

AGREEMENT

FOR CONSTRUCTION AND OPERATION OF A SANITARY SEWER INTERCEPTOR
IN THE POPLAR CREEK-DEER CREEK DRAINAGE BASIN

AGREEMENT entered into this 26th day of April, 1976 by and among the CITY OF BROOKFIELD, a municipal corporation organized and existing under the laws of the State of Wisconsin with principal offices at 2000 North Calhoun Road, Brookfield, Wisconsin, the CITY OF NEW BERLIN, a municipal corporation organized and existing under the laws of the State of Wisconsin with principal offices at 16300 West National Avenue, New Berlin, Wisconsin and the TOWN OF BROOKFIELD, a body corporate organized and existing under the laws of the State of Wisconsin with principal offices at 655 Janacek Road, Waukesha, Wisconsin, hereinafter called the PARTIES to this agreement:

WITNESSETH:

The PARTIES have agreed that it is to their mutual benefit to construct and operate and maintain a sanitary interceptor sewer, hereinafter called the "Poplar Creek-Deer Creek Interceptor", to serve that portion of the Fox River Drainage Basin by gravity as shown on the drawing attached hereto and incorporated herein by reference as "Exhibit A", Poplar Creek-Deer Creek Drainage Basin System Map, dated September 1, 1975.

All PARTIES to this Agreement have territory in the said drainage basin. Poplar Creek-Deer Creek Interceptor will terminate at, and connect to the Fox River Water Pollution Control Center, a sewage treatment facility owned and operated by the City of Brookfield at the location designated as Point 12 on said "Exhibit A". Wastes transmitted by the Poplar Creek-Deer Creek Interceptor will be treated at the Fox River Water Pollution Control Center under the terms of separate treatment contracts between the City of Brookfield and the other parties.

NOW, THEREFORE, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration to each in hand paid by the other, receipt of which is hereby acknowledged, and in consideration of the covenants herein contained, the Parties contract and agree as follows:

1. The "Total Cost", as hereinafter defined, for the installation of the Poplar Creek-Deer Creek Interceptor, shall be shared and paid for by the said municipalities on the following basis:

a. Pro-rata Basis.

Each Party's share of the "Total Cost" of the installation of the Poplar Creek-Deer Creek Interceptor shall be determined on a Gross Area Estimated Flow Basis in accordance with the estimated percentages of total flow contributed by each municipality between the Points designated and enumerated in the chart entitled "Design and Cost Sharing of Sanitary Sewers, Poplar Creek Basin", dated September 1, 1975, attached hereto and incorporated herein by reference as "Exhibit B".

b. The "Total Cost" shall include.

- (1) Construction costs paid to the sewer contractors who are awarded the sewer construction contracts as the lowest responsible bidders.
- (2) Engineering fees paid for the design of the project and supervision of the installation of the said sewer. These fees will include whatever labor and material costs are incurred to design, prepare plans and specifications, advertise and award contracts and supervise the construction.
- (3) Inspection fees for construction inspection.
- (4) Permit fees.
- (5) Legal Fees
- (6) Litigation Expense
- (7) Condemnation Awards

c. All monies received from Federal Grant and/or State Grants shall be shared by said municipalities on the pro-rata basis established in Item 1.a. herein.

2. Upon execution of this Agreement a Joint Sewage Commission shall be established.

a. Each of the Parties shall designate one official to represent it upon a Joint Sewage Commission, established under Section 66.30 of the Wisconsin Statutes. Members of the Commission shall serve at the pleasure of the governing body by whom appointed and successors shall be appointed by the same governing body. Such Commission shall be known as the Poplar Creek-Deer Creek Interceptor Commission and shall have jurisdiction over all main interceptor sewers within the Poplar Creek-Deer Creek Drainage Basin as shown on "Exhibit A" attached to this instrument. The Commission shall have the following authority: to construct, operate, supervise, and maintain the Poplar Creek-Deer Creek Interceptor Sewer on behalf of its municipalities.

