

**BOUNDARY STIPULATION AND INTERMUNICIPAL AGREEMENT
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 Intermunicipal Agreement (“Agreement”) pursuant to the provisions of Sec. 66.0301, 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, Wis. stats. section 66.0301(6)(a) provides any two municipalities whose boundaries are immediately adjacent at any point may enter into a written agreement determining all or a portion of a common boundary line between the municipalities; and,

WHEREAS, the Town and City, by adoption and submittal of this Plan, intend to secure their respective abilities to address the provision of sanitary sewer and water service to City residents and property owners, including both developed and undeveloped properties within the City and to transfer to the Town the remaining interest of the City in the Poplar Creek Interceptor;

WHEREAS, Wis. stats. section 66.0301(6)(c) provides that before this Agreement may take effect, it must be approved by the governing body of each municipality by the adoption of a resolution and before each municipality may adopt a resolution, a public hearing on the agreement must be held after due notice; and,

WHEREAS, on the ___ day of _____, 2020, after due notice at joint public hearing, this Boundary Stipulation and Intermunicipal Agreement between the Town of Brookfield and the City of New Berlin was approved by the Town Board and by the Common Council;

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: Definitions.

As used herein, the defined terms shall have the following meanings:

Brookfield Customers shall mean all customers for whom Brookfield provides Utility Services, whether within or outside of the jurisdictional boundaries of Brookfield.

Capital Costs shall mean those capital expenditures of the Town of Brookfield made for the purpose of purchasing sanitary sewer treatment capacity, for the construction of sanitary sewer interceptors and mains, for the construction of water towers, municipal water mains and other infrastructure related to the operation and distribution of the Brookfield water system.

Common Boundary Line shall mean the permeant and fixed boundary line between the Town and the City as depicted on **Exhibits A and B**.

Fox River Water Pollution Control Facility shall refer to the regional sanitary sewage treatment plant located in the City of Brookfield.

Future Utility Service Area shall mean that area of the City for which Brookfield will provide Utility Services available as described more particularly on **Exhibit F**.

Municipalities shall mean, collectively, the Town of Brookfield and the City of New Berlin.

Utility Services. Shall mean sanitary sewer and municipal water.

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
Town of Brookfield
645 N. Janacek Road
Brookfield, WI 53045

For the City: Mayor David Ament
City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151

SECTION 3: Establishment of Permanent Boundary Between Town and City.

Pursuant to the provisions of Sec. 66.0301(6)(b), Wis. Stats., the boundaries established by this Agreement shall remain be permanent and fixed boundaries of both the Town and the City. The permanent and fixed boundaries of the City, are described and depicted on **Exhibit A**. The permanent and fixed boundaries of the Town are depicted and described on **Exhibit B**.

SECTION 4: Incorporation of the Town.

The City shall not, at any time during the term of this Agreement, opposed any petition or request by the Town of Town residents to incorporate the Town and either a Village or City under

any statutory authority under any statutory authority which allows or permits incorporation of unincorporated municipalities.

The Common Boundary Line between the Town and City is depicted on **Exhibit A and B**, and shall remain the Common Boundary Line between the Town and City; provided however, that the governing bodies of the Town and City shall retain the authority to change the Common Boundary Line by amendment to this Plan.

SECTION 5: 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 C** 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 D** 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, the Town purchased from the City the capacity in the Fox River Wastewater Treatment Facility necessary to provide sanitary sewer service to residents in the City. The Town, subsequent to purchase of the capacity, has extended additional sanitary sewer service to Town residents and businesses, but retains a surplus capacity which can be utilized to provide sanitary sewer service to adjoining municipalities, including the City and the Village of Waukesha.

However, the Agreement between the Town, City and City of Brookfield, a copy of which is appended hereto to as **Exhibit E**, 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 August 31, 2020, the City of Brookfield asserts and continues to assert that the City owes the City of Brookfield _____ dollars

and ___/100 (\$ _____), 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 August 31, 2020.

The Town, by this Agreement, shall assume responsibility for payment, and shall pay to the City of Brookfield, all amounts which the City of New Berlin may owe to the City of Brookfield under the terms of the respective Agreement for such operation and maintenance expenses, including but not limited to those obligations that have been are claimed due as of August 31, 2020.

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.

Upon approval of this Agreement, both the City and the Town shall notify the City of Brookfield of the existence of this Agreement, and the assumption, by the Town, of any obligation which the City of Brookfield claims due in owing from the City for operation and maintenance under the terms of the Agreements referenced herein.

SECTION 6: Future Utility Service Area.

Although the City has, as a matter of policy, previously determined that the City would not, as a general rule, provide sanitary sewer and/or municipal water services to areas located in the western portion of the City, some areas of the City located north of State Trunk Highway 59/Greenfield Avenue may require the extension of Utility Services. The area for which Future Utility Services will be provided under the terms of this Agreement is depicted on **Exhibit F** which is appended hereto and incorporated herein by reference.

The Town shall, upon request by the City for the extension of sanitary service and/or water service to properties within the Future Utility Service Area, extend Utility Services, provided that the extension of Utility Services is consistent with, and not contradicted by, any existing or future Agreement between the City and the City of Milwaukee, as well as the diversion permit of the State of Wisconsin Department of Natural Resources previously issued to the City. The extension of Utility Services shall be subject to the following conditions:

1. The Town receives a request to provide sanitary sewer and/or water service from both the property owner located within the Future Utility Service Area and from the City; and,
2. The Town will extend the requested sanitary sewer and municipal water service, upon the same terms and conditions that the Town provides the same sanitary sewer and/or water service to residents of the Town. Residents within the Future Utility Service Area will reimburse the Town for the cost of extending sanitary sewer and/or water mains, and shall be responsible for payment of any hook-up fees or other charges contained in the Town Codes, which charges and fees apply to all Brookfield Customers.
3. 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. The Town and City acknowledge the provisions of Wisconsin Statute Sec. 66.0707 will apply to any special assessment levied under this Plan provision. If any assessment is levied under this Plan provision, the City will take all reasonable and necessary steps to approve said assessment in accordance with Wisconsin Statute Sec. 66.0707.

SECTION 7: Waiver of Extraterritorial Plat Approval and Zoning Authority.

A. Land Division. The City, effective as of the execution of this Agreement, waives extraterritorial plat approval rights otherwise afforded the City pursuant to the provisions of Sec. 236.10, Wis. Stats. This waiver extends to land divisions for which either plats or Certified Survey Maps are required pursuant to the provisions of Chapter 236, Wis. Stats., or any Ordinance enacted under the authority granted by Chapter 236, Wis. Stats.

B. Zoning. The City, effective as of the execution of this Agreement, waives the right to exercise extraterritorial zoning authority granted the City pursuant to Sec. 62.23(7a), Wis. Stats. as such authority would extend to lands located within the permanent and fixed boundaries of the Town as described in this Agreement. The City also waives the right to extend the City of New Berlin Comprehensive Plan to those areas within the permanent fixed boundaries of the Town which authority is granted pursuant to the provisions of Sec. 66.23(2) or (3), Wis. Stats., as well as Sec. 59.69(1), Wis. Stats.

SECTION 8: 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.

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.

(SIGNATURES ON FOLLOWING PAGE)

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