

Intergovernmental Cooperation Contract
Village of Wales – City of Waukesha
Wastewater Treatment

This Intergovernmental Cooperation Contract, referred to herein as the Contract, is entered into pursuant to Wis. Stats. §66.0301 by and between the Village of Wales (including any public utility which it might create), referred to herein as the Village; and the City of Waukesha, referred to herein as the City; together, the Village and the City are referred to herein as the Parties.

This Contract rescinds and replaces the “Intermunicipal Agreement between Village of Wales and City of Waukesha,” dated January 16, 2007.

Recitals

The Village wants to construct, operate, maintain and provide to its property owners sewerage facilities within certain specified service areas of the Village. However, the Village does not have the authority to construct a wastewater treatment facility to treat the wastewater generated within those service areas.

The City’s wastewater treatment system has excess capacity, and the Village is within a distance from the City which makes it practical for the Village to connect with the City’s wastewater treatment system. The City’s wastewater treatment system is referred to herein as the System.

The City is willing to allow the Village to connect its sewers for that specified service area with the City’s System, subject to the terms and conditions of this Contract.

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. Definitions.

a. Service Area. The area within the Village, and properties identified outside the Village, that will be connected to the City’s System shall be those areas described in Exhibit A attached hereto and incorporated by reference. This area is referred to herein as the Service Area. The Service Area shall not be expanded, except by the expressed, written, mutual agreement of the Parties; the City shall not be obliged to receive wastewater generated by any source outside of the Service Area; and nothing in this Contract shall be construed to require otherwise.

b. User. Each individual residential unit, or each commercial, industrial or public facility within the Service Area to which a connection is made to Village Facilities, as shown on Exhibit B, is referred to herein as a User. Residential unit, as used herein, shall mean an individual single-family home, an individual condominium unit, an individual apartment, or an individual duplex unit.

c. Village Facilities. All sewerage improvements and facilities required to carry out the purposes of this Contract, and to deliver wastewater from the Service Area to the Collection

Point, defined in Subsection 1.e, are referred to herein as the Village Facilities. Village Facilities specifically includes, without limitation, pumping stations. It is the intent of the Parties that the City shall not be responsible for the construction, maintenance, or improvement of any facilities between the Collection Point and any part of the Service Area.

d. System. The City of Waukesha's wastewater treatment system is referred to herein as the System.

e. Collection Point. The point in the System, designated in the sole discretion of the City, at which the Village Facilities terminate, connect and deliver wastewater from the Service Area to the System is referred to herein as the Collection Point. The Collection Point is shown on the attached Exhibit C, which is incorporated herein by reference.

f. Water Meter Equivalent. The Parties acknowledge that it is their intent to treat Users in the Service Area as if they were residents of the City. However, Users in the Service Area obtain their drinking water from private wells and do not have water meters, whereas users in the City are served by the City's Water Utility and have water meters. The sewer Connection Charge imposed by Waukesha Municipal Code §29.14 is calculated on the basis of the size of the water meters serving the property, and the quarterly Fixed Charge imposed by Waukesha Municipal Code §29.12(3)(a) is charged on a per-meter basis. In order to treat Users in the Service Area the same as properties in the City, the Parties agree that a Meter Equivalent shall be determined for Users in the Service Area, and that the Connection Charge and quarterly Fixed Charge shall be assessed per Meter Equivalent. The Meter Equivalent shall be determined by assuming the User in the Service Area is instead within the City and served by the City's Water Utility; and shall be the size, and of the quantity, of the water meter or meters that would then serve the property. The determination of Meter Equivalent shall be made by the City, in good-faith cooperation with the Village.

