

Memorandum of Agreement

MILWAUKEE COUNTY (“MC”) and WAUWATOSA (“WAUWATOSA”), enter into this Memorandum of Agreement (Agreement) as of the ___ day of _____, 2013, by and between MC and WAUWATOSA as it relates to the transfer of seven water utility customers from MC’s water utility to WAUWATOSA’s water utility. MC and WAUWATOSA are collectively referred to as the “Parties,” and individually as a “Party.”

RECITALS

WHEREAS, in an effort to avoid certain new capital construction costs associated with construction of the Zoo Interchange, estimated to be approximately \$1,700,000, which costs would be borne by the customers of the MC, MC wishes to transfer to WAUWATOSA and WAUWATOSA wishes to receive, seven customers currently served by the MC’s water utility. These customers include (1) UWM Real Estate Foundation’s Innovation Park LLC, (2) MC’s Camp Wil-O-Way building on Underwood Parkway, (3) UW-Milwaukee County Cooperative Extension’s Urban Gardens, (4) MC’s Fleet building, (5) Wisconsin Lutheran College Athletic Facilities, (6) Milwaukee County Research Park Corporation (MCRPC) and (7) MC’s Children’s Court Center. MC wishes to lease the West Water Tower (“Tower”) located in the MCRPC to WAUWATOSA in exchange for the provisions described herein; and

WHEREAS, a transfer of associated MC water service facilities to the Wauwatosa Water Utility would provide an opportunity to significantly improve Wauwatosa Water Utility service to its customers in the southwestern portion of the service area;

The Parties hereby agree as follows:

1. This Agreement shall be for a term of 10 years. Ten years represents that length of time required to defease the general obligation bonds (“the Bonds”) issued by the County to finance the Tower (See Attachment A). Upon the conclusion of year ten, ownership of the Tower and underlying land shall be transferred to WAUWATOSA at a cost of \$1.00.
2. During the term of the Agreement, WAUWATOSA shall pay MC an annual sum, which will be the greater of \$25,000 or forty-percent (40%) of the total net revenue realized by WAUWATOSA from the transfer of the seven water utility customers to WAUWATOSA’s water utility system. The payment shall be made by April 1 for the preceding year.
3. During the term of this Agreement, MC will retain the current cell antenna revenue collected at this location. Any additional revenues from the siting of additional cell tower equipment on the Tower will accrue to WAUWATOSA.
4. WAUWATOSA will maintain the Tower and MC shall provide WAUWATOSA with technical support as necessary to effectuate transference of the Tower and seven water utility customers.
5. As part of the transfer, MC agrees to execute an easement agreement with Wauwatosa for the water mains that will become part of the WAUWATOSA Water Utility through the transfer of the seven customers (as named in the recitals) and the Tower.
6. MC and WAUWATOSA will negotiate costs for the capping, abandonment, valve adjustments and cross-connections needed to complete Phases I and II.

7. Neither MC nor the seven customers transferred to WAUWATOSA shall be responsible for any costs not directly associated with the provision of water service or other services actually provided by WAUWATOSA to MC or those customers.
8. MC and WAUWATOSA agree to discuss the fire protection fee charged to MC government as part of the next phase of the water utility transfer.
9. WAUWATOSA will not take any action, omit to take any action, cause any action to be taken or cause the omission of any action that would adversely affect the exclusion of the interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes, including without limitation any private use of the Tower (or the water stored therein); provided that WAUWATOSA is not responsible for the effect that the continuation or renewal of any existing contracts or use arrangements made by MC with respect to the Tower have on the tax-exempt status of the interest on the Bonds.
10. IN WITNESS WHEREOF, the Parties have caused this instrument to be executed on the stated day and year.

SIGNATURES ON FOLLOWING PAGE

MILWAUKEE COUNTY

By: _____
Chris Abele, Milwaukee County Executive

Date

By: _____
Joseph J. Czarnecki, Milwaukee County Clerk

Date

By: _____
Don Tyler
Director, Department of Administrative Services

Date

Approved as to form:

By: _____
Kimberly R. Walker
Milwaukee County Corporation Counsel

Date

CITY OF WAUWATOSA

Kathleen Ehley, Mayor

Date

Carla M. Ledesma, City Clerk

Date

John Ruggini, Finance Director

Date

Approved as to form and execution:

Alan R. Kesner, City Attorney

Date