

MEMORANDUM

DATE: September 17, 2018

TO: Water Commissioners

FROM: Daniel S. Duchniak, P.E

RE: Recommend Approval of an Intergovernmental Cooperation Agreement with the City of Franklin 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 these meetings with the City of Franklin, we became aware of an interceptor sewer project they were planning in South 60th Street, just south of Ryan Road, that would eliminate a sanitary sewer lift station in the area. The proposed project would run parallel to our return flow pipeline in the same street.

To minimize disruption to the area, staff proposed the City of Franklin incorporate the interceptor sewer project into our return flow pipeline project. There would be different bid items for the interceptor sewer and the City of Franklin will be responsible for all costs associated with installation of the interceptor sewer.

The attached Intergovernmental Cooperation Agreement defines the responsibilities of each party for the project. The IGA has been reviewed and approved by City Attorney Running.

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 Franklin to the Common Council

CITY OF FRANKLIN AND CITY OF WAUKESHA, WATER UTILITY
INTERGOVERNMENTAL COOPERATION AGREEMENT
SOUTH 60TH STREET SEWER PROJECT – GREAT WATER ALLIANCE WATER RETURN PROJECT
ON SOUTH 60TH STREET BETWEEN WEST RYAN ROAD (STH 100) AND WEST OAKWOOD ROAD,
CITY OF FRANKLIN

THIS AGREEMENT is made and entered into, pursuant to Wis. Stat. § 66.0301 Intergovernmental Cooperation, by and between the City of Franklin (“FRANKLIN”), 9229 West Loomis Road, Franklin, Wisconsin 53132, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of Wisconsin and the City of Waukesha, Water Utility (“WAUKESHA”), 115 Delafield Street, PO Box 1648, Waukesha, WI 53187, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of Wisconsin (collectively, the “PARTIES”; individually, the “PARTY”).

WHEREAS, FRANKLIN seeks to abandon the Industrial Park Sewage Lift Station located on the east side of South 60th Street midblock between West Franklin Drive and West Oakwood Drive by constructing a sewer line beneath South 60th Street to an interceptor sewer in West Ryan Road (STH 100); and

WHEREAS, WAUKESHA seeks to construct a return-water main beneath South 60th Street as part of the Great Water Alliance project to transport wastewater reuse from the Wastewater Treatment Facility located in Waukesha to the Root River located at South 60th Street and West Oakwood Drive located in Franklin; and

WHEREAS, both PARTIES seek to construct their respective projects circa the year 2021; and

WHEREAS, FRANKLIN has selected the same consultant hired by WAUKESHA, Greeley and Hansen, Inc. (“CONSULTANT”), to perform survey, geotechnical, engineering, and other design work; and

WHEREAS, in order to avoid multiple excavations and reconstructions of South 60th Street for the WAUKESHA and FRANKLIN separate projects, and to obtain cost savings for both PARTIES, WAUKESHA is amenable to allowing FRANKLIN’s project to be incorporated within WAUKESHA’s project at incremental cost to FRANKLIN; and

WHEREAS, the purpose of this AGREEMENT is to set forth the understanding of the PARTIES.

NOW, THEREFORE. IT IS HEREBY AGREED, by and between the PARTIES, as follows:

1. FRANKLIN shall employ CONSULTANT to design FRANKLIN’s project such that the FRANKLIN pipe utilizes the same trench as WAUKESHA’s project, but at a lower vertical elevation and horizontally adjacent to the WAUKESHA pipe.
2. WAUKESHA shall allow FRANKLIN’s consultant(s) to utilize Waukesha design information, including, but not limited to field survey, geotechnical work, and utility coordination.
3. The PARTIES shall require CONSULTANT to generate separate specifications for FRANKLIN’s and WAUKESHA’s work, such that the extent and costs of each PARTY’s work can be separately determined.
4. WAUKESHA shall allow FRANKLIN to include all of the work associated with FRANKLIN’s project, as specified by CONSULTANT and agreed to by Franklin, to be included within the public bidding for WAUKESHA’s project as an alternate bid.
5. FRANKLIN’s alternate bid items shall be anything associated with the abandonment of the existing lift station and also trench and pipe materials and installation for elevations below what is needed for the WAUKESHA project.

