

**INTERGOVERNMENTAL COOPERATIVE PLAN  
BETWEEN THE TOWN OF BROOKFIELD  
AND THE CITY OF NEW BERLIN**

The Town of Brookfield, a Wisconsin town located in Waukesha County, Wisconsin (“Town”) and the City of New Berlin, a Wisconsin municipal corporation, located in Waukesha County, Wisconsin (“City”) hereby enter into this Intergovernmental Cooperative Plan (“Plan”) pursuant to the provisions of Sec. 66.0307, Wis. Stats.

**RECITALS**

**WHEREAS**, the Town has existed and operated as a Town under the provisions of Chapter 60, Wis. Stats., at all times material hereto; and,

**WHEREAS**, the City is an incorporated municipality operated as a City under the provisions Chapter 62, Wis. Stats., at all times material hereto; and,

**WHEREAS**, the Town and City have adopted Resolutions declaring their intent to enter into a Boundary Agreement and Cooperative Plan in accordance with the provisions of Sec. 66.0307, Wis. Stats., and now intend to cooperatively prepare a Plan which meets the requirements for approval of the Department of Administration (“Department”) in accordance with the authority granted the Town, City and Department pursuant to Sec. 66.0307, Wis. Stats.; and,

**WHEREAS**, the Town and City are of the opinion that intergovernmental cooperation and joint planning, as set forth in the following Plan, will provide for the best use of land and natural resources and high quality and efficient services for residents of both the Town and City; and,

**WHEREAS**, the Town and City are of the opinion that it is in the best interest of the residents of the Town and City to provide effective and efficient joint planning and to manage their future growth in the areas referenced in this Plan; and,

**WHEREAS**, the Town and City, by adoption and submittal of this Plan, intend to secure their respective abilities to address future growth and development within their respective jurisdictions, and to provide for an orderly growth of lands located in both the Town and City;

**NOW, THEREFORE**, in consideration of the mutual promises of the parties, the receipt and sufficiency of which is mutually acknowledge, the Town and City hereby agree as follows:

**SECTION 1: Participating Municipalities.**

The Town and City, whose respective boundaries are as of the effective date of this Plan, are shown on the maps appended hereto as Exhibits A and B, respectively and, the legal

description of each municipality of the Town and City being appended hereto as Exhibits C and D, respectively, hereby enter into this Plan under the authority of Sec. 66.0307, Wis. Stats.

**SECTION 2: Contact Persons.**

The following persons and their successors are authorized to speak for their respective municipalities regarding this Plan:

For the Town:           Town Chairperson, Keith Henderson

For the City:            Mayor David Ament

**SECTION 3: Adjustments Subject to the Plan.**

This Plan will affect the territory (herein the “Territory”) currently located in the Town and City in certain respects, as it relates to the potential extension and provision of municipal services. Notwithstanding the foregoing, the existing common boundary line between the Town and City, as of the effective date of this Plan, and as depicted on Exhibits A and B, shall remain the boundary line as between the Town and City in perpetuity; provided however, that the governing bodies of the Town and City shall retain the authority to change those boundaries by amendment to this Plan.

**SECTION 4: Purposes.**

The Plan is intended to achieve the general purpose described in Sec. 66.0307(3)(b), Wis. Stats., which is to guide and accomplish a coordinated, adjusted, and harmonious development of the Territory covered by the Plan consistent with each participating municipality’s comprehensive plan. The parties have further identified the following specific purposes of this Plan:

- a. To increase governmental efficiency through the sharing of services that had been provided separately by the Town and City, and to eliminate duplicative or unnecessary expenditures.
- b. To assure orderly development by combining the land use planning, development and zoning functions of the Town and City.

**SECTION 5: Consistency with Comprehensive Plans.**

Both the Town and City currently maintain Comprehensive Plans developed in accordance with the provisions of Sec. 66.1001, Wis. Stats. Both the Town and City have determined that the provisions of this Plan are consistent with the respective Comprehensive Plans of the Town and City, copies of which shall be submitted to the Department with the submittal of this Plan.

**SECTION 6: Transfer of Interest in the Poplar Creek Interceptor.**

On April 26, 1976 the Town and City entered into an Agreement with the City of Brookfield for the construction and operation of a sanitary sewer interceptor in the Poplar Creek/Deer Creek drainage basin, which interceptor is known as and referred to herein as the "Poplar Creek Interceptor". A copy of the Agreement is appended hereto as Exhibit E and incorporated herein by reference.

Under the terms of the Agreement, the Interceptor was constructed in segments. In 1986, the Town desired to construct an additional segment of the Interceptor which, when constructed, would allow the extension of sanitary sewer service to areas of the Town located south of Interstate 94 and, at some point in the future, would also allow the extension of sanitary sewer services for the City. The Town, City and City of Brookfield then modified the April 26, 1976 Agreement, in part, so as to provide that the construction of the additional segment of the Interceptor requested by the Town would be paid for by the Town, and, that the City would be required to reimburse the Town only in the event and at such time as residents of the City were provided sanitary sewer service. A copy of the Agreement, approved by the City on January 28, 1986 and the Town of February 4, 1986 is appended hereto as Exhibit F and incorporated herein by reference.