2. Village Responsibilities. The Village shall be solely responsible for the following items, all at the Village's sole expense.

a. Design and Construction of Village Facilities. The Village shall plan, design, construct, own, operate and maintain the Village Facilities. The Village shall comply with §29.06 of the Waukesha Municipal Code.

b. Plan Approval by City. Prior to the construction of the Village Facilities, the Village shall submit all plans, drawings and specifications to the City's Department of Public Works and receive the Department's written approval pursuant to Subsection 3.a.

c. Plan Approval by State. Prior to the construction of the Village Facilities, the Village shall comply with Wis. Stats. §281.41 and receive the Department of Natural Resource's approval of the construction of the Village Facilities.

d. Permission for Location of Facilities. The Village shall be responsible for obtaining sufficient rights to the lands over which the Village Facilities will cross.

e. Sewage Meters. The Village shall install two flow-measuring devices on the force main, in close proximity to each other, upstream of the City System, at a location approved by the City, which shall each measure the total flow of wastewater received from the Service Area by the City at the Collection Point. These flow-measuring devices are referred to herein as the Sewage Meters. The purpose of two Sewage Meters is redundancy to verify the accuracy of the first Sewage Meter, allow for Sewage Meter maintenance without disruption of flow measurement, and to provide backup in the event of the failure of one Sewage Meter. If the Sewage Meters differ in their readings by less than five percent (5%), then charges shall be calculated using the average of the readings. If the Sewage Meters differ in their readings by five percent (5%) or more, then the Sewage Meters shall be tested for accuracy, and billing shall be calculated based on the readings of the Sewage Meter that is found to have been most accurate. No wastewater shall be delivered to the City which has not passed through the Sewage Meters. The Sewage Meters' design and specifications shall be approved by the City prior to installation. The Sewage Meters shall measure flow in gallons and be capable of reporting flow rate per specified time period. The City may require that the Village, at the Village's sole expense, test and calibrate the Sewage Meters once per year, or at any time any contemporaneous readings of the two Sewage Meters vary by five percent (5%) or more. Testing and calibration shall be done by a qualified party approved by the City and Village, and a written calibration report shall be provided to the City after each calibration. The Village at its sole expense shall be solely responsible for the purchase, installation, maintenance, repair, replacement, testing, calibration and adjustment of the Sewage Meters; however, the City may periodically inspect and test the calibration of the Sewage Meters, and the Village shall promptly take appropriate corrective action when notified of the need by the City. The Village shall provide a back-up power supply to the Sewage Meters to ensure continuous flow measurement during power outages.

f. Sewage Meter Data Reporting. Sewage Meter measurements shall be collected electronically by cellular telemetry using the Village's control system and cellular telemetry provider. Data shall be available to the City by [internet](#) access to a [web-sitedatabase](#) maintained by the Village and protected by password. The Village shall give the City access to the [web-sitedatabase](#) and all Sewage Meter data. Data shall be available in real-time and historical format for a minimum of five (5) years, and in Excel, SQL, or other agreed-upon spreadsheet format.

g. Monitoring and Sampling of Wastewater. The Village shall, at its sole expense, construct and maintain three manholes and associated equipment for the City to monitor and sample wastewater being delivered by the Village Facilities to the System. The first manhole will receive the force-main discharge. The second will contain facilities for wastewater monitoring and sampling, and is referred to as the Monitoring Manhole. The third manhole will be at the Collection Point, where wastewater enters the System main. The three manholes will be in close proximity to one another. The City shall have the right to access and enter the manholes at any time. The design and specifications of the manholes and associated equipment must be approved by the City before construction. The Monitoring Manhole shall conform to the following requirements:

- i.** Located in the curb lane as close to the edge of the street as possible.

- ii. No less than 60 inches in diameter.
- iii. Maximum depth of 15 feet.
- iv. Equipped with ladder rungs. The top rung must be set at a height that does not interfere with passage of the sampling equipment in or out of the manhole.
- v. Equipped with a stainless steel bracket, shelf, or other means of supporting or suspending the sampling equipment in the manhole, while still providing clearance for confined-space entry, calibration measurements, and manhole maintenance.
- vi. Equipped with a permanent 8-inch Palmer-Bowlus flume with a built-in bubble tube. This is the appropriate size flume for the projected flow rate of 200 gpm.
- vii. The manhole and piping system must be constructed so that the upstream flow is sub-critical (lower in velocity than in the throat of the flume) and non-turbulent, and the downstream flow is not submerged. Preventive or corrective measures must be taken to quiet turbulence and slow the velocity to provide tranquil flow upstream of the flume and distribute flow uniformly through the flume.
- viii. All hardware, fasteners, and anchors must be stainless steel.

