

The Town of Cedarburg, Wisconsin

IN THE NAME AND BY THE AUTHORITY OF THE TOWN OF CEDARBURG, WISCONSIN

Resolution 2021-8

“RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF CEDARBURG AND TOWN OF CEDARBURG TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT AND FOR THE CONNECTION OF FORWARD WAY TO HILLTOP DRIVE”

WHEREAS, Section 66.0301(6)(a) of the Wisconsin Statutes provides that 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, Section 66.0301(6)(c) of the Wisconsin Statutes provides that before any such 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 such resolution, a public hearing on the agreement must be held after due notice; and

WHEREAS, on the 7th day of July, 2021, after due public notice, a public hearing was held before the Town Board of the Town of Cedarburg regarding the Intergovernmental Agreement between the City of Cedarburg and Town of Cedarburg to provide for orderly growth and development and for the connection of Forward Way to Hilltop Drive, a copy of said Agreement is attached to this Resolution and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Cedarburg does hereby approve the Intergovernmental Agreement between City of Cedarburg and Town of Cedarburg to provide for orderly growth and development and for the connection of Forward Way to Hilltop Drive, as set forth in the attached Agreement, incorporated herein by reference.

Adopted this 7th day of July, 2021.



David M. Salvaggio, Town Chairman

Attest:



Jack Johnston, Assistant Administrator/Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF CEDARBURG AND TOWN OF CEDARBURG
TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT
AND FOR THE CONNECTION OF FORWARD WAY TO HILLTOP DRIVE**

THIS AGREEMENT (“Agreement”) is entered into by and between the City of Cedarburg (“City”), a Wisconsin municipal corporation, and the Town of Cedarburg (“Town”), both located in Ozaukee County, Wisconsin. The City and the Town may be individually referred to herein as “Party” or collectively as “Parties”. The purpose of the Agreement is to set forth the procedures, terms, and conditions by which the parties wish to achieve the following mutual goals pursuant to Section 66.0301, of the Wisconsin Statutes:

Orderly, planned growth for the City and the Town and the provision of appropriate, cost effective municipal services for such development;

Orderly, planned boundaries between the City and the Town, promoting cost effective provision of services and more efficient operation of all units of government;

Prevention of unplanned development leading to urban sprawl, and protection of the area’s natural resources; and

Promotion of quality development in the City and the Town.

**ARTICLE I
DEFINITIONS**

1.1 City Growth Area. Attached and incorporated by reference is a map, marked **Zoning Map A**, showing the area that is identified as the “City Growth Area”. The City Growth Area consists of developed and undeveloped land within the Town that the Parties acknowledge may be annexed at the request of the property owner and/or developed within the City’s future municipal boundaries. City Smart Growth areas are included within the City Growth Area. The City Growth Area is intended to be sufficient for at least the next 20 years of City growth.

1.2 Town Area. The remaining areas not included as City Growth Area shall be referred to herein as “Town Area”. The Town Area consists primarily of developed and undeveloped land that the Parties acknowledge shall remain under the Town’s jurisdiction and/or developed within the Town during the term of this Agreement. The Town Area is intended to be sufficient for at least the next 20 years of Town growth and will be guided by the Town Comprehensive Plan.

1.3 Smart Growth Area. The term “Smart Growth Area”, as used herein, shall have the meaning given in the City Smart Growth Comprehensive Land Use Plan - 2025, passed,

approved and adopted by the City on February 25, 2008, by Ordinance No. 2008-06, as amended.

1.4 Rural Profile. The term “Rural profile”, as used herein, shall mean the construction of a public roadway without curb, gutter, or storm sewer, but, rather, with gravel shoulder and ditch construction.

ARTICLE II NATURE OF THIS AGREEMENT

2.1 Intergovernmental Cooperation. This Agreement is entered into pursuant to and in accordance with the provisions of Section 66.0301, Wis. Stats.; it shall be liberally construed and enforced in favor of cooperative action between the Parties. The Parties agree the adoption of this agreement does not in and of itself result in the change of the jurisdiction of any territory or a boundary change.