Pursuant to the Agreement between the Town, City and City of Brookfield, as amended, an additional segment of the Poplar Creek Interceptor was constructed, and the cost was paid by the Town.

Subsequent to completion of the Poplar Creek Interceptor, the City determined that the sanitary sewer services, would not be extended to residents of the City, and accordingly, transferred to the Town, the Interceptor capacity in the Poplar Creek Interceptor so as to allow the Town to extend sanitary sewer service to additional Town residents and businesses. However, the Agreement between the Town, City and City of Brookfield, a copy of which is appended hereto as Exhibit G, did not provide for a conveyance by the City to the Town of the City's ownership in the Poplar Creek Interceptor. Accordingly, the City of Brookfield has continued to invoice the City for certain costs associated with the continued operation and maintenance of the Poplar Creek Interceptor even though the City has conveyed to the Town all of the City's interest in the Poplar Creek Interceptor. As of December 31, 2018, the City of Brookfield asserts and continues to assert that the City owes the City of Brookfield two hundred and twenty-five thousand nine hundred twenty-eight dollars and 17/100 (\$225,928.17), although both the Town and City dispute that the City owes that sum or any other sum to the City of Brookfield.

The Town and City agree, that upon approval of this Plan, all right, title and interest in the ownership of any portion of the Poplar Creek Interceptor owned or possessed by the City shall be transferred to the Town. The conveyance shall be deemed retroactive to the date of the conveyance of capacity in the Poplar Creek Interceptor. As a part of the conveyance, the Town shall release, without payment, any obligation the City may owe to the Town as a result of public funds expended by the Town for the purpose of constructing the Poplar Creek Interceptor. Further, the Town shall indemnify and hold the

City harmless for any and all obligations which the City may owe to the City of Brookfield, under the terms of the Agreements relating to the construction, operation and maintenance of the Poplar Creek Interceptor. As used herein, the term “obligations” is intended to refer to, and encompass any and all claims which the City of Brookfield has in the past, or may in the future, assert against the City under the terms of the Agreements referred to herein, including but not limited to the claimed obligation as of December 31, 2018 in the amount of two hundred and twenty five thousand nine hundred twenty eight dollars and 17/100 (\$225,928.17). The Town agrees to make payment to the City of Brookfield of the full outstanding amount for such operation and maintenance expenses, which the City of Brookfield claims are due and owing at the time of the approval of this Agreement by the Department of Administration, with such payment being made to the City of Brookfield within 30 days of the date of the approval of the Agreement by the Department of Administration. Both the Town and City have, and continue, to assert that all obligations claimed by the City of Brookfield under the terms of the Agreements are without merit. In the event it is determined that the City is obligated to make any payment to the City of Brookfield under the terms of the Agreements referred to herein, the Town, in addition to defending any such claims, shall be responsible for the payment of all obligations which are determined to be owed to the City of New Berlin under the terms of the Agreements referenced herein.

As additional consideration for the assumption of the City’s obligations under the Agreements referenced herein, the City agrees that the City will retain its status as a Class 3 City until at least July 1, 2020.

#### **SECTION 7: Future Sanitary Sewer and Water Extension Area.**

Although the City has, as a matter of policy, determined that the City will not extend or provide sanitary sewer and/or municipal water service to areas located in the western portion of the City, some areas of the City located north of State Highway 59/Greenfield Avenue may require the extension of sanitary sewer and/or municipal water services at some time in the future. The area for which such potential service future services depicted on Exhibit H, and referred to herein as the “Future Service Area”.

The Town agrees that, to the extent the Town has the ability to provide sanitary sewer and/or water service to the future service area, and subject to any existing agreements between the City and the City of Milwaukee, as well as diversion permit from the State of Wisconsin Department of Natural Resources previously issued to the City, The City will provide sanitary sewer service and/or municipal water service to City residences whose properties are located in the Future Service Area and subject to the following conditions:

- a. The Town receives a request to provide sanitary sewer and/or water service from both the property owner located within the Future Service Area and from the City; and,
- b. The Town will extend the requested sanitary sewer and municipal water service, to the extent the Town has the ability to do so, but only upon the same terms and conditions that the Town provides the same sanitary sewer and/or water service to

residents of the Town. To the extent that the extension of sanitary sewer and/or water service would result in the levy of a special assessment against the benefited property, such assessments will be levied in accordance with the provisions of Sec. 66.0703, Wis. Stats., and shall apply the same terms and conditions for payment of the assessment as are extended and provided to other residents of the Town.