h. Inspection and Approval of Finished Construction. The Village shall notify the City of the completion of the construction of the Village Facilities, and shall allow the City to inspect the Village Facilities and connections with facilities serviced and Users for compliance with the approved plans, drawings and specifications; quality of construction; measures to prevent infiltration and inflow; odor-control measures, and compliance with Chapter 29 of the Waukesha Municipal Code.

i. Odor Control. The Village shall be solely responsible, at its sole expense, for the control of odors originating and escaping from the Village Facilities. The Village shall, at its sole expense, treat the force-main wastewater with Bioxide calcium nitrate solution, or its chemical and functional equivalent, to control the generation and release of hydrogen sulfide from the force-main discharge. There shall at all times be in the wastewater a residual nitrate concentration of no less than 3 mg/l and no greater than 10 mg/l and a dissolved sulfide concentration of less than or equal to 0.5 mg/l, at the Monitoring Manhole referred to in Subsection 2.g. The Village shall conduct weekly testing from May through September, and monthly testing from October through April, for nitrate and dissolved sulfide at the Monitoring Manhole. The City may require the frequency of this testing to be increased if consistent odor and sulfide control is not being achieved, and may reduce the frequency if consistent odor and sulfide control is being achieved. The Village shall also maintain an average hydrogen sulfide gas concentration of no greater than 5 ppm, measured in the sewer vapor space at the City's manhole number 19114 and the Madison Street pump station. All testing results, including any vapor space odor measurements, shall be submitted monthly to the City. The Village shall also submit to the City a monthly report with supporting documentation that indicates the volume of chemical added daily to the force main. Any changes to the method of odor control or the chemical used shall be subject to the approval of the City.

~~j.~~ — The Village shall be responsible at its sole expense for taking all necessary measures to control odors originating and escaping from the Village Facilities and the Collection Point, both during construction and during the Term of this Contract.

~~k.~~**j.** **Connection to Users within the Service Area.** The Village shall be solely responsible for all arrangements to connect Users to Village Facilities; installing meters for each facility serviced if the Village elects to do so, and making arrangements with Users for maintenance of laterals and connections on private property. The City shall not be responsible in any way, directly or indirectly, to Users for provision of services under this Contract.

~~l.~~**k.** **Subsequent Connections.** All additional connections to the Village Facilities subsequent to the initial inspection of the finished construction of the Village Facilities shall be reported to the City Department of Public Works within two (2) weeks of the date the connection is approved by the Village. Connections shall be subject to inspection by the City for compliance with the approved plans, drawings and specifications, quality of construction, and compliance with Chapter 29 of the Waukesha Municipal Code.

~~m.~~**l.** **Billing and Collection from Users.** The Village shall be solely responsible for metering individual usage, billing and collecting fees from Users. The Village shall pay the City's invoices when due, and the failure of Users to pay the Village's bills shall not be a defense to the Village's payment of the City's invoices. The City shall have no responsibility for collecting payments from Users.

~~n.~~**m.** **User Reporting.** The Village shall compile and report to the City Department of Public Works the number, and service address, of Users within the Service Area as of the date of connection of the Village Facilities to the System. The reported information shall be in sufficient detail for the City to calculate the number of Meter Equivalents in the Service Area, including the type of development, size, and REC consistent with Exhibit B. The Village shall inform the City of new Users and connections to the Village Facilities, including the same information required above, within two weeks of each such new User or connection so that the calculation of Meter Equivalents is at all times based on a current, accurate count of Users and connections. The Village shall be responsible for identifying and reporting to the City all existing industrial Users, and for reporting promptly to the City any subsequently-connected industrial Users, who may be subject to industrial discharge permitting under Waukesha Municipal Code §29.04 or its successor.

~~o.~~**n.** **Wisconsin Pollutant Discharge Elimination System Permit.** The Village shall obtain a WPDES permit from the Wisconsin Department of Natural Resources for operation of a satellite collection system. This permit may be either a general permit or an individual permit. The Village shall comply with all elements of the permit including but not limited to developing a Capacity, Management, Operation, and Maintenance (CMOM) program; submitting Compliance Maintenance Annual Reports (CMAR); and timely reporting of sanitary sewer overflows (SSO). A copy of all reports submitted to the DNR pursuant to the WPDES permit shall simultaneously be sent to the City.