2.2 Effectiveness of Agreement. Notwithstanding any provision to the contrary contained herein, this Agreement shall not become effective unless and until the Governing Body of each Party has adopted an “Authorizing Resolution”, which Resolution approves of this Agreement and authorizes its execution, and this Agreement is fully executed by all such authorized individuals. If such Authorizing Resolutions are not so duly adopted by the Governing Body of each Party on or before July 7, 2021, then in such event, this Agreement shall not become effective.

2.3 Public Hearing. Prior to the adoption of the Authorizing Resolutions, each Party held a public hearing on this Agreement. Each Party gave notice of this Agreement and public hearing thereon by publishing a Class 1 notice under Ch. 985. At the public hearing, each Party hereto provided proof of such publication.

2.4 Publication of Agreement. When each of the Parties hereto has adopted the Authorizing Resolution, the Parties shall jointly publish this Agreement as a Class 1 notice under Ch. 985 in a newspaper of general circulation within the jurisdiction of each Party.

2.5 Effective Date. The “effective Date” for purposes of this Agreement shall be the date of the adoption and publication of the final Party’s Authorizing Resolution.

ARTICLE III DEVELOPMENT WITHIN CITY GROWTH AREA

3.1 General Agreement. At such times that this Agreement remains in effect, including the Renewal Term, the following terms and conditions shall dictate future development and/or annexation of real property within the City Growth Area.

3.2 City Covenants. The City may annex territory at the request of the property owner from the City Growth Area upon receipt of a Petition for Annexation submitted in compliance with the Wisconsin Statutes.

3.3 Town Covenants. Prior to the expiration or termination of the Agreement, including the Renewal Term, for any reason, the Town agrees as follows concerning the City Growth Area:

a. The Town will cooperate to maintain currently undeveloped lands in an undeveloped state, in order to preserve them for potential future City development.

b. The Town will discourage premature development by imposing and maintaining zoning classifications that do not permit, or that discourage, development in violation of the terms herein. To the extent authorized by law, the Town shall refuse to approve certified survey maps or platted subdivisions within the City Growth Area.

c. The Town shall not challenge any annexation within the City Growth Area, including, but not limited to, annexation of town island parcels, nor shall the Town judicially oppose any annexations that are consistent with the terms of this Agreement. The Town will not financially support anyone who opposes or contests any such annexation within the City Growth Area. The City shall meet with Town officials prior to or shortly after the filing of any annexation petition for the purpose of discussing matters of mutual concern under this Agreement. If the Town is impleaded into an annexation lawsuit by a party other than the City, the Town shall immediately stipulate that it does not oppose the contested annexation. The Town will also cooperate with the City on the dismissal of the Town as a party to the lawsuit.

ARTICLE IV DEVELOPMENT WITHIN TOWN

4.1 General Agreement. At such times that this Agreement remains in effect, including the Renewal Term, the following terms and conditions shall dictate future development and/or annexation of real property within the Town Area.

4.2 City Covenants. The boundaries of the City Growth Area are intended to establish the outer limits of annexation and the potential boundary of the City for the term of this Agreement, including the Renewal Term. Prior to the expiration or termination of the Agreement and the Renewal Term, for any reason, the City agrees that it will not annex any land from the Town Area, without prior Town approval. The City shall not implement/exercise Extraterritorial Zoning or Extraterritorial Plat review over Town lands within the Town Area for the duration of this Agreement, including the Renewal Term.

