
PLAN COMMISSIONER NETWORK

May 28, 2014

SHARED SERVICES

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1. Background.

- a. In times of limited revenues, sharing services through intergovernmental cooperation allows towns to accomplish together more than they can alone.
- b. Sharing services can result in cost savings, better quality of services, sharing of expertise, and efficiencies.

2. Statutory Authority *Big Takeaway*

- a. Towns have broad statutory authority to contract with other towns and municipalities for the sharing of services. The Wisconsin Statutes include many sections specifically authorizing certain types of shared-service contracts:
 - i. See Exhibit A.
- b. The Wisconsin Statutes also include a section with a general authorization for municipalities to enter into shared-service agreements.
 - i. Wis. Stat. § 66.0301: Any municipality may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of *any power or duty required or authorized by law*. . . . This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.

3. Basic Arrangements.

- a. One municipality provides services for another. Exhibit B.
- b. Multiple municipalities jointly provide services. Exhibit C.
- c. Municipalities arrange the relationship between or among themselves. Exhibit D.

4. Basic Elements of a Shared Services Agreement.

- a. Statement of purpose.
- b. Enumeration of powers.
- c. Governance, voting, or decision-making procedures.
- d. Members.
- e. Meetings.
- f. Cost allocations and budgeting.
- g. Term and termination.
- h. Unwinding.
- i. Liability limitations.
- j. Indemnification.
- k. Dispute resolution.

5. Best Practices.

- a. Achieve clarity up front. Avoid ambiguities in a shared-services agreement. Don't believe that you can wait for a problem to arise before addressing it.
- b. Address title to and ownership of any property acquired under the agreement.

- c. Consider designating one of the municipalities as the employer if the arrangement will require employees.
- d. Remember that joint service boards or commissions cannot issue independent debt.
- e. Include a dispute resolution procedure.
- f. Include in the applicable agreement a procedure for dissolving the shared-services arrangement.
 - i. Outline how assets are then distributed to the municipalities.

PART III

OTHER STATUTORY AUTHORITY FOR INTERGOVERNMENTAL COOPERATION

In addition to the general authority for intergovernmental cooperation granted by ss. 66.0301 and 59.03 (2), Stats., described in Parts I and II, the Wisconsin statutes contain a substantial number of provisions granting specific authority for such cooperation. Issues of intergovernmental cooperation have been a recurring topic of study by the Legislative Council. In the Staff Brief to the Special Committee on Shared Governmental Services, Legislative Council Staff described previous efforts to study intergovernmental cooperation, stating:

It is interesting to note that the League of Wisconsin Municipalities reported to the Legislative Council's 1959 Interim Urban Problems Committee: "The existence of numerous statutes providing for joint cooperation between municipalities may create some uncertainty as to the authority of municipalities to proceed independent of such specific statutes." [*Report of the Interim Urban Problems Committee to the 1959 Wisconsin Legislature*, p. 25 (January 1959).] The League suggested that the Interim Urban Problems Committee consider developing legislation to address the proliferation of statutes on joint cooperation, eliminating those statutes that may be unnecessary and organizing the remainder of the statutes into a uniform provision. However, time limitations did not permit the Interim Urban Problems Committee the "intensive and thorough study which would be needed to develop" legislation to accomplish the suggestion. [*Id.*]

Since the time the Interim Urban Problems Committee declined the task, it appears there has been no systematic attempt to deal with the large number of specific statutes authorizing intergovernmental cooperation in the face of the general authority of s. 66.30, Stats. However, ... Ch. 123, Laws of 1975, appears to have addressed this concern (at least partially) by indicating that the authority under s. 66.30 is "in addition to the provisions of any other statutes specifically authorizing cooperation between municipalities unless such statutes specifically exclude action."

[*Statutory Framework for Local Governmental Cooperation in Delivery of Services*, Staff Brief 94-10, p. 19 (September 23, 1994).]