3. City Responsibilities. The City shall provide the following services to the Village. Nothing in this Contract shall be construed to require the City to provide services of a type or extent other than those expressly described herein.

a. Plan Review and Approval. The City shall review the plans, drawings and specifications submitted by the Village pursuant to Subsection 2.b to ensure adequacy for intended service and compatibility with the City's System, compliance with the provisions of this Contract, and compliance with Chapter 29 of the Waukesha Municipal Code; and shall approve them if they are substantially adequate and compatible with the City's System and in compliance with Chapter 29. The City shall not unreasonably withhold approvals. Approval of any documents by the City shall not constitute an assumption by the City of liability or responsibility for the quality of the documents or the information contained in them, and the Village shall at all times remain solely responsible for the design, engineering and construction of the Village Facilities, as defined in Subsection 2.a, and for any liabilities arising from the design, engineering, construction, operation or maintenance of the Village Facilities.

b. Acceptance of Wastewater. The City shall accept wastewater from the Village, generated within the Service Area, delivered by the Village Facilities to the Collection Point. There is no minimum or limit on the amount of wastewater flow the City will accept, provided zoning and uses in the Service Area remain substantially the same as of the date of this Agreement. If parts of the Service Area are re-zoned, permitted uses or densities are substantially changed, or other substantial changes take place which alter the flow into the System or otherwise substantially change the assumptions on which this Agreement was based as of the date of its execution, then the flow of wastewater being delivered to the System from the Service Area will be re-evaluated, and limits on the amount of wastewater accepted by the City may be imposed, as necessary.

c. Treatment of Wastewater. The City shall treat and dispose of all wastewater received from the Village pursuant to Subsection 3.b, in accordance with all state and federal statutes and regulations.

d. Invoice for Services. The City shall invoice the Village, quarterly, for treatment and disposal of wastewater received from the Village pursuant to Subsection 3.b, calculated according to Section 5 below. Payment terms shall be net 60 days.

e. Maintenance of City Facilities. The City shall maintain, at its sole expense, its sewerage facilities from the Collection Point to and including the City's wastewater treatment plant in a good and usable condition, in full compliance with all applicable statutes and regulations, sufficient to provide the services required by this Section 3.

f. Sewage Meter Inspection. The City, upon two (2) business days notice, may periodically inspect ~~and calibrate~~ the Sewage Meter(s) installed by the Village pursuant to Subsection 2.e, and shall promptly report any need for maintenance, ~~repair~~ calibration or replacement of the Sewage Meter(s) to the Village. The Village shall have the right to be present for any such inspection.

g. Inspection of Finished Construction. The City shall inspect the Village Facilities upon notification from the Village that construction is complete. Inspection shall be to verify that the construction complies with the plans, drawings and specifications approved by the City pursuant to Subsection 3.a, that the quality of construction is workmanlike, and that adequate measures have been taken to address surface and ground water infiltration and inflow, and odors.

4. Reimbursement of Expenses. It is acknowledged by the Parties that the City shall not bear any expenses incurred in connection with the Village's design, construction, maintenance, repair or replacement of any part of the Village Facilities, and if the City reasonably incurs any such expenses for the Village's benefit, or provides such services to the Village, including engineering, administration, or legal work incurred in plan approval or the inspection and approval of finished construction, then the Village shall reimburse the City for such expenses or pay to the City the reasonable value of the services provided.

