipeline project. The obligation to indemnify, defend, and hold harmless Muskego, shall be applicable unless: (1) liability results from the negligence of Muskego, its elected and appointed officials, officers, employees, agents,

representatives and volunteers or (2) Muskego has not preserved its immunities under Wis. Stat. § 893.80. This indemnity provisions shall survive the termination or expiration of this Agreement.

**14. Insurance.** Insurance will be provided per Specification 00 73 00.

**15. 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 \_\_\_\_\_, 2020.

**City of Waukesha**

**City of Muskego:**

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Shawn N. Reilly, Mayor

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Rick Petfalski, Mayor

**Attested by:**

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Gina L. Kozlik, City Clerk

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Sharon Mueller, Dir. of Finance & Admin.