This Part identifies those statutory provisions that explicitly cross-reference to authority granted under s. 66.0301, Stats., for intergovernmental cooperation and some, but not all, of those statutes that grant authority for intergovernmental cooperation without express mention of s. 66.0301, Stats.

STATUTORY PROVISIONS CROSS-REFERENCING SECTION 66.0301, STATS.

Current statutory provisions relating to shared governmental services that specifically cross-reference s. 66.0301, Stats., are identified below.

1. Section 30.31 (5), Stats., provides that towns, villages, cities, and counties have the powers conferred by s. 66.0301, Stats., for purposes of cooperating in erecting, maintaining, or



repairing a dock wall or shore protection wall along the shore of any waterway adjoining or within the limits of the municipalities.

2. Section 33.22 (4), Stats., restricts a public inland lake protection and rehabilitation district from exercising town sanitary district powers in any territory included in an existing town sanitary district except by contract under s. 66.0301, Stats., (or unless the sanitary district merges with the public inland lake protection and rehabilitation district).
3. Section 36.11 (19) (a), Stats., permits the University of Wisconsin System Board of Regents to enter into contracts under s. 66.0301, Stats., to furnish services for educational study and research projects to school districts.
4. Section 46.2895 (4) (g) and (6) (f), Stats., permits a long-term care district to provide employee benefits, including a pension plan, and to participate in a plan of liability insurance for officers, employees, and agents, by contract under s. 66.0301, Stats.
5. Section 49.49 (7), Stats., permits the operation of a nursing home or intermediate care facility by two or more cities, villages, or towns under s. 66.0301, Stats.
6. Section 59.52 (7), Stats., authorizes counties to join with the state, other counties, and municipalities in a cooperative arrangement as provided by s. 66.0301, Stats., including the acquisition, development, remodeling, construction, equipment, operation, and maintenance of land, buildings, and facilities for regional projects, whether or not the project is located within the county.
7. Section 59.56 (3) (h), Stats., authorizes cooperative agreements under s. 66.0301, Stats., between county university extension programs and “other educational programs of importance to the citizens of the county.”
8. Section 59.58 (2) and (3), Stats., permits a county, by contract under s. 66.0301, Stats., to establish a joint municipal transit commission, in cooperation with any county, city, village, town, or Indian tribe or band.
9. Section 59.58 (3), Stats., authorizes a county to contract under s. 66.0301, Stats., to establish a joint transit commission with other municipalities [as defined under s. 66.0301 (1) (b), Stats.].
10. Section 59.692 (4) (a), Stats., expressly provides that s. 66.0301, Stats., applies to the section on county zoning of shorelands on navigable waters, s. 59.692, Stats., and requires that, for purposes of the section, any agreement under s. 66.0301, Stats., must be “effected by ordinance.” If the municipalities are served by a regional planning commission, the commission may, if it agrees, be empowered by the ordinance of agreement to administer each ordinance enacted under s. 59.692, Stats., throughout the enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.
11. Sections 59.693 (9) (a) and (c), 60.627 (8) (a) and (c), 61.354 (8) (a) and (c), and 62.234 (8) (a) and (c), Stats., provide that s. 66.0301, Stats., applies to the sections on county, town, village, and city construction site erosion control and stormwater management zoning and require that, for purposes of these sections, any agreement under s. 66.0301, Stats., must be “effected by ordinance.” [If it consents, the Dane County Lakes and Watershed Commission may be given authority by Dane County or by a town, village, or city served by the Commission to administer an ordinance enacted under these sections for the entire county, village, or city, even if the area otherwise served by the Commission does not include all of Dane County or the village or city. Section 66.0301, Stats., expressly does not apply to this particular provision.]