5. Fees. The Village shall pay to the City the following fees, at the times and upon the terms specified:

a. Impact Fee. The Village shall pay the City the sanitary interceptor Impact Fee imposed by Waukesha Municipal Code §4.10 and as stated in the City's then-current Interceptor Fee Schedule. The Impact Fee shall be payable by the Village at the time of the initial connection of the Village Facilities to the System and shall be calculated on the basis of the Users existing in the Service Area at that time. Impact Fees shall be payable by the Village with respect to each subsequent User connecting to the Village Facilities, at the rates shown on the then-current Impact Fee Schedule. The Village shall have the same rights to appeal the imposition or amount of Impact Fees as a resident or property owner in the City would have.

b. Connection Charge. The Village shall pay to the City the Connection Charge imposed by Waukesha Municipal Code §29.14, as follows: The Connection Charge shall be payable by the Village at the time of the initial connection of the Village Facilities to the System on the basis of the number of Meter Equivalents existing in the Service Area at that time, and at the rates shown on the then-current Connection Charge Schedule. Connection Charges shall be payable by the Village with respect to each subsequent connection to the Village Facilities on the basis of the Meter Equivalent for the connection, at the rates shown on the then-current Connection Charge Schedule. The Village shall have the same rights to appeal the imposition or amount of Connection Charges as a resident or property owner in the City would have.

c. Quarterly Service Charge. The Village shall pay the City a continuing Quarterly Service Charge calculated using the Inside User fees defined in §29.12 of the Waukesha Municipal Code, or its successor ordinance, as stated in the schedules issued pursuant to §29.12 as periodically amended. The Fixed Charge defined in §29.12 of the Waukesha Municipal Code shall be paid by the Village per Meter Equivalent in the Service Area, per billing period. The Volumetric Charge defined in §29.12 shall be per every one thousand (1000) gallons metered by the Sewage Meters required by Subsection 2.e. The Volumetric Charge shall not be calculated per User or Meter Equivalent, but shall be calculated only on

the total flow generated by the Service Area measured by the Sewage Meters. The Quarterly Service Charge shall be invoiced by the City to the Village quarterly, and all invoices shall be payable net 60 days. The Village shall have the same rights to appeal the imposition or amount of Quarterly Service Charges as a resident or property owner in the City should have.

d. Wastewater Strength Charges. It is anticipated by the Parties that the wastewater generated by the Village will be within the limits set for Class 1 Inside Users, as defined in §29.12 of the Waukesha Municipal Code. However, if the average of the daily strength readings of the wastewater for a billing period exceeds the limits of Class 1, then the Village will be reclassified for that billing period as a Class 2 Inside User and all fees and strength surcharges applicable to Class 2 Inside Users shall be used in calculating billing to the Village for the subsequent billing period. The Village shall have the same rights to appeal the imposition or amount of Wastewater Strength Charges as a resident or property owner in the City would have.

e. Other Fees and Charges. All other fees, charges and surcharges contained in Chapter 29 of the Waukesha Municipal Code and applicable to Inside Users shall be applicable to the Village and Users, including fees, charges, surcharges and permitting requirements applicable to industrial users. The Village shall have the same rights to appeal the imposition or amount of such other fees and charges as a resident or property owner in the City would have.

f. Future Rate Increases. The Parties acknowledge that ~~wastewater treatment fees and charges~~, Impact Fees and Connection Charges are adjusted periodically; that Quarterly Service Charges and Fixed Charges are adjusted annually, and that they will increase in the future; ~~and that the Waukesha Wastewater Treatment Plant is scheduled for a projected \$67,500,000 plant upgrade, and the City's sanitary sewer collection facilities are scheduled for a projected \$3,500,000 per year upgrade. These upgrades will impact future wastewater treatment rates.~~ The Village shall have the same rights to appeal the imposition or amount of such future rate increases as a resident or property owner in the City would have.

6. Term. The Term of this Contract shall commence upon the date of the last execution by the Parties, and shall terminate upon the occurrence of any of the following:

a. Mutual Agreement. The mutual, written agreement of the Parties to terminate.

b. Unilateral Termination by Village. The delivery of a written notice of the Village's decision not to construct the Village Facilities, no later than ninety (90) days after the Effective Date.

7. Industrial Users. The Parties acknowledge that the Service Area includes residential, commercial, industrial and public Users. All industrial Users, as that term is defined in Chapter 29 of the Waukesha Municipal Code, within the Service Area shall be subject to the requirements of §29.04 or its successor. The Village shall collect from industrial Users all additional surcharges, and permitting, monitoring, inspection and associated fees, as applicable to all industrial users in the City as provided in Chapter 29 of the Waukesha Municipal Code, and shall

promptly remit all such collected amounts to the City. The Village shall enforce all provisions of Chapter 29 (or Village ordinance containing provisions substantially the same as pertinent portions of Chapter 29) relating to industrial users in the Village.