**ARTICLE V
ROADS**

5.1 Hilltop Road and Forward Way. Pursuant to the Highway Order, issued by the Town conditionally or contemporaneously herewith, the extension of the City right-of-way and public roadway identified as Forward Way shall connect to the existing Town right-of-way and public roadway identified as Hilltop Drive, as set forth on **Exhibit B**, attached hereto and incorporated herein by reference. Such connection shall require completion of the construction of Hilltop Drive, to the corporate boundary of the City, and shall further result in anticipated increased traffic on Sycamore Drive, to its intersection with Washington Avenue. Therefore, the parties agree to share the costs of such construction and reconstruction of Hilltop Drive and Sycamore Drive, to its intersection with Washington Avenue, as follows:

a. **Hilltop Drive extension to Sycamore Drive intersection.** The City shall undertake, bid, construct and be financially responsible for the construction of Hilltop Drive, from the corporate boundary of the City, north to and including the intersection with Sycamore Drive. Said reconstruction shall be approximately as set forth on **Exhibit B**, with a Rural Profile. The City, its officers, employees, contractors, agents and assigns, shall be granted access at all reasonable times to this section of Hilltop Drive right-of-way for the purposes set forth herein. The Town shall reasonably cooperate with the reconstruction, which cooperation shall include, but is not necessarily limited to, assisting in traffic control and/or notices to adjacent or impacted landowners. Such work shall be completed by the City no later than December 31, 2022.

b. **Sycamore Drive reconstruction to Washington Avenue.** The City shall reimburse the Town for forty-five percent (45%) of the actual costs for the reconstruction of Sycamore Drive, identical to its existing construction and profile, from its intersection with Hilltop Drive west to the intersection with Washington Avenue. Such reimbursement shall not include the reconstruction of the intersection of Sycamore Drive and Washington Avenue, which is anticipated to be served by a four-way stop. The Town shall undertake, bid, construct and pay for such reconstruction, subject to the reimbursement set forth herein. The Town shall determine the reconstruction schedule. City shall be given a minimum of one-year advanced notice of said reimbursement ("Notice"), in order to properly budget for said cost. Said Notice shall include the approximate construction schedule, engineering designs for said extension, and actual or engineer's estimate of total and City reimbursement costs. The City shall make the reimbursement payment to the Town within two months of the Town sending the City a summary of the actual roadway construction costs.

**ARTICLE VI
PROHIBITION OF TOWN INCORPORATION**

6.1 Prohibition on Incorporation. At such times that this Agreement remains in effect, including any Renewal Term, Incorporation by the Town, as set forth in Chapter 66 of the

Wisconsin Statutes, as amended, or any other applicable law, rule or regulation, shall be prohibited.

**ARTICLE VII
TOWN COOPERATION WITH CITY UTILITY EASEMENT TO
CONNECT TO WATER RECYCLING CENTER**

7.1 In the event that the City determines, in its sole discretion, that it is most appropriate to extend water and/or sewer lines through Town roads or right-of-way for purposes of extending or connecting the lines to a new or existing City water recycling center or sewer plant outside of the City on property located on Pioneer Road as identified on the attached Exhibit A, then the Town shall fully cooperate, in no way obstruct, and timely approve of such extension, pursuant to Chapter 196 of the Wisconsin Statutes, or any other applicable law, rule or regulation. The City shall be responsible, at City expense, for such installation, including restoration of the Town road(s) to the condition prior to construction. The City shall indemnify and hold harmless the Town for any and all claims which may arise related to such work in the Town Right of Way. Nothing herein shall require or in any way mandate that the City provide water or sewer service outside of its corporate boundaries. Any related work shall not result in the annexation of any Town properties.

**ARTICLE VIII
TERM**

8.1 Term. The initial term of this Agreement shall commence upon the Effective Date and continue for a ten (10) year period of time thereafter ("Initial Term").

8.2 Automatic Renewal; Renewal and Withdrawals. The Initial Term hereof shall be automatically extended for one (1) additional ten (10) year renewal term ("Renewal Term") commencing upon the expiration of the Initial Term; unless both Parties agree to terminate the automatic renewal term at least 120 days prior to the expiration of the Initial Term:

**ARTICLE IX
NO CHALLENGES TO THIS AGREEMENT; REMEDIES**

9.1 No Challenges. Each Party waives any and all rights each may have to commence or maintain any action or other proceeding to contest, invalidate, or otherwise challenge the validity or enforceability of this Agreement.