12. Section 60.23 (1), Stats., authorizes town boards to cooperate with the state, counties, and other units of government under s. 66.0301, Stats., including cooperative arrangements involving the acquisition, development, remodeling, construction, equipment, operation, and maintenance of land, buildings, and facilities for regional projects, whether or not located in the town.
13. Section 60.23 (20), Stats., authorizes a town to enter into a contract with any other governmental unit under s. 66.0301, Stats., to provide for the removal and disposition of dead animals.
14. When incorporating or annexing a town sanitary district, s. 60.79 (2) (c), Stats., permits a city or village and the town sanitary district to divide the district's assets and liabilities by agreement under s. 66.0301, Stats.
15. Section 66.0125 (2), Stats., provides that if a community relations–social development commission is established on an intergovernmental basis with a county, the provisions of s. 66.0301, Stats., apply as optional authority and may be utilized by participating municipalities to effectuate the purposes of s. 66.0125, Stats., relating to community relations–social development commissions.
16. Section 66.0304, Stats., permits certain political subdivisions to create a commission for the issuance of conduit revenue bonds by agreement under s. 66.0301, Stats., except that upon its creation all of the initial members of this commission must be political subdivisions that are located in this state. Only one commission may be formed under this section.
17. Section 66.0309 (12) (b), Stats., authorizes a regional planning commission to enter into a contract with any local unit of government within the region under s. 66.0301, Stats., to make studies and offer advice on land use, thoroughfares, community facilities, public improvements, and encouragement of economic and other development.
18. When two or more municipalities levy a room tax in the same tourism “zone,” s. 66.0615 (1m) (b) 2., Stats., requires the municipalities to create a commission under s. 66.0301, Stats., to administer the room tax and provide or contract for tourism promotion in the zone.
19. Section 66.0825, Stats., provides that powers granted under s. 66.0825, Stats., relating to municipal electric utilities, do not limit powers of cities, villages, and towns to “enter into intergovernmental cooperation or contracts or to establish separate legal entities under ss. 66.0301 to 66.0311.”
20. Section 66.1021 (10) (a), Stats., authorizes a city, village, or Indian tribe or band to contract under s. 66.0301, Stats., to establish a joint municipal transit commission with the powers and duties of a city transit commission under s. 66.1021, Stats.
21. Section 66.1113 (2) (c), Stats., permits two or more contiguous political subdivisions that are premier resort areas to enter into a contract under s. 66.0301, Stats., to pay for premier resort area infrastructure expenses, in addition to any other authority they have to act under s. 66.0301, Stats.
22. Section 66.1201 (9) (w), Stats., authorizes a housing authority to exercise any powers of a s. 66.1333, Stats., redevelopment authority if done in concert with a redevelopment authority under a s. 66.0301, Stats., contract.
23. Section 66.1333 (5) (a) 9., Stats., authorizes a redevelopment authority to exercise any powers of a s. 66.1201, Stats., housing authority if done in concert with a housing authority under a s. 66.0301, Stats., contract.

