

**INTERGOVERNMENTAL COOPERATIVE PLAN  
BETWEEN THE TOWN OF BROOKFIELD  
AND THE TOWN OF WAUKESHA**

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

**RECITALS**

**WHEREAS**, Brookfield and Waukesha have existed and operated as Towns under the provisions of Chapter 60, Wis. Stats., at all times material hereto; and,

**WHEREAS**, Brookfield and Waukesha desire to enter into this Plan for the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development and redevelopment of certain lands in Waukesha, described more particularly in this Agreement as the Joint Utility Service Area (“JUSA”), which development and redevelopment with sanitary sewer and water service is consistent with the Comprehensive Plan of Waukesha, as well as the Waukesha County Comprehensive Plan; and,

**WHEREAS**, Brookfield and Waukesha have determined that intergovernmental cooperation by extension of sanitary sewer and water services, as set forth in this Plan, will provide for the best use of land and natural resources, and make available to Waukesha residents, high quality, and efficient utility services; and,

**WHEREAS**, the extension of sanitary sewer and water services to Waukesha, as provided by this Plan, will benefit Brookfield by permitting recovery of capital costs expended by Brookfield, and will result in additional customers for the Brookfield utilities; and,

**WHEREAS**, Brookfield and Waukesha, 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 extension of utility services which will facilitate development and redevelopment of lands located in the JUSA; and,

**WHEREAS**, Brookfield and Waukesha have received comments regarding the proposed Cooperative Plan at a joint public hearing conducted on September 19, 2019, (Exhibit A) and subsequent to that public hearing, have received written comments from the City of Waukesha and the City of Brookfield, which written comments are appended to this Cooperative Plan as Exhibits B & C respectively; and,

**WHEREAS**, Brookfield and Waukesha have taken into consideration the public hearing comments and written comments referenced herein, and have modified the initial draft of this Cooperative Plan in response to those comments;

**NOW, THEREFORE**, in consideration of the mutual promises of the parties, the receipt and sufficiency of which is mutually acknowledged, Brookfield and Waukesha hereby agree as follows:

**SECTION 1: Definitions.**

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

Boundary. Shall mean the common boundary line between the Town of Waukesha and the Town of Brookfield, as established when the Townships were initially created, and as currently exists as depicted on Exhibit D & E.

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.

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

Joint Utility Service Area (“JUSA”). Shall mean that portion of the Town of Waukesha for which Brookfield will make utility service available as described more particularly on Exhibit H.

Municipalities. Shall mean, collectively, the Town of Brookfield and the Town of Waukesha.

Utility Services. Shall mean sanitary sewer and municipal water.

**SECTION 2: Participating Municipalities.**

Brookfield and Waukesha’s respective boundaries as of the effective date of this Plan are shown on the maps appended hereto as Exhibits D and E, respectively. The legal descriptions of each municipality are appended hereto as Exhibits F and G, respectively, Brookfield and Waukesha hereby enter into this Plan under the authority of Sec. 66.0307, Wis. Stats.

**SECTION 3: Contact Persons.**

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

For Brookfield: Town Chairperson, Keith Henderson

For Waukesha: Town Chairperson, Brian Tom Fischer

**SECTION 4: Existing Boundary.**

Adjustment of existing common boundary lines between Brookfield and Waukesha are not required in order to implement this Cooperative Plan. Accordingly, the common boundary line between Brookfield and Waukesha will remain the common boundary line during the Planning Period. In the event either of the municipalities incorporate as a Village or City, neither municipality shall accept or approve any annexation of any territory from the other municipality.

**SECTION 5: Purpose of Plan.**

This 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 and redevelopment of the JUSA with each participating municipality's Comprehensive Plan. The parties have further identified the following specific purposes of this Plan:

- A. To increase governmental efficiency by the extension of sanitary sewer and water services from Brookfield to the JUSA in accordance with the terms of this Plan.
- B. To allow Brookfield to recover capital costs and annual operating expenses that relate to the provision of sanitary sewer and water services to Brookfield customers.
- C. To promote orderly and more efficient development and redevelopment of lands within the JUSA as described in this Plan.