9.2 Defense. In the event of any action by any person other than a Party challenging the validity or enforceability of this Agreement or any of its provisions, the Parties shall reasonably cooperate in order to preserve this Agreement. If both Parties are not named as a party to the said action, the other Party shall seek to intervene; and the named Party shall support such intervention. To the extent deemed appropriate by the governing bodies of the Parties, the Parties may jointly retain counsel to represent their interests in the event of such

challenge. No settlement of such an action shall be permitted without the approval of both Parties.

9.3 Breach. A Party's failure to comply with any provisions of this Agreement constitutes a breach of the Agreement.

9.4 Remedies. In the event of a breach of this Agreement, a Party may seek specific performance of this Agreement in addition to any other remedies available at law or in equity. The breaching Party shall pay the other Party's attorney fees reasonably incurred in seeking specific performance or other remedies for the breach.

9.5 Mediation. In the event that the Parties are unable to resolve a dispute as to the construction or application of this Agreement, or if one Party believes there has been a breach by the other Party, the Parties shall participate in mediation of the dispute or the alleged breach. The mediator shall be an impartial individual found mutually acceptable to the Parties. In the event that the Parties are unable to agree to a mediator, within 30 days of written request for mediation by one Party, either Party may petition the Circuit Court for Ozaukee County for the appointment of a mediator pursuant to Chapter 708 of the Wisconsin Statutes. The Parties shall attempt in good faith to avoid litigation of disputes through mediation. The Parties shall share equally in the cost of the mediator. This Section 9.5, however, does not preclude any Party from instituting litigation, if necessary, in its opinion for the protection of its interests or if mediation is not successful. In the event of any litigation following failed mediation, the prevailing Party in such litigation is entitled to recover from the adverse Party its reasonable attorney's fees and disbursements.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Amendments. This Agreement may be amended in writing, from time to time, by mutual consent of both parties.

10.2 Notices. All notices required under this Agreement must be served, either personally or by certified mail, upon the Parties' respective municipal clerks.

10.3 Enforceability and Compliance with Laws. The Parties have entered into this Agreement under the authority of Section 66.0301 of the Wisconsin Statutes. Its enforceability 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 Agreement shall be construed so as to be binding upon the Parties' respective officials, employees, successors and agents. This Agreement is consistent with all known state and federal laws and administrative rules and regulations. This Agreement shall be governed by the laws of the State of Wisconsin.

10.4 Complete Agreement. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement and it shall supersede all prior

agreements or municipal policies to the contrary. No agreements, promises, or representations made during or in connection with the negotiations for or approval of this Agreement shall be binding or effective unless they are included herein. This Agreement may be recorded with Register of Deeds for Ozaukee County. This Agreement may be used in litigation and may be introduced into evidence by either Party without objection in any action to enforce the terms of this Agreement.

10.5 No Waiver. The failure of a Party to require strict performance with any provision of this Agreement will not constitute a waiver of the provision or of any of the Parties' rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be signed by the Party waiving the right. If an obligation of a Party is being waived or released, the writing must be signed by all affected Parties. 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. Waivers and releases will affect only the specific right or obligation waived or released and will not affect the rights or obligations of the Party that did not sign the waiver or release.

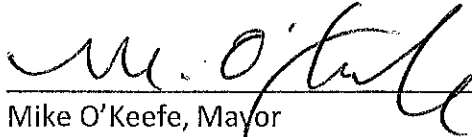
10.6 Performance Standard. This Agreement requires the Parties to act or to refrain from acting on a number of matters. The Parties hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a Party, the consent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

10.7 No Third Party Beneficiary. This Agreement is intended to be solely between the signatories set forth on the following pages. Nothing in this Agreement grants any third party beneficiary rights to any non-party that may be enforced by any non-party to this Agreement.