24. Section 74.10, Stats., authorizes a county and a taxation district within the county to contract under s. 66.0301, Stats., for the county to receive all payments of property taxes for which the taxation district has sent property tax bills.
25. Sections 101.65 (1) (b), 101.76 (1) (b), and 101.86 (1) (b), Stats., authorize cities, villages, towns, and counties to jointly exercise jurisdiction related to the one- and two-family dwelling code, the modular home dwelling code, and the electrical code, respectively, under s. 66.0301, Stats.
26. Section 118.40, Stats., authorizes two or more school boards to enter agreements under s. 66.0301, Stats., to establish charter schools and virtual charter schools.
27. Section 121.54 (5), Stats., permits two or more school boards to provide transportation for residents of the district participating in vocational education programs organized cooperatively between school districts under s. 66.0301, Stats.
28. Under s. 174.10 (2), Stats., the municipalities in a county with a population of 500,000 or more may form an intergovernmental commission by contract under s. 66.0301, Stats., for the purpose of providing animal control services. If an intergovernmental commission is formed, the county and the commission may enter into an agreement under which the intergovernmental commission assumes the county's responsibility for activities related to dog licensing.
29. Section 200.11 (9), Stats., authorizes a metropolitan sewerage district to provide services to a territory outside the district, including territory in a county not in that district, under s. 66.0301, Stats., subject to other specified statutory provisions.
30. Sections 229.44 (5) and (6), 229.68 (5) and (6), 229.824 (5) and (6), and 229.844 (5) and (6), Stats., permit local exposition districts, baseball park districts, football stadium districts, and cultural arts districts to provide employee benefits, including an employee pension plan, and to participate in governmental plans of insurance or self-insurance under s. 66.0301, Stats.
31. Section 236.10 (4), Stats., provides for the cooperative exercise of the authority to approve or review plats by cities, villages, towns, and counties under s. 66.0301, Stats. Additionally, s. 236.10 (4), Stats., permits a city, village, town, or county to agree, under s. 66.0301, Stats., to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval.
32. Section 251.09, Stats., specifies that local health departments jointly may provide health services as agreed upon under s. 66.0301, Stats., unless, notwithstanding s. 66.0301, Stats., the agreement conflicts with a provision of ch. 251, Stats.
33. Under s. 281.58 (8) (d), Stats., an unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality is not eligible for financial assistance under the clean water fund program until it executes an agreement under s. 66.0301, Stats., with another municipality to receive, treat, and dispose of the wastewater of the unsewered municipality.
34. Section 287.09 (1) (d), Stats., specifies that a "responsible unit" of government for purposes of recycling programs under ch. 287, Stats., may by contract under s. 66.0301, Stats., designate another unit of government, including an Indian tribe or band in this state, or a solid waste management system created under s. 59.70 (2), Stats., to be the responsible unit in lieu of the previously designated responsible unit.
35. Section 323.14 (2), Stats., specifies that local units of government may cooperate under s. 66.0301, Stats., to furnish services, combine offices, and finance emergency management programs.

36. Under s. 755.01 (4), Stats., two or more cities, villages, or towns of this state may enter into an agreement under s. 66.0301, Stats., for the joint establishment of a municipal court, except that for purposes of this subsection, any agreement under s. 66.0301, Stats., shall be effected by the enactment of identical ordinances by each affected city, village, or town.

OTHER STATUTES AUTHORIZING INTERGOVERNMENTAL COOPERATION

Examples of statutes granting authority for intergovernmental cooperation that do not cross-reference the authority under s. 66.0301, Stats., are identified below.

1. Section 43.53, Stats., authorizes joint libraries to be created by any two or more municipalities or by a county and one or more municipalities located in whole or in part in the county.
2. Section 46.20, Stats., authorizes two or more counties to jointly provide for a county home, hospital, infirmary, or similar institution, or juvenile detention home.
3. Section 46.22, Stats., authorizes county boards of counties with populations of less than 500,000 to establish county departments of social services on a multicounty basis.
4. Section 46.23 (3), Stats., authorizes county boards of counties with a population of less than 500,000 to establish county departments of human services on a multicounty basis.
5. Section 46.82, Stats., authorizes county boards of two or more contiguous counties to administer certain programs for older individuals.
6. Section 49.72, Stats., authorizes two or more counties to jointly establish a county infirmary for the treatment, maintenance, and care of the aged infirm.
7. Section 51.42 (3), Stats., authorizes counties to join with other counties to establish a county department to administer a community mental health, developmental disabilities, alcoholism, and drug abuse program.
8. Section 51.437 (4g), Stats., authorizes county boards to establish multicounty departments of developmental disabilities services.
9. Section 59.42, Stats., authorizes two or more counties to jointly designate a corporation counsel.
10. Section 59.52 (15), Stats., authorizes counties to provide for the printing on assessment rolls and tax rolls and on data cards for local municipal officials descriptions of properties and the names of the owners of the properties.
11. Section 59.54 (4) and (4m), Stats., authorizes counties to establish a rural naming or numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense. Establishment of the rural naming or numbering system may be carried out in cooperation with any town or towns in the county.
12. Section 59.70 (2), Stats., authorizes county boards to establish and operate a solid waste management system or participate in such a system jointly with other counties, cities, villages, or towns.
13. Section 59.70 (12), Stats., authorizes any county or two or more contiguous counties to establish a district to control mosquitoes.