8. Applicability of City Municipal Code Chapter 29. The provisions of Chapter 29 of the Waukesha Municipal Code shall apply to the Village with regard to the Service Area, and the Village shall enforce the provisions of Chapter 29 (or Village ordinance containing provisions identical to pertinent portions of Chapter 29) in the Village upon Users as if the Users were Inside Users, as defined in Chapter 29. Except as expressly provided otherwise in this Contract, the Village and its Users shall for all purposes be treated the same as users located in the City regardless of any present or future provisions in the City Municipal Code to the contrary. The Village shall enforce the applicable provisions of Chapter 29 (or Village ordinance containing provisions identical to pertinent portions of Chapter 29) upon its residents in the Service Area, and no Village ordinance which deals with the same subject matter as Chapter 29 shall conflict with the applicable provisions of Chapter 29, with respect to Users within the Service Area. The applicable provisions of Chapter 29 specifically include penalties for delinquent fee payments. All penalties shall be included in the next quarterly invoice and shall be payable upon invoice terms.

9. Inspections, Notices of Violations. The City shall have the right to inspect the plumbing and wastewater-generation activities of all Users, and if the City determines after such inspection that any deleterious waste is improperly entering the System, or that the Village is violating any federal, state or City ordinance, statute, regulation, or any term of this Contract, then the City shall deliver a written notice of the violation (NOV) requiring the Village immediately to cease or correct the violation or to cause a violating User to cease or correct the violation. If the violation is not ceased or corrected within the time frame specified in the NOV, then the Village shall be in breach of this Contract and the City may pursue any and all available legal and equitable remedies.

10. System Changes Made Necessary by Users. If improvements to the System or the addition to the System of a specific process for treating wastewater are required solely and directly as a result of wastewater generated by a User, the expense thereof shall be paid to the City by the Village. The Village shall be solely responsible for seeking reimbursement from the User. Neither the Village nor Users shall be responsible for payment for changes to the System made necessary by the addition of any third-party municipality, sanitary district or utility district to the System.

11. Memorandum Memoranda of Understanding. If technical issues arise regarding the implementation and continued operation of this Contract which are not addressed in this Contract or which must necessarily be addressed during the implementation and continued operation of this Contract, the Parties agree that they will in good faith resolve the issues and adopt policies and procedures to address the issues, and will not unreasonably refuse to do so. These policies and procedures shall be incorporated into a memorandum memoranda of understanding executed by the Parties, which shall be amended from time to time as necessary, by the mutual written agreement of the Parties.

12. Default. Except for disputes of invoices pursuant to Section 13, if either Party breaches this Contract, the non-breaching Party shall deliver written notice of the breach to the breaching Party, and the breaching Party shall then have thirty (30) days after receipt of the notice to cure the breach or begin diligent, good-faith efforts to cure the breach and the breach is in fact fully cured no later than sixty (60) days after receipt of the notice. No lawsuit may be filed by either Party for breach of this Contract unless such written notice of breach is delivered to the breaching party and the breaching party fails either to cure the breach within 30 days of the receipt of the notice, or the breaching Party fails to begin diligent, good-faith efforts to cure the breach within 30 days of the receipt of the notice and the breach is in fact not cured within 60 days of receipt of the notice.

13. Notice of Disputed Invoice. If the Village disputes any invoice received from the City, the Village shall deliver written notice of the dispute, with supporting detail, to the City Clerk and Director of the Department of Public Works within forty-five (45) days after receipt of the disputed invoice; and if such notice is not so delivered, then the invoice shall be deemed accepted and all disputes arising from it are waived by the Village. If it can be shown that the City was actually aware of the dispute and was not prejudiced by the failure of the Village to give formal, timely written notice as specified, the invoice shall not be deemed accepted nor the dispute waived. The Parties shall attempt in good faith to resolve all fee issues, and shall submit disputes to mediation if they are unable to resolve the disputes mutually. Nothing in this paragraph shall require the Village to exhaust its appeal rights under this Contract (as the equivalent of a City resident or property owner), nor shall this paragraph be construed in any way to prohibit such appeal by the Village.