**SECTION 6: Consistency with Comprehensive Plans.**

This Plan is consistent with the requirements of the Town of Waukesha Comprehensive Plan and the Waukesha County Comprehensive Plan as required by Sec. 66.0307(3)(c), Wis. Stats.

Waukesha has adopted a Comprehensive Plan developed in accordance with the provisions of Sec. 66.1001, Wis. Stats. Waukesha has determined that the provisions of the Town of Waukesha Comprehensive Plan, a copy of which will be submitted to the Department of Administration with the submittal of this Plan. In accordance with the provisions of Sec. 66.0307(3)(d)4., Wis. Stats., appended to this Plan as Exhibit I is the statement of Shaun Mularkey, Planning Consultant for Waukesha, which details the manner in which the terms of this Plan are consistent with the Waukesha Comprehensive Plan. As noted in the statement, as well as other portions of this Plan, no adjustment of the common boundary line is required or necessary in order to implement the terms of this Plan.

Brookfield is a participant in the Waukesha County Comprehensive Plan. The provision of sanitary sewer and water services, as provided by this Plan, is consistent with the Waukesha County Comprehensive Plan. As noted in that Plan:

“Where cities and villages own and operate essential public utilities not provided by adjacent towns, the plan presumes that cities and villages will either annex unincorporated territory recommended in the plan for urban development and provide extension of essential utility services to serve such development, or that the cities and villages will reach agreement with adjacent unincorporated towns on the extension of those essential services without the need for annexation and municipal boundary change.” *Waukesha County Comprehensive Plan*, pg. 7-44.

Brookfield, although a Town rather than a City or Village, owns 12.83% treatment capacity in the Fox River Water Pollution Control Facility (the City of Brookfield Sewage Treatment Plant), and, owns and operates a municipal water system subject to Public Service Commission rules and regulations. Thus, the extension of utility services by the Town of Brookfield is consistent with the purpose and provisions of the Waukesha County Comprehensive Plan.

### **SECTION 7: Content of Plan.**

Wisconsin Statutes Section 66.0307(3)(d) describes certain required Plan elements, which are hereby addressed directly or by reference as follows:

- A. The existing common boundary line between Waukesha and Brookfield will not be modified or changed during the Planning Period. Neither Brookfield nor Waukesha has the ability to annex territory from the other municipality, and accordingly, there are no conditions under which a boundary change would occur during the Planning Period. There is no schedule or period during which a boundary change may occur.

Because no boundary changes are either contemplated or necessary in order to implement this Plan, the Plan complies with the requirements of Sec. 66.0307(3)(d)1., 2., and 3., Wis. Stats.

- B. The shape of the boundaries of the Town of Brookfield and the Town Waukesha, which are to be maintained under the terms of this Plan, reflect the boundaries established when the townships were originally created by the State of Wisconsin. The sharing of services, as provided under this Cooperative Plan, does not require, or necessitate any boundary changes. And accordingly, the maintaining of existing boundary lines is not arbitrary. The provision for the sharing of utility services, as provided under the terms of this Plan, will be implemented through utilization of the natural terrain, including topography, wetlands and soil condition. The determination that no boundary modifications are required in order to implement this Plan takes into consideration and complies with the requirements of Sec. 66.0307(5)(c).5., Wis. Stats.
- C. In accordance with the requirements of Sec. 66.0307(3)(d)5., Wis. Stats., both municipalities have considered and evaluated the municipal services provided to their respective residents.