- b. Such Commission shall, from among its members, designate a Chairman and a Secretary and shall adopt such rules of procedure as shall enable it to most efficiently carry out the functions assigned to it by the parties to this Agreement. The Chairman shall preside at all meetings of such Commission and perform such other duties as may be assigned to him under the rules of procedure of the Commission, and the Secretary shall act as the agent of the Commission for all contracts to or from the State and Federal Governments in connection with the requirements and conditions of State Grants and Federal Grants and perform such other duties as may be assigned to him under such rules of procedure. Such rules of procedure shall be submitted to, and approved by, the governing body of each municipality before becoming effective.
- c. Immediately after its appointment, the Commission shall authorize, direct and carry out the design, bidding, construction, payment, and operation of said Poplar Creek-Deer Creek Interceptor as herein provided.
3. The Parties agree that the City of Brookfield Engineering Staff, under the direction of the Commission shall have complete charge of design and supervision of construction for Phases I and II of the project. Design and construction supervision for Phase III will be assigned by the Commission at the time of construction.
4. The Commission shall follow this time schedule as nearly as possible.
- a. Phase I, from Point 9 to Point 12 as designated on Exhibit "A",
- (1) All necessary easements shall be acquired in the name of the City of Brookfield where they lie within the City limits, and jointly in the names of the City of Brookfield and the Town of Brookfield where they lie within the Town Limits.
- (2) The City of Brookfield shall complete all plans and specifications and obtain all necessary approvals and permits. Upon completion, the plans and specifications shall be forwarded to the Commission for approval and advertising for bids.

- (3) Bids shall be received by _____ barring unforeseen delays.
- (4) Phase I shall be completed and placed in operation within 12 months after award of contract.
- (5) The City of Brookfield and the Town of Brookfield shall furnish the Commission with satisfactory proof that their respective shares of the "total cost" referred to in Paragraph 1 and Paragraph 4 a (7) have been provided for and that the said funds are available for the project before the Commission proceeds to award the Contract.
- (6) The City of Brookfield and the Town of Brookfield shall pay the Commission from time to time, pursuant to Paragraph 6 of this Agreement, their respective shares of the "total cost" for Phase I from Point 9 to Point 12.
- (7) The City of Brookfield shall also advance and pay from time to time pursuant to Paragraph (6) of this Agreement, the City of New Berlin's share of the "total cost" from Phase I from Point 9 to Point 12 to the Commission, which share (with accumulated interest) shall be reimbursed by the City of New Berlin to the City of Brookfield at such time as a contract is awarded for the installation of Phase III of the Poplar Creek Interceptor from Point 1 to Point 5. Said accumulated interest shall be computed at the rate of 5.80% per annum from May 28, 1975 until reimbursed as provided herein.
- (8) "The parties agree that the financial commitments herein assumed by each of them shall be binding on their governing bodies, with their payments to be determined and paid as the acts are performed and the conditions met which are the basis for such payments"
- b. Phase II, from Point 5 to Point 9 and from Point 13 to Point 5 as designated on Exhibit "A"
- (1) All necessary easements shall be acquired in accordance with Paragraph 4a (1) of this Agreement.
- (2) The City of Brookfield shall complete all plans and specifications and obtain all necessary approvals and permits. Upon completion, the plans and specifications shall be forwarded to the Commission for approval and advertising for bids.
- (3) Bids shall be received by _____

- (4) Phase II shall be completed and placed in operation within 24 months after award of contract.
 - (5) The City of Brookfield and the Town of Brookfield shall furnish the Commission with satisfactory proof that their respective shares of the "total cost" referred to in Paragraph 1 and Paragraph 4.b.(7) have been provided for and are available for the project before the Commission proceeds to award the Contract.
 - (6) The City of Brookfield and the Town of Brookfield shall pay the Commission from time to time, pursuant to Paragraph 6 of this Agreement their respective shares of the "total cost" for Phase II and Point 5 to Point 9 and from Point 13 to Point 5.
 - (7) The City of Brookfield shall also advance and pay from time to time pursuant to Paragraph 6 of this Agreement the City of New Berlin's share of the "total cost" for Phase II from Point 5 to Point 9 to the Commission, which share (with accumulated interest) shall be reimbursed by the City of New Berlin to the City of Brookfield at such time as a contract is awarded for the installation of Phase III of the Poplar Creek Interceptor from Point 1 to Point 5. Said accumulated interest shall be accumulated at the rate of 5.80% per annum from May 28,1975 until reimbursed as provided herein.
- C. Phase III, from Point 1 to Point 5 as designated on Exhibit "A".

- (1) Upon receiving written notification from either the City of New Berlin or the Town of Brookfield of their desire to proceed with Phase III, the Commission shall schedule said project.
- (2) All necessary easements shall be acquired in accordance with Paragraph 4a (1) of this Agreement.
- (3) The Commission shall arrange for completion of plans and specifications and obtain all necessary approvals and permits. Upon completion, the plans and specifications shall be forwarded to the Commission for approval and advertising for bids.
- (4) The City of Brookfield, the City of New Berlin and the Town of Brookfield shall furnish the Commission with satisfactory proof that their respective shares of the "total cost" referred to in Paragraph 1 have been provided for and are available for the project before the Commission proceeds to award the Contract.