14. Section 60.23 (5), Stats., authorizes town boards to cooperate with counties in rural planning activities under ss. 27.019, 59.54 (4) and (4m), and 59.69, Stats.
15. Section 60.55, Stats., authorizes a town to join with a city, a village, or another town to establish a joint fire department.
16. Section 60.56, Stats., authorizes a town to join with a city, a village, or another town to create a joint police department.
17. Section 60.82, Stats., authorizes town boards to act jointly with other municipalities to establish and maintain regional planning programs to protect the health, safety, and general welfare of the town as part of the region. The town board may make payments out of the general fund for the town's share of the cost of the program.
18. Section 61.34 (2), Stats., authorizes a village board to join with other villages or cities in a cooperative arrangement for executing any power or duty in order to attain greater economy or efficiency, including joint employment of appointive officers and employees.
19. Section 61.65 (1), Stats., authorizes a village to contract with a county, a city, another village, or a town to provide police protective services; to create a joint police department with a city, another village, or a town; or to abolish its police department and enter into a contract with a county for the county sheriff to provide law enforcement services in the village.
20. Section 61.65 (2), Stats., authorizes a village to contract with a city, another village, or a town for fire protection services or to create a joint fire department with a city, another village, or a town.
21. Section 62.13 (2g), Stats., authorizes a city to enter into a contract with a county, another city, a village, or a town for police protective services.
22. Section 62.13 (2m), Stats., authorizes a city to create a joint fire department or a joint police department, or both, with another city.
23. Section 62.13 (2s), Stats., authorizes a city to abolish its police department if it enters into a contract with a county for the county sheriff to provide law enforcement services in the city.
24. Section 66.0123, Stats., authorizes two or more town boards or school boards to jointly establish a department of public recreation.
25. Section 66.0131 (2), Stats., authorizes any political subdivision of the state, special purpose district in the state, or an agency or corporation of such a political subdivision or special purpose district to make purchases from another unit of government, including the state or federal government, without requiring bids.
26. Section 66.0305, Stats., authorizes two or more counties, cities, villages, or towns to enter into an agreement to share all or part of revenues derived from taxes and special charges. One or more counties, cities, villages, or towns may enter into such agreements with Indian tribes or bands.
27. Section 66.0307, Stats., authorizes municipalities to enter into a cooperative plan determining the boundary lines between the municipalities, subject to Department of Administration approval. The plan must include specified planning and services requirements.
28. Section 66.0813, Stats., authorizes a municipality that operates a utility that provides water service to enter into an agreement with a city or village to provide water service to that city or village.

29. Section 83.14, Stats., authorizes towns or villages to raise money to improve portions of county highways.
30. Chapter 116, Stats., authorizes the creation of cooperative educational service agencies.
31. Section 252.10, Stats., authorizes two or more local health departments to jointly establish, operate, and maintain public health dispensaries.
32. Section 281.43, Stats., authorizes two or more governmental units, including cities, villages, town sanitary districts, and town utility districts, to jointly construct, operate, and maintain a joint sewerage system.
33. Section 287.13, Stats., authorizes two or more municipalities to enter into an agreement regarding the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and regarding the required use of that facility.
34. Section 303.09, Stats., authorizes county boards of two or more counties to jointly establish, maintain, and relocate an unlocked facility for use exclusively by persons granted leave privileges under the "Huber Law" and certain other confined persons.
35. Section 303.10, Stats., authorizes two or more counties to jointly provide one work camp for the reformation and employment of persons sentenced to the county jail.
36. Section 303.16, Stats., authorizes two or more counties with populations of less than 500,000 to jointly provide for one county house of correction.
37. Section 767.405, Stats., authorizes two or more contiguous counties to enter into a cooperative agreement to establish one family court services office to provide mediation in those counties.
38. Section 938.22, Stats., authorizes county boards of two or more counties to jointly establish a juvenile detention facility. Section 938.22, Stats., also authorizes county boards of two or more counties to jointly establish a shelter care facility.