Both municipalities provide police, fire, and EMS/paramedic services, public works services, including garbage disposal and recycling, and both Brookfield and Waukesha operate and maintain town parks and recreational facilities and provide for building and zoning services. Taking into consideration:

- (1) The long-standing provision of those services by each respective municipality; and,
- (2) The determination, by both municipalities that the current level of services meets the expectation of residents of that municipality, and that there exists no need to increase any level of service at this time or in the foreseeable future; and,
- (3) Government efficiency would not be increased by jointly providing any of those services to respective residents of either municipality;

Brookfield and Waukesha have determined that the only shared services to be provided under this Plan involves the extension of sanitary sewer and water service as provided in this Plan.

### **SANITARY SEWER SERVICE**

- D. The City of Waukesha has a long-standing policy of not providing sanitary sewer service without annexation of lands from the Town of Waukesha to the City of Waukesha. As a result, numerous residential properties and businesses in the Town of Waukesha have been required to install and maintain sanitary sewer holding tanks. (See Exhibit J).

In 2002, the State of Wisconsin began constructing State Trunk Highway 59 (Greenfield Avenue) from the intersection of State Trunk Highway 164, located in the City of Waukesha, east to the City of Brookfield. As a part of the reconstruction of State Trunk Highway 59, a decision was made by the City of Waukesha that the City would not extend sanitary sewer service west along State Trunk Highway 59, which extension would be necessary in order to provide sanitary sewer service to the JUSA referenced in his Plan. Consistent with that decision, in 2008, lands located in the Town of Waukesha immediately north of State Trunk Highway 59 requested the extension of sanitary sewer service. In order to provide that service, an application to modify the SEWRPC Sanitary Sewer Service Area was made by the Town of Brookfield, and the change of the sanitary sewer area from the City of Waukesha to the Town of Brookfield was approved by both the City of Waukesha and the City of Brookfield. The land transferred from the City of Waukesha Sanitary Sewer Service Area to the Town of Brookfield Sanitary Sewer Service Area, as depicted more particularly on Exhibit K which is appended hereto and incorporated herein by reference. Those lands were subsequently developed in the Town of Waukesha as a multi-family development now known as Overlook Farms.

## MUNICIPAL WATER SERVICE

- E. WEPCO Fly Ash Landfill Site. The JUSA is located adjacent to a former WEPCO Fly Ash Landfill site as depicted on Exhibit L. Underground contamination from the WEPCO site has already contaminated ground water within the JUSA, as well as lands located both in the City of Waukesha and the Town of Waukesha. As a result of that contamination, WEPCO has, since at least 1998, been ordered by the Public Service Commission to provide an alternate potable water source for many properties within the JUSA, as well as adjacent properties. In 2002, the City of Waukesha agreed to extend water service to one residential property (the Gerald Dlapa Property) located within the JUSA, and depicted on Exhibit L. However, under the terms of the agreement between the Town of Waukesha and the City of Waukesha under which the City agreed to extend water service to the Dlapa Property, the City limited the size of the water main to a 4 inch water main, and prohibited the provision of municipal water service to other vacant lands within the JUSA. (See Exhibit L, pg. 2).

In addition, the Public Service Commission has recently approved a water diversion agreement which allows the City of Waukesha to use Lake Michigan as a water source. As a part of the approval, the City was required to identify those portions of the Town of Waukesha for which the City would allow connection to the municipal water system. The City, in determining those areas of the Town that would be permitted to obtain municipal water from the City, excludes the JUSA. (See Exhibit L).

Accordingly, in order to obtain municipal water service for the JUSA, the only viable source of municipal water would be the extension of the municipal water system owned and operated by Brookfield.