- (5) The City of Brookfield, the City of New Berlin and the Town of Brookfield shall pay the Commission from time to time, pursuant to Paragraph 6 of this Agreement, their respective shares of the "total cost" for Phase III from Point 1 to Point 5.
- (6) The City of New Berlin shall reimburse the City of Brookfield for its' share of Phase I and II before the Commission awards the contract for Phase III. This reimbursement to include accumulated interest expense incurred by the City of Brookfield in financing the City of New Berlin's share of Phase I and II.
5. The Poplar Creek-Deer Creek Interceptor Commission shall advertise, take bids, and award contracts for such Poplar Creek-Deer Creek Interceptor and shall supervise and control the construction thereof, except that:
- a. No construction contract shall be awarded without the approval of all three Parties by resolution, provided that such approval shall not be unreasonably withheld.
 - b. All municipalities will be made a party to all construction contracts, with full rights of enforcement, performance and damages.
 - c. Any extras awarded to the Contractor in excess of \$1,000.00 per item must be approved by the Commission before the extra work is performed.
6. Each municipality shall pay to the Poplar Creek-Deer Creek Interceptor Commission the funds necessary for its share of this project and shall arrange its own financing at its own cost. As the project proceeds, each municipality will make payouts to the Poplar Creek-Deer Creek Interceptor Commission of its proportionate share of the project, based upon certificates issued by the Poplar Creek-Deer Creek Interceptor Commission, except as provided in Item 4 herein.
7. Upon completion , each party shall own that portion of the Intercept lying within its' corporate limits, and each municipality shall have the right to perpetual use of the sewer. Future revisions in said Municipal Corporate Limits, if any, shall result in corresponding changes in ownership of these portions of the Interceptor affected by said revisions.

8. Operation and Maintenance:

a. Maintenance costs shall be shared by the municipalities as follows, the budget for which shall have been submitted to, and approved by, each Municipality:

- (1) Replacement, relocation or reconstruction of any part of the Poplar Creek-Deer Creek Interceptor according to the formula established in Paragraph 1 and Exhibit "B" of this Agreement, except that after five years, such formula may be changed by mutual negotiation.
- (2) Administration expense and routine maintenance, such as "rodding out" and maintenance inspection, according to the formula established in Paragraph 1 and Exhibit "B" of this Agreement.

b. Meter Stations shall be constructed and located as required to establish the amount of flow contribution from each Municipality. The stations shall be constructed in accordance with City of Brookfield requirements. Maintenance and operation responsibilities for these meter stations shall be in accordance with the terms of separate intercommunity treatment contracts.

9. No areas shall be added to the original project district as shown on "Exhibit "A" except with the mutual consent of the Commission.

10. No party shall change any zoning classification of any of the land in the project except to a Business, Industrial or Single Family Zoning Classification District, without the consent of the other parties. Such consent shall not be unreasonably withheld. It is the intent of the parties that the home rule powers of each shall be respected; however, the parties also understand and agree that increased population densities may overload the interceptor capacity and therefore such increased density may not be allowable. The parties further understand and agree that such density changes shall increase the financial share of the municipality whose sewerage flow is increased by said density changes.

11. All extension or branch sewers constructed by either municipality shall be at the cost of said municipality unless the extension or branch is to be shared by more than one Municipality, in which case joint construction Agreements shall be entered into by the participating Municipalities.

12. This Agreement shall be binding upon the successors and assigns of said Municipalities.

IN WITNESS WHEREOF, each of the Parties hereto has caused these presents to be executed by its duly authorized officers and its municipal seal to be hereunto affixed all as of the day and year first above written.

IN PRESENCE OF:

Wm. A. Blalock
Clark W. Wagoner

CITY OF BROOKFIELD

William A. Mitchell Jr
Mayor
Dennis R. Ferry
City Clerk

IN PRESENCE OF:

Ernest Greve
Coaklyn Blum

CITY OF NEW BERLIN

P. Henry Clark
Mayor
Donald W. De Gruin
City Clerk

IN PRESENCE OF:

Harlan D. Doss
Janette L. Lewman

TOWN OF BROOKFIELD

Harold W. Wagoner
Town Chairman
Myra C. Seidel
Town Clerk

POPLAR CREEK BASIN

SEGMENT	MUNIC.	AREA DESIGNATION (Per Exhibit)	INDIVIDUAL AREA (ACRES)	COST SHARING CUMULATIVE AREA (ACRES)	COST SHARING FLOW (cfs)	TOTAL FLOW	COST SHARING BREAKDOWN (%)	DESIGN FLOW (cfs)	SEWER SIZE & PARTS FULL
-2	CNB TOB COB	NP-1 TP-1 CP-1	7726 144 223	7726 144 223	38.63 0.71 1.11	40.45	95.50 1.75 2.75	32.36	48" @ 0.07% (.60 Full)
-3	CNB TOB COB	TP-2	0 589 0	7726 733 223	38.63 3.67 1.11	43.41	88.99 8.45 2.56	34.73	48" @ 0.07% (.65 Full)
-4	CNB TOB COB	TP-3 CP-3	0 54 22	7726 787 245	38.63 3.94 1.22	43.79	88.22 9.00 2.78	35.03	48" @ 0.07% (.66 Full)
-5	CNB TOB COB	TP-4 CP-4	0 120 49	7726 907 294	38.63 4.54 1.47	44.64	86.54 10.17 3.29	35.71	48" @ 0.07% (.67 Full)
-6	CNB TOB COB	TP-5 TD-13-14-15 CD-13-14-15	0 294 2180	7726 1201 2474	38.63 7.02 14.96	60.61	61.42 14.79 23.79	36.37	54" A 0.07% (.58 Full)
7	CNB TOB COB	TP-6 CP-6	0 291 49	7726 1492 2523	38.63 9.30 15.21	63.14	61.18 14.73 24.09	37.88	54" @ 0.07% (.62 Full)
8	CNB TOB COB	TP-7	0 58 0	7726 1550 2523	38.63 10.12 15.21	63.96	60.40 15.82 23.78	38.38	54" @ 0.07% (.64 Full)
9	CNB TOB COB	TP-8 CP-8	0 41 179	7726 1591 2702	38.63 11.50 16.10	66.23	58.33 17.36 24.31	39.74	54" @ 0.07% (.66 Full)
10	CNB TOB COB	TP-9 CP-9	0 72 695	7726 1663 3397	38.63 11.87 19.58	70.08	55.12 16.94 27.94	42.05	54" @ 0.07% (.69 Full)
11	CNB TOB COB	TP-10 CP-10	0 204 0	7726 1867 3397	38.63 14.01 19.58	72.22	53.49 19.40 27.11	43.33	54" @ 0.07% (.71 Full)
12	CNB TOB COB	TP-10 CP-10	0 0 0	7726 1867 3397	38.63 14.01 19.58	72.22	17.16 6.23 8.70	43.33	72" @ 0.07% (.43 Full)

CITY OF NEW BERLIN
TOWN OF BROOKFIELD
CITY OF BROOKFIELD

September 1, 1975

(See Page 2 for notes)

DESIGN AND COST SHARING OF SANITARY SEWER
DEER CREEK BASIN

SEGMENT	MUNIC.	AREA DESIGNATION (Per Exhibit)	INDIVIDUAL AREA (ACRES)	COST SHARING CUMULATIVE AREA (ACRES)	COST SHARING FLOW (cfs)	TOTAL FLOW	COST SHARING BREAKDOWN (%)	DESIGN FLOW (cfs)	SEWER SIZE SLOPE & PARTS FULL
13-14	TOB COB	TD-13 CD-13	13 1717	13 1717	.06 11.18	11.24	0.53 99.47	11.24	27" @ .15% (.75 Full)
14-15	TOB COB	TD-14 CD-14	68 51	81 1768	.68 11.43	12.11	5.62 94.38	12.11	27" @ .15% (.80 Full)
15-5	TOB COB	TD-15 CD-15	124 412	205 2180	1.54 13.49	15.03	10.25 89.75	15.03	36" @ 0.07 (.70 Full)
TOB COB	TOWN OF BROOKFIELD CITY OF BROOKFIELD								

GENERAL NOTES:

- 1) Flow Factors For City & Town of Brookfield Vary According To Zoning Areas.
- 2) Zoning Flow Factors Used:
 Residential 0.005
 Commercial 0.005
 Conservancy 0.005
 Office & Light Ind. Industrial 0.0125
 Industrial 0.025
- 3) Cost Sharing of Segment 11-12 Based on Stone and Robinson, Fox River Watershed Study Indicating 32.09 Percent Flow Contributed From Poplar Creek Sub-Basin.
- 4) Flow factors as noted above, were used (City of New Berlin at a constant 0.005) for all sub-trunks and Poplar Interceptor for cost sharing purposes, however design flow of the Poplar Interceptor reflect a decreased flow factor of 0.004 from points 1 - 5 and 0.003 from point 5 - 12.