MAINTENANCE AGREEMENT

This Maintenance Agreement (“Agreement”) is entered into as of the latest date set forth below by and between the Town of Fond du Lac (“Town”) and Fond du Lac County (“County”).

Whereas, the Town would like to retain the services of the County to provide certain highway maintenance services during the period from January 1, 2013 to December 31, 2013; and

Whereas, the County is willing and able to perform the maintenance services for the Town during this period on the terms described below.

NOW, THEREFORE, in consideration of the above recitals, which are contractual, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. Maintenance Services. For purposes of this Agreement, “Winter Maintenance Services” refers to snow removal, application of chlorides and anti-icing materials, and snow fencing. “General Maintenance Services” refers to surface maintenance, shoulder maintenance, maintenance of safety appurtenances, guard and security fencing, bridge railings, and attenuators, maintenance of drainage facilities, culverts, ditches, and catch basins, traffic control, marking and signage, and pavement ratings. Collectively, these types of maintenance services are referred to as “Maintenance Services.”
2. Performance of Maintenance Services. The County shall perform Winter Maintenance Services on the following Town roads:
 - a. Esterbrook Road from CTH OO south to STH 23.
 - b. Forest Avenue from the Town line east to the cul de sac.
 - c. Roads within Airport Industrial Park.
 - d. Esterbrook Road from Rogersville Road south to the cul de sac.
 - e. Miranda Way from Esterbrook Road to CTH D.
 - f. Town Line Road from CTH T south to USH 151.
 - g. Brown Road from Townline Road east to CTH D.
 - h. River Road from CTH D south to the Town line.
 - i. Martin Road from USH 151 south to the Town line.
 - j. Reinhardt Road from CTH V east to CTH K.

The County shall perform General Maintenance Services on the above roads and any other Town roads on an as-needed basis, when requested by the Town.



3. Non-Subject Highways. The Town will be responsible for all Maintenance Services on all other Town roads, except as may be set forth in any other agreement between the Town and any other party, including the County.
4. Term of Agreement. The County shall be responsible to perform Maintenance Services in accordance with this Agreement from its date through December 31, 2013.
5. Payment. The County shall submit invoices by the 10th day of each month for all Maintenance Services performed during the preceding month. The wage rates, material costs, and machinery rental rates established from time to time by the County shall apply. All work will be billed on a time-and-material basis.

For reference, the current estimated hourly rate for winter maintenance is \$140 - \$160 per hour, which rate includes, at a minimum, a five-yard truck, plow, wing and salter with operator. The cost for salt shall be approximately \$65.00 per ton and liquid de-icing shall be approximately \$0.20 per gallon for salt brine and \$1.20 per gallon for magnesium chloride.

Each invoice shall provide information substantiating the amount due, including the number of hours worked and the applicable rate as well as the amount and price of all materials used. The Town shall pay each invoice within 45 days of its receipt.

6. Timing of Maintenance Services. Maintenance Services shall generally occur between the hours of 4:00 a.m. and 8:00 p.m. During snow emergencies, the County Trunk Highway System shall take precedence over Town roads provided that the County uses its best efforts not to delay the provision of Maintenance Services on Town roads.
7. Anti-Discrimination. Neither party shall discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability, sexual orientation as defined in Wis. Stat. § 51.01(5), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
8. Indemnification. The County shall indemnify, defend, and hold harmless the Town, its Board, officers, employees, representatives, and insurers from and of all claims (including claims by employees such as worker's compensation claims), losses, damages, and attorneys' fees that may arise out of the County's performance of Maintenance

Services under this Agreement. This obligation shall not apply to the extent the claim, loss, or damage arises out of the Town's negligence.