**SECTION 8: Dispute Resolution.**

- A. Scope. All disputes over the interpretation or application of this Plan shall be resolved according to the dispute resolution procedures contained in this Section.
- B. Mediation. If the dispute cannot be resolved by the personnel directly involved, the parties will conduct the following mediation process before invoking formal arbitration:
1. Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
    - a. Either representative may request the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within 5 days of the request for a mediator, a qualified mediator will be appointed by the Chairperson of the Alternative Dispute Resolution Committee of the State Bar of Wisconsin, or if the Chair fails to appoint a mediator, by the American Arbitration Association.
    - b. The mediation session shall take place within 45 days of the appointment of the respective representatives designated by the parties, or the designation of a mediator, whichever occurs last.
    - c. In the event that a mediator is used, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least 120 days prior to the first scheduled mediation session. The parties will also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement such information.
    - d. The mediator does not have authority to impose a settlement upon the parties but will attempt to help the parties reach a satisfactory resolution of their dispute. All mediation sessions are private. The parties and their representatives may attend mediations sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties shall not rely on, or introduce as evidence in any arbitrable, judicial, or other proceeding, views expressed or suggestions made by the other party with respect to a possible settlement of the dispute, or admissions made by the other party in the course of the mediation proceedings.
    - e. The expense of a mediator, if any, shall be borne equally by the parties.

- C. Arbitration. If unresolved after Section 10 B. above, the parties will submit the dispute to binding arbitration by an arbitrator of recognized qualifications. If the parties cannot agree on an arbitrator, they will request an arbitrator from the American Arbitration Association. The parties may agree to an alternative method for the selection of the single arbitrator.
1. The Town and the City will equally divide the fees of the arbitrator as well as the costs of court reporters, if any. The parties are responsible for the fees of their own attorneys and expert witnesses subject to any award of costs or fees by the arbitrator.
  2. The arbitrator shall not be bound by rules of evidence or the substantive, internal laws of the State of Wisconsin. The award is final and binding and shall be enforceable at law. The arbitration provisions of Chapter 788, Wis. Stats. shall apply to the arbitration proceedings unless the parties otherwise agree.
  3. The parties agree that arbitration proceedings must be instituted within 1 year after the claimed breach was discovered or in the exercise reasonable diligence could have been discovered and that the failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims.

**SECTION 9: Division of Assets and Liabilities.**

The Town and City agree that no adjustment relating to division of assets and liabilities were required as a result of any future transfer of land under the terms of this Plan.

**SECTION 10: Planning Period.**

The Planning Period, as that term is used and defined in Sec. 66.0307, Wis. Stats., shall continue in perpetuity.

**SECTION 11: General Provisions.**

A. Indemnification. To the extent the Town is required to indemnify the City under any provision of this Plan, upon receipt of any demand or litigation which would require the Town to indemnify the City based upon the demand or litigation, notice will be promptly given to the Town, together with a copy of any documents in the possession of the City which give rise to requirement of indemnification, and the Town shall thereafter provide a legal defense to any claim asserted against the City, and will otherwise indemnify the City under the terms of this Plan.

B. No Waiver. The failure of either party to require strict performance with any provision of this Plan will not constitute a waiver of the provision or any of the rights under this Plan. Rights and obligations under this Plan may only be waived or modified in writing. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any party.

C. Performance Standard. This Plan requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Plan imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a party, the consent or approval shall not be unreasonably withheld.

D. Construction. This Plan shall be literally construed to accomplish in this Plan is the product of numerous individuals representing the various interests. Therefore, ambiguities shall not be construed against the drafter of this document. This Plan should be construed to give a reasonable meaning to each of its provisions and a construction that would render any of its provisions meaningless, inexplicable, or mere surplusage is to be avoided.

E. Enforceability. The enforceability of this Plan will not be affected by statutory amendments, changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Plan is binding on their respective successors, agents, and employees.

F. Smart Growth Law. The parties acknowledge that this Plan has been executed after the Wisconsin Legislature's enactment of Sec. 66.1001, Wis. Stats., which pertains to comprehensive land use planning. The preceding is generally referred to as "Smart Growth Law." The parties acknowledge that they have entered into this Plan in contemplation of the standards and requirements of the Smart Growth Law. This Plan is intended to be an Intergovernmental Cooperation Agreement under the Smart Growth Law and therefore may be amended, if necessary, to comply with the requirements of the Smart Growth Law.

G. Incorporation. The City agrees that the City shall not object to any action taken by the Town, subsequent to the approval of this Plan, which actions intended to seek the incorporation of the Town as a City or Village in accordance with the provisions of the applicable statutes governing any incorporation effort.

IN WITNESS WHEREOF, the parties will have caused the execution of this Plan by their Duly authorized officers as of the date first written above.

CITY OF NEW BERLIN

By: \_\_\_\_\_  
Mayor David Ament

ATTEST:

\_\_\_\_\_  
Georgia Stanford, City Clerk

TOWN OF BROOKFIELD

By: \_\_\_\_\_  
Keith Henderson, Chairman

ATTEST:

\_\_\_\_\_  
Elisa Cappozzo, Town Clerk

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