10.8 Construction. This Agreement shall be liberally construed to accomplish its intended purposes. The parties acknowledge that the language contained in this Agreement is the product of numerous individuals representing the various interests. Therefore, ambiguities shall not be construed against the drafter of this document. This Agreement 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.

10.9 Severable Provisions. If any clause, provision, or section of this Agreement is declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect the remaining provisions.

CITY OF CEDARBURG



Mike O'Keefe, Mayor

ATTEST:



Tracie Sette, Clerk

TOWN OF CEDARBURG



David Salvaggio, Chairman

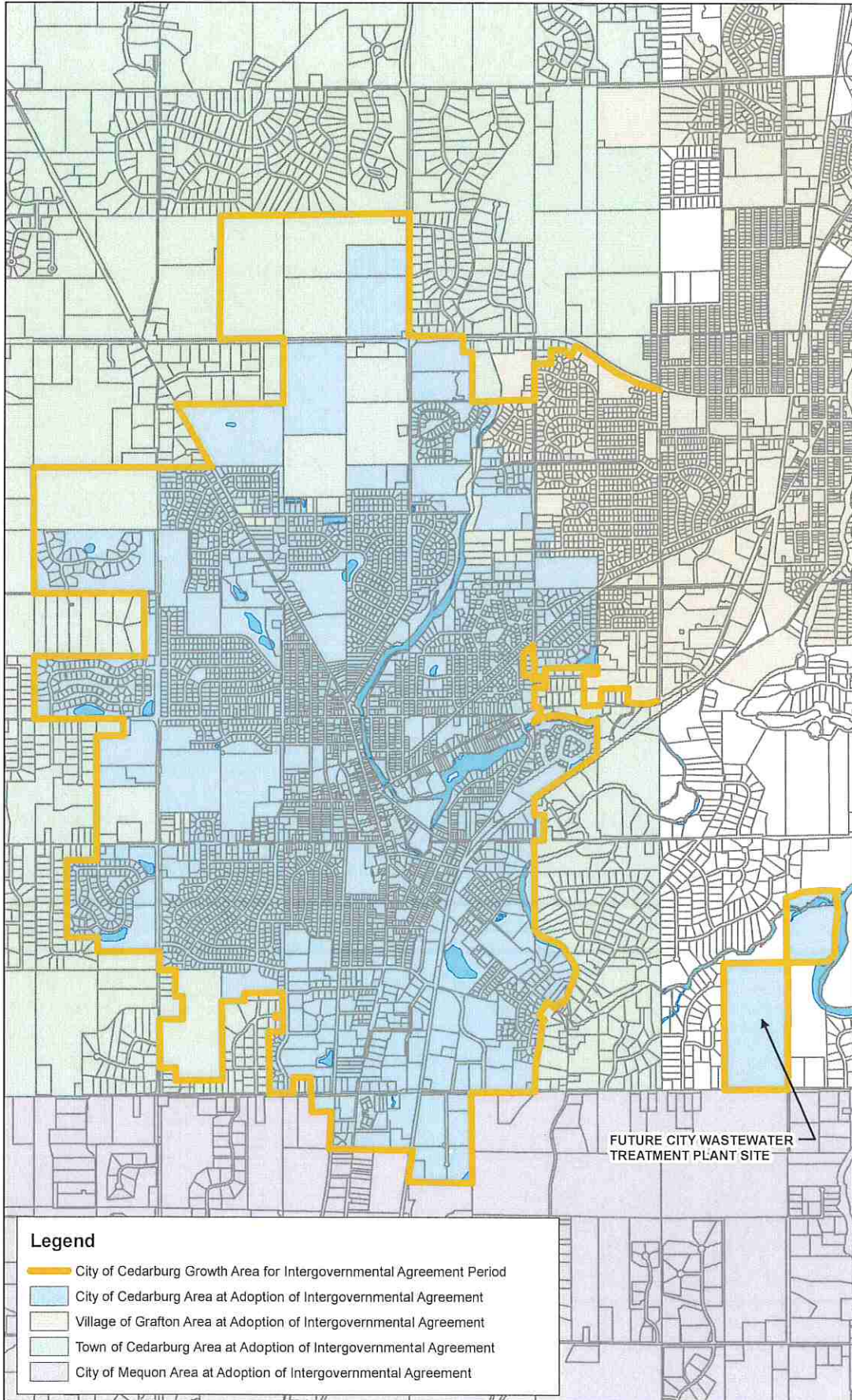
ATTEST:



Jack Johnston, Clerk

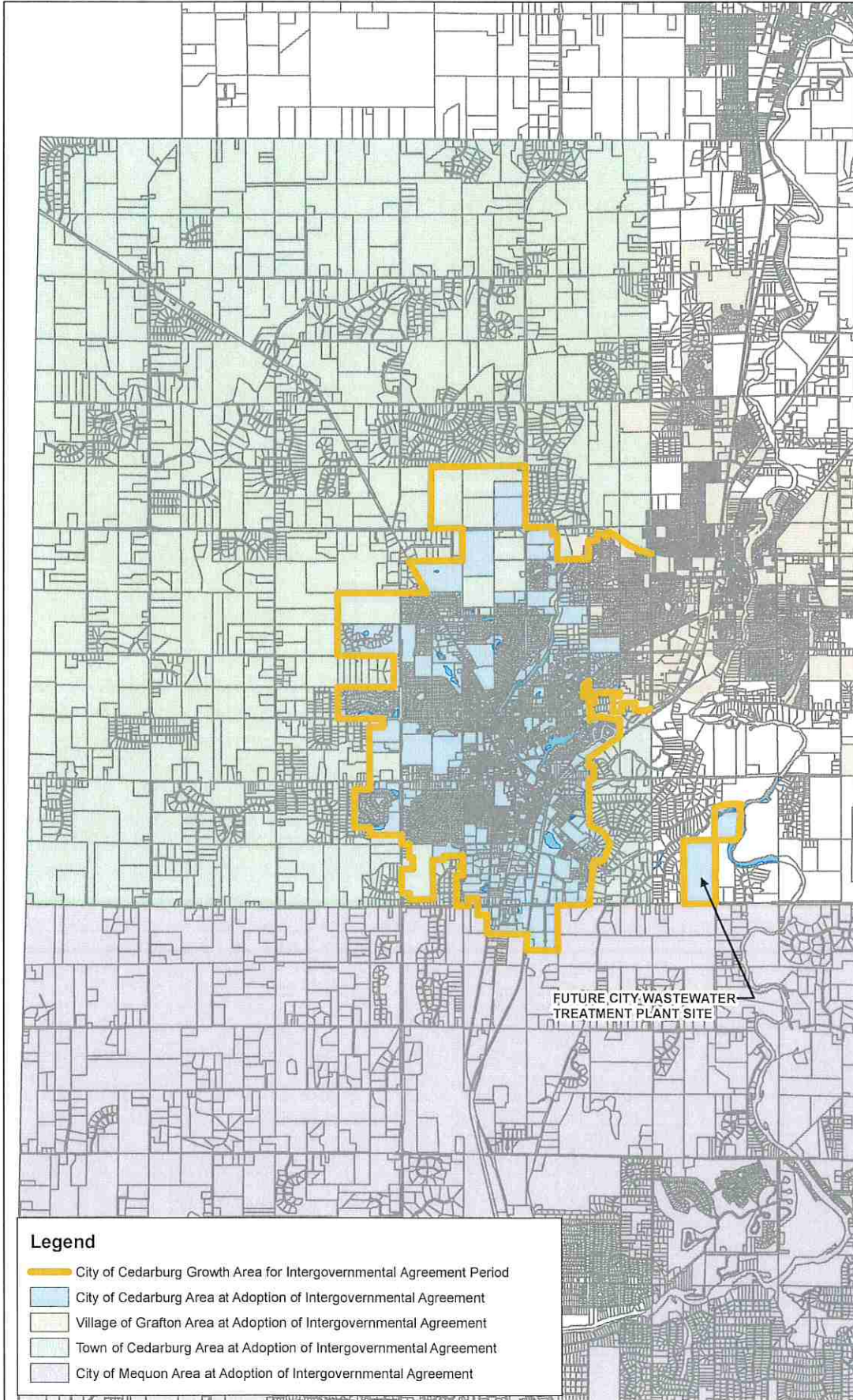
ZONING MAP A

ZONING MAP A CEDARBURG CITY AND TOWN INTERGOVERNMENTAL AGREEMENT MAP



1 inch = 2,000 feet

ZONING MAP A
CEDARBURG CITY AND TOWN INTERGOVERNMENTAL AGREEMENT MAP



1 inch = 4,000 feet

EXHIBIT B

EXHIBIT

HILLTOP DRIVE (TOWN OF CEDARBURG ROADWAY)

Part of Hilltop Drive, being a part of the Northeast 1/4 of the Northwest 1/4 of Section 22, Town 10 North, Range 21 East, in the City and Town of Cedarburg, Ozaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of Lot 2 of CSM 1829, and the point of beginning; thence South 87° 52' 12" West 80.00 feet along the