9. Termination. This Agreement may be terminated by either party upon 30 days' written notice.
10. Independent Contractor. Nothing herein shall be deemed to constitute the Town and County as partners, joint venturers, agents, or employees of each other, or otherwise associated in or with the business of the other. The County is an independent contractor of the Town in its performance of this Agreement.
11. Miscellaneous. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereto. No failure on the part of either party to insist on the performance of any of the terms of this Agreement shall affect the party's ability to insist on the performance of such terms in the future. This Agreement may be executed in counterparts, and facsimile, pdf, digital, and electronic signatures shall operate as original signatures.

TOWN OF FOND DU LAC

Harold Manske, Town Chairperson

Attest:

Patti Supple, Town Clerk

FOND DU LAC COUNTY

Thomas J. Janke, Commissioner
Fond du Lac County Highway Dept.

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN
TOWN OF HARRISON AND VILLAGE OF HARRISON**

The Parties to this Intergovernmental Cooperation Agreement (hereinafter "Agreement") are the Town of Harrison (hereinafter the "Town") and the Village of Harrison (hereinafter the "Village").

RECITALS

WHEREAS, on or about March 8, 2013, the Secretary of State for the State of Wisconsin issued an incorporation certificate, recognizing the Village as an independent Wisconsin municipality consisting of lands that were formerly located in the Town of Harrison and the Town of Buchanan; and,

WHEREAS, the Town provided municipal services to the property owners and residents of the Town prior to the incorporation of said Village; and,

WHEREAS, in order to continue the adequate provision of said services on a cost-effective basis, the Town and Village wish to enter into an agreement whereby the Town will continue to provide some municipal services for the benefit of the Town and the Village; whereby the Village will provide other municipal services for the benefit of the Town and Village, and the Town and Village will share the costs of said services in accordance with the proportions and other terms herein; and,

WHEREAS, the Town and the Village wish to adjust the boundary line separating the Town and the Village, leaving only the remaining "growth area" (as identified in two separate Intermunicipal Agreements between the Town of Harrison and the City of Appleton and between the Town of Harrison and the City of Menasha, respectively), located within the Town; and,

WHEREAS, Wisconsin statute §66.0235 requires the Town and Village to apportion assets and liabilities as a result of the recent incorporation of the Village and further apportionment will be required in accordance with the boundary adjustments detailed in this Agreement; and,

WHEREAS, the Town and Village wish to establish rules and procedures for said apportionment in the context of this Agreement; and,

WHEREAS, Wisconsin statute §66.0301 allows municipalities to cooperate and contract in a binding fashion for the receipt and furnishing of services, for the joint exercise of powers or duties required or authorized by law, for the apportionment of expenses involved, for the adjustment of boundary lines, and for the exercises of other duties and rights as stated in §66.0301.



WHEREAS, a joint public hearing was held on this proposed Agreement on Tuesday July 2, 2013, and said public hearing was noticed in accordance with Wisconsin Statutes §66.0301(6)(c).

NOW THEREFORE, the Town and Village hereby enter into an Intergovernmental Cooperation Agreement pursuant to the authority granted to them by Wisconsin statutes §66.0301, on the following terms:

I. **Term of Agreement.** The Term of this Agreement shall be ten (10) years from the Effective Date. The "Effective Date" shall be the later of 1) the first date that this Agreement is signed by an authorized representative of both Parties, or 2) if, for any reason, this Agreement does not or cannot become effective on the first date it is signed by an authorized representative of both Parties, it shall become effective on the first date thereafter that this Agreement may become effective under Wisconsin law.