6. WAUKESHA shall include all items needed for its project outside of FRANKLIN's alternate bid items, including, but not limited to bedding and backfill surrounding the WAUKESHA pipe, all surface restoration, traffic control, contractor's mobilization, and construction inspection services.
7. WAUKESHA shall receive and review qualified bids, award and enter into a contract with the lowest qualified bidder ("CONTRACTOR"). Before awarding a contract, WAUKESHA shall consult with FRANKLIN and receive FRANKLIN's approval of the bid relating to FRANKLIN's work.
8. The contract with CONTRACTOR shall identify FRANKLIN as a third-party beneficiary of the contract with respect to FRANKLIN's separately-specified work, specifically including but not limited to the right to enforce all warranties of quality of workmanship and materials. WAUKESHA shall not have any responsibility for enforcing the contract with respect to FRANKLIN's separately-specified work, and each PARTY shall be responsible for enforcing the contract against CONTRACTOR with respect to their respective portions of the work.
9. Each PARTY shall be responsible for monitoring the CONTRACTOR's performance of the contract and construction of the PARTIES' respective portions of the work, and each PARTY releases the other from any liability for failure to monitor or supervise the other's portion of the work.
10. To the extent that damages or liabilities are covered by insurance during construction, each PARTY waives the right of subrogation for such damages or liabilities, and each PARTY shall obtain an endorsement to their liability insurance policies waiving the right of subrogation with respect to such damages and liabilities.
11. FRANKLIN hereby authorizes WAUKESHA and the selected CONTRACTOR, upon the award of contract as set forth herein, to perform the work necessary to complete the PROJECT within FRANKLIN's South 60th Street right-of-way (ROW) between West Ryan road (STH 100) and West Oakwood Road.
12. FRANKLIN shall inspect all work performed by CONTRACTOR promptly upon its completion, and shall notify WAUKESHA no later than 10 days after WAUKESHA's receipt of CONTRACTOR's invoice for such completed work of any failures of the work to comply with the terms of the contract. If FRANKLIN does not so notify WAUKESHA within that time period, or if FRANKLIN expressly gives its acceptance of the work, then FRANKLIN shall have accepted the work.
13. After FRANKLIN has accepted work, WAUKESHA shall pay CONTRACTOR's invoice for that work, and bill FRANKLIN for the amounts attributable to FRANKLIN's work as specified by the CONSULTANT. WAUKESHA shall not pay any CONTRACTOR invoice for work associated with FRANKLIN's portion of the contract until FRANKLIN has accepted that work.
14. FRANKLIN shall pay WAUKESHA's bills in full promptly, and no later than 45 days after the date of issue date of the bill. By accepting work, FRANKLIN agrees that it will reimburse WAUKESHA for payment for that portion of the work, and waives any defenses to payment of WAUKESHA's bill. By accepting work and paying WAUKESHA, FRANKLIN does not waive any causes of action or defenses with respect to the CONTRACTOR for breach of contract or breach of warranty..
15. No construction shall begin for any improvement to the PROJECT until this AGREEMENT is executed by the PARTIES. Acceptance of bids for the PROJECT shall be determined solely by WAUKESHA, pursuant to paragraph 7. above.
16. Upon completion of the PROJECT the PARTIES will continue to own and maintain their respective pipes within South 60th Street.
17. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the contracting municipality PARTY or its insurer to rely upon the limitations, defenses, and immunities contained

within Wisconsin law, including those contained within Wisconsin Statutes §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality PARTY or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

18. If any provision of this AGREEMENT is contrary to any law, then the provision shall be deemed amended to comply with such law, and this AGREEMENT shall remain enforceable to the extent that it may.
19. This AGREEMENT shall be effective upon the last date of approval by the respective governing bodies of FRANKLIN and WAUKESHA.

The above stated conditions and terms are accepted and agreed to by the PARTIES and the PARTIES have set their hands and seals as follows:

CITY OF FRANKLIN

Stephen R. Olson, Mayor

Approved as to form:

Sandra L. Wesolowski, City Clerk

To certify available funds for payment:

Jesse A. Wesolowski, City Attorney

Paul Rotzenberg, Director of Finance and Treasurer

CITY OF WAUKESHA, WATER UTILITY

Shawn N. Reilly, Mayor

Gina L. Kozlik, City Clerk-Treasurer

Daniel S. Duchniak, General Manager, Water Utility

Joseph J. Piatt, President, Water Utility Commission

G.J. Zinda, Secretary, Water Utility Commission

Approved as to form:

Brian E. Running, City Attorney