south line of the Town of Cedarburg Limits, 80.00' to the Southwest corner of Hilltop Drive; thence North 02° 07' 48" West along the West line of said Drive 38.52 feet to a point; thence North 87° 52' 12" East 80.00 feet to a point in the East line of said Drive; thence South 02° 07' 48" East along said East line 37.67 feet to the Southeast corner of said Drive and to the point of beginning.

Said land contains 3,048 square feet or 0.0699 acres.

June 4, 2021

Drawing No. 168106-RMK

raSmith

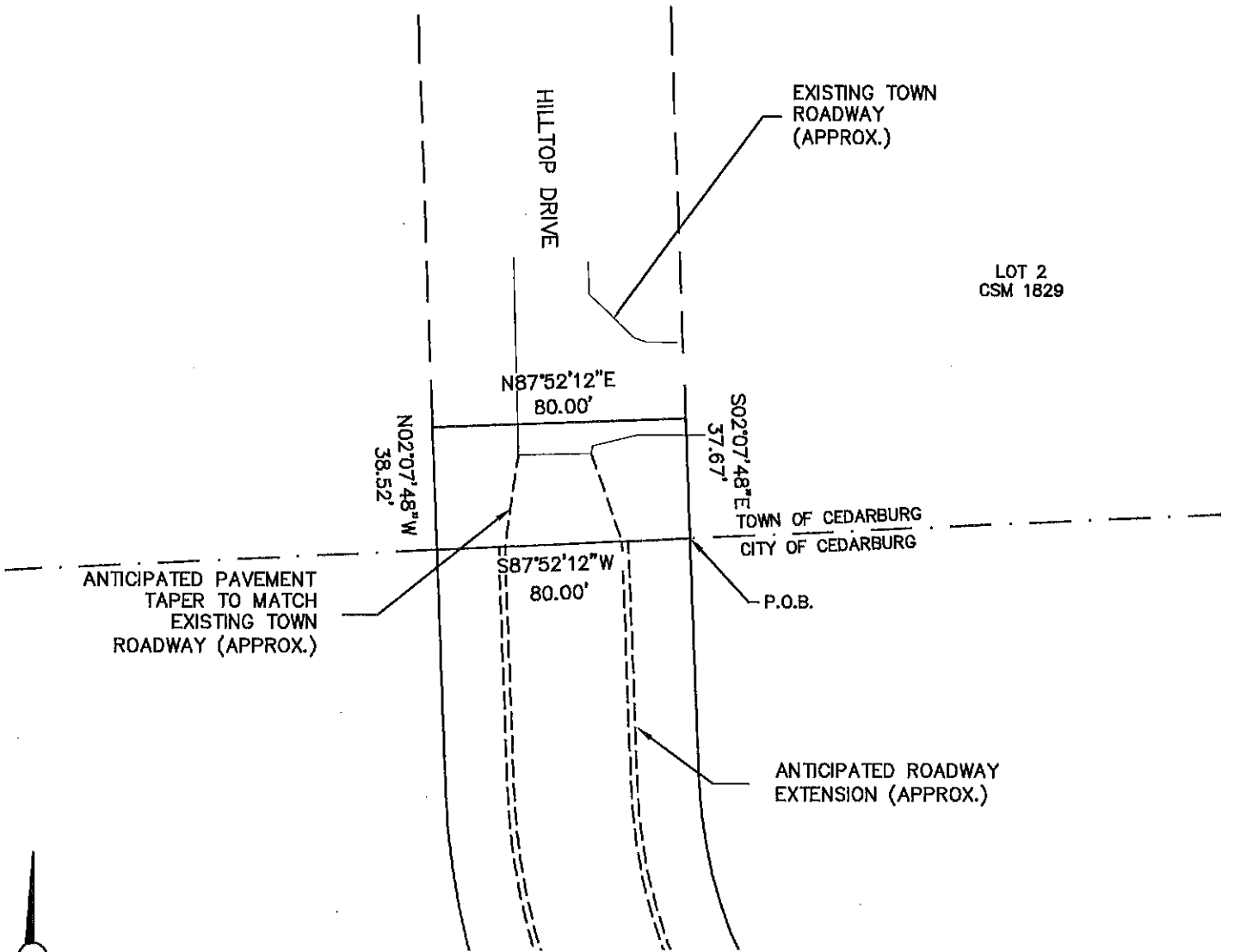
CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road
Brookfield, WI 53005-5936
(262) 781-1000