II. **Agreement Procedure.** Prior to approving this Agreement by resolution, the Town and Village has held a joint public hearing in accordance with Wisconsin statute §66.0301(6)(c), and the Town and Village provided notice of a pending agreement and public hearing by publishing a class 1 notice and by giving notice to each property owner affected by certified mail at least 20 days before the public hearing, in accordance with Wisconsin statutes §66.0301(6)(c).

III. **Apportionments of Assets and Liabilities.** Unless stated herein, the apportionment of assets and liabilities between the Town and Village shall be determined pursuant to Wisconsin statutes §66.0235.

a. The Apportionment Board, consisting of representatives of the Town and Village, shall convene immediately to begin discussions regarding apportionment of assets between the Town and Village, in accordance with §66.0235.

b. Notwithstanding the foregoing subparagraph (a), because the boundary line between the Town and Village will change (due to the operation of this Agreement) before a proper apportionment of assets and liabilities could be completed by the Apportionment Board, the Apportionment Board shall wait until the new boundary line is established before completing the apportionment process. The post-boundary-line-change areas of the Town and Village, respectively, shall be used to determine the average assessed values of the Town area and Village areas for the preceding five years. After a boundary-change ordinance is adopted, filed, and recorded by the Town under §66.0301(6)(e), the Apportionment Board shall finalize the apportionment process in accordance with §66.0235.

c. However, notwithstanding the foregoing subparagraph (b), if the boundary line change contemplated by this Agreement does not occur prior to December 31, 2013, the Apportionment Board shall complete its apportionment of assets and liabilities on an

interim basis and then reapportion assets and liabilities at such time that the boundary line change referenced in this Agreement takes effect.

d. Before apportioning any other asset or liability, all unrestricted monetary assets and liabilities presently owned or owed by the Town shall be apportioned in accordance with the formula contained at §66.0235(2)(b) based upon the average assessed valuation for the preceding five (5) years of the post-boundary-line change Town and Village areas, respectively. Because most non-monetary assets will be transferred by the Town to the Village or leased by the Town to the Village post apportionment, the goal of this paragraph is to ensure that monetary assets and liabilities are divided in the appropriate proportion before deciding the apportionment of any other tangible asset.

e. Any monetary funds that are restricted for a particular use shall retain said restrictions after apportionment.

f. During and after the apportionment process, non-monetary assets such as vehicles, land, buildings and/or inventory, may, at the option of the Apportionment Board, remain Town property or may be transferred to the Village in accordance with the formulas contained in §66.0235; in the alternative, the Apportionment Board may decide that certain assets will be jointly owned by the Town and Village in a proportion to be determined by the Apportionment Board (for example, the Apportionment Board could decide that the present Town Hall will be jointly owned in a certain percentage by the Town and a certain percentage by the Village, respectively). If the Apportionment Board decides that any asset shall be jointly owned post-apportionment, the Apportionment Board shall also allocate responsibility for the maintenance, insurance, preservation, and other obligations related to said asset. Deeds or other instruments reflecting changes in ownership shall be executed and recorded as necessary.

g. Following apportionment, the Town shall lease any real estate, buildings, road maintenance equipment, snowplowing equipment, ditch and culvert equipment, signage, mowers, tractors, park equipment, inventory, chippers, vehicles, fire and rescue equipment including engines, rescue vehicles, brush trucks, tankers, ATVs, snowmobiles, and similar equipment, garbage and recycling equipment, and other similar non-monetary assets that it retains after apportionment, to the Village in exchange for payment of \$1.00 in annual consideration (the Village's compliance with the other terms and conditions contained in this Agreement will serve as additional consideration for said lease).

IV. Provision of Municipal Services.

a. Public Works. All public works and related services that were previously provided by the Town for the benefit of the Town, shall hereafter be provided by the Village for the benefit of the Town and Village