14. Relationship of Parties. The Parties are independent contractors, and this Contract shall not be deemed to create any other relationship, including without limitation, partnership or joint venture. Neither Party shall be deemed to be vicariously liable for the acts or omissions of the other as a result of this Contract.

15. Indemnification.

a. Mutual Indemnification. The City shall indemnify and hold the Village harmless from any and all third-party claims, demands, causes of action, liabilities and costs, including attorney fees and other costs of defense, arising from damages to or loss of property, personal injuries or the deaths of any persons caused by any negligent act or omission or willful misconduct of the City in the course of performing this Contract. The Village shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, liabilities and costs, including attorney fees and other costs of defense, arising from damages to or loss of property, personal injuries or the deaths of any persons caused by any negligent act or omission or willful misconduct of the Village in the course of performing this Contract. This mutual indemnification shall not be construed to relieve either Party from liability to the other Party for breach of this Contract.

b. Claims of Village Residents and Users. The Village shall indemnify and hold the City harmless from any claims, demands, lawsuits, causes of action asserted by, or any other liabilities to, residents of the Village or Users arising in any way in relation to the City's performance or alleged failure to perform the terms of this Contract. The City shall

be responsible only to the Village for performance of its obligations under this Contract, and not to Users or the individual residents of the Village.

c. Claims Related to Construction Beyond Village Limits. The Village shall indemnify, hold the City harmless from, and assume the defense of any claims asserted or lawsuits filed against the City by any third party challenging the Village's construction of Village Facilities outside of the Village's corporate limits and connection to the System without township approval. The City shall cooperate with the Village in all aspects of such defense, and the Village shall have the sole discretion to select legal counsel for the City's defense. Such legal counsel may be the same as the Village's legal counsel.

d. Immunities Preserved. Nothing in these indemnification provisions shall be construed to waive any governmental immunity of either party under §893.80 Wis. Stats. or otherwise.

16. Books and Records. The Village and the City shall keep accurate books, records, and accounts of costs, expenses, expenditures, and receipts as they pertain to this Contract. Upon reasonable notice, either Party shall be entitled to examine any and all such books and records. Either Party may request an annual certified audit report of the books and records of the other Party.

17. Authorization by Governing Bodies. The Parties hereby represent and warrant to each other that the governing body of their own municipality has taken all actions necessary to approve this Contract and to authorize the person signing below to sign this Contract on behalf of that municipality and that, upon full execution of this Contract, it shall be binding on each municipality.

18. Severability. If any provision of this Contract is declared invalid by any Court of competent jurisdiction, then to the extent that invalid term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.

19. Force Majeure. Neither Party shall be in breach of this Contract 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.

20. Adequacy of Consideration. The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to support the obligations contained in this Contract, and that where values have been expressed, such values have been received.

21. Integration. This Contract embodies the entire Contract 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.

22. Amendments. No amendments, additions, or changes of any kind to this Contract will be valid unless in writing, signed by all of the Parties to this Contract, and attached to this Contract.

23. Survival. Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors and assigns.

24. Governing Law and Jurisdiction. This Contract 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 Contract, it will be filed in the Circuit Court for Waukesha County, Wisconsin.

25. Conflicts With Municipal Code. The Village and its Users as identified in Exhibit A shall be deemed to be Inside Users as defined in Waukesha Municipal Code Chapter 29 for purposes of this Contract, and if any current or future provision of the Municipal Code should conflict or attempt to treat the Village or its Users otherwise, then this Contract shall supersede any such provision and shall control.

26. Effective Date. This Contract shall be effective as of the date last executed by either of the Parties.

City of Waukesha

Attest:

By Shawn N. Reilly, Mayor

Gina L. Kozlik, Clerk-Treasurer

Date: _____

Village of Wales

Attest:

By _____
Village President

By _____
Village Clerk

Date: _____

Attachments:

Exhibit A – Map of Service Area

Exhibit B – List of residential, commercial, industrial, and public facilities within the Service Area

Exhibit C – Map of Collection Point location