rasmith.com

EXHIBIT

HILLTOP DRIVE (TOWN OF CEDARBURG ROADWAY)



ANTICIPATED PAVEMENT
TAPER TO MATCH
EXISTING TOWN
ROADWAY (APPROX.)

EXISTING TOWN
ROADWAY
(APPROX.)

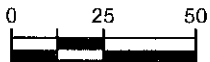
LOT 2
CSM 1829

TOWN OF CEDARBURG
CITY OF CEDARBURG

P.O.B.

ANTICIPATED ROADWAY
EXTENSION (APPROX.)

GRAPHIC SCALE



1" = 50'



raSmith

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000

rasmith.com

EXHIBIT

HILLTOP DRIVE (ROADWAY LAYOUT)

NE COR OF
NW 1/4 OF
SEC. 22-10-21

#500001
CONC MON CAP

LOT 2
CSM 1829

HILLTOP DRIVE

EXISTING TOWN
ROADWAY (APPROX.)

ANTICIPATED
PAVEMENT TAPER TO
MATCH EXISTING TOWN
ROADWAY (APPROX.)

TOWN OF CEDARBURG
CITY OF CEDARBURG

S. LINE NE 1/4 OF
NW 1/4 OF SECTION 22
N. LINE PROPOSED FAIRWAY VILLAGE

80.00'

PROPOSED OUTLOT 2
FAIRWAY VILLAGE

ANTICIPATED
ROADWAY EXTENSION
(APPROX.)

80.00'

FORWARD WA

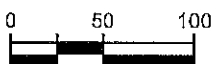
PROPOSED OUTLOT 3
FAIRWAY VILLAGE

E. LINE NW 1/4 SECTION 22

P.O.C.
SE COR OF
NW 1/4 OF
SEC. 22-10-21

#50001
CONC

GRAPHIC SCALE



1" = 100'

raSmith

CREATIVITY BEYOND ENGINEERING

16745 W. Bluemoor Road
Brookfield, WI 53005-5938
(262) 781-1000

rasmith.com

S:\5168106\dwg\SX101A100-drr.dwg SHEET 2 6/4/2021 1:54:22 PM - Drr