- F. As required by Sec. 66.0307(3)(d)6., Wis. Stats., a schedule for delivery of utility services as provided in this Plan is described in Sections 8 and 9 of this Plan. The delivery of utility services will be provided upon request of the Town Board of the Town of Waukesha which, in turn, will determine the need based upon the demand for those services resulting from private development and private redevelopment of the territory described in the JUSA.
- G. The extension of utility services provided under this Plan by Brookfield to Waukesha, and as described in Sections 8 and 9 of this Plan, will require modification of the SEWRPC. Currently, the SEWRPC Sanitary Sewer Service Area Plan depicts the JUSA in the area that can obtain sanitary sewer service from the City of Waukesha. Implementation of this Plan will require a change in the SEWRPC Sanitary Sewer Service Area map and plan to reflect that sanitary sewer service within the JUSA will be provided by the Town of Brookfield. The approval process will be initiated by the Town of Waukesha ninety (90) days following the approval of this Plan. As required by Sec. 66.0307(3)(d)5., Wis. Stats., this is the only governmental regulatory authority whose approval will be required in order to implement the Plan.

## MISCELLANEOUS PROVISIONS

- H. The highways within the territories covered by this Plan include: State Trunk Highways 18, 164, 59 and 190 and Interstate 94.
- I. There are no boundary changes contemplated by this Agreement, so neither Waukesha nor Brookfield are required or authorized to adopt a boundary change ordinance per Section 66.0307(10), Wisconsin Statutes.
- J. This Cooperative Plan is fully consistent with current state and federal laws, county shoreland zoning ordinances, municipal regulations and administrative rules that apply to the territory affected by the Plan.
- K. The Planning Period is described in Section 11, below.
- L. There are no agreements made regarding zoning in town territory per Section 66.0307(7m), as this is an agreement between towns.

### **SECTION 8: Joint Utility Service Area.**

- A. The municipalities have identified a Joint Utility Service Area (“JUSA”), located in the Town of Waukesha, and described more particularly on Exhibit H which is appended hereto and incorporated herein by reference.

The JUSA currently consists of vacant lands, older single-family residential units, industrial buildings and uses having minimum assessed valuations. Waukesha has determined that development of vacant lands within the JUSA, as well as redevelopment of existing buildings and structures will require the extension of sanitary sewer and water services. Waukesha may create a Tax Incremental Finance District (“TIF District”) in accordance with the provisions of Sec. 66.1105, Wis. Stats., for the purpose of financing the extension of sanitary sewer and water services, as well as other infrastructure costs. A Tax Incremental Finance District would consist of “mixed-uses” as that term is defined in Sec. 66.1105(2)(cm), Wis. Stats.

The Town of Waukesha Comprehensive Plan is consistent with the proposed development and redevelopment of lands within the JUSA, following creation of a Tax Incremental Finance District, and the underlying zoning is also consistent with a mixed-use development. A copy of the current zoning classification is depicted on Exhibit H which is appended hereto and incorporated herein by reference.

Although, as noted, Waukesha may create a TIF District including the JUSA, the delivery of utility services within the JUSA will be provided upon request of the Town Board of the Town of Waukesha which, in turn, will determine the need for extension of those utility services based upon demand for those services, including demand for those services resulting from private development and redevelopment of lands

described in the JUSA. Upon receipt of a request for extension of sanitary sewer and water service within the JUSA, Waukesha shall refer any such request to Brookfield so that Brookfield can review the request and determine the schedule by which the extension of sanitary sewer and water services can occur so as to accommodate those requests.

**SECTION 9: Sanitary Sewer and Water Utility Services.**

Brookfield has determined that Brookfield owns sufficient sanitary sewer treatment capacity in the Fox River Water Pollution Control Facility, and, that Brookfield has the necessary infrastructure to provide both sanitary sewer and water services within the JUSA. (See Exhibit M). As with the extension of sanitary sewer and water services by any municipality, the extension of those services will require the construction of additional infrastructure, and those costs are customarily paid by land owners or developers requesting that service. Thus, the extension of municipal water and sanitary sewer services, subsequent to the approval of this Plan, will require the following:

- A. That Brookfield and/or Waukesha enter into a Development Agreement with the property owner or developer requesting the extension of those services, the terms of which shall require that the property owner or developer reimburse the infrastructure costs related to the extension to the sanitary sewer and water service being requested. The term “infrastructure costs” shall include any design, engineering, and related costs, in addition to the actual cost of construction.
- B. Under the terms of the Development Agreement, the infrastructure, upon completion and acceptance by Brookfield, shall be dedicated to Brookfield. Thereafter, Brookfield shall own, operate, and maintain the infrastructure in accordance with and under the same terms and conditions as applied to all other and similar infrastructure owned by Brookfield and located in the Brookfield.
- C. Except with respect to the designation by SEWRPC of Brookfield as the municipality that will provide sanitary sewer service to the JUSA, all permits and approvals by any governmental authority having jurisdiction or authority to regulate the extension of either sanitary sewer and/or water service are met. Brookfield shall, except as it relates to the change in SEWRPC’s Sanitary Sewer Service Area designation, assume the primary responsibility for obtaining those permits and governmental approvals, provided however, to the extent required or requested, Waukesha shall cooperate with Brookfield and obtain those permits and approvals.
- D. Waukesha shall adopt and enforce all terms and conditions of the Brookfield Sanitary Sewer and Water Utility Service Code, as the same exists as of the extension of sanitary sewer and water service, or as the same may be amended or modified thereafter.

## **SECTION 10: 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:
  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 Chairperson 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 mediation 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 from any mediation session in any 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.

## **SECTION 11: Division of Assets and Liabilities.**

Brookfield and Waukesha agree that no adjustment relating to division of assets and liabilities are required as a result of any future transfer of land under the terms of this Plan.

**SECTION 12: Planning Period.**

The extension of sanitary sewer and water services, as provided by this Plan, will require substantial and significant capital expenditures and infrastructure related costs. Following extension of those services, the customers within the JUSA will become permanent customers of the Brookfield Utility. Accordingly, the Planning Period, as that term defined in Sec. 66.0307(5)(c) 6., Wis. Stats., is required to be perpetual, and not limited to any specific term of years.

**SECTION 13: General Provisions.**

A. 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.

B. 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.

C. Construction. This Plan shall be literally construed to accomplish the purpose as set forth in this Plan. 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.

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

E. Incorporation. Brookfield agrees that Brookfield shall not object to any action taken by Waukesha, subsequent to the approval of this Plan, which actions seek the incorporation of Waukesha in accordance with the provisions of the applicable statutes governing any incorporation effort. Waukesha agrees that Waukesha shall not object to any action taken by Brookfield, subsequent to the approval of this Plan, which actions seek the incorporation of Brookfield in accordance with the provisions of the applicable statutes governing any incorporation effort. In the event one or both of the towns subject to this Plan is/are incorporated, this Plan remains in effect exactly as if such incorporation had not occurred.

IN WITNESS WHEREOF, the parties will have caused the execution of this Plan by their duly authorized officers as of the date set forth below:



## **EXHIBIT LIST**

- EXHIBIT A -** September 9, 2019 Public Hearing Minutes
- EXHIBIT B -** City of Waukesha Sec. 66.0307, Wis. Stats. Comments
- EXHIBIT C -** City of Brookfield Sec. 66.0307, Wis. Stats., Comments
- EXHIBIT D -** Town of Brookfield Boundary Map
- EXHIBIT E -** Town of Waukesha Boundary Map
- EXHIBIT F -** Town of Brookfield Legal Description
- EXHIBIT G -** Town of Waukesha Legal Description
- EXHIBIT H -** Joint Utility Service Area Legal Description and Map
- EXHIBIT I -** November 27, 2019 Shaun Mularkey Correspondence
- EXHIBIT J -** WAKT Holding Tanks
- EXHIBIT K -** SEWRPC Sanitary Sewer Service Area 2008 Changes
- EXHIBIT L -** WEPCO Water Service Extensions
- EXHIBIT M -** Sewer/Water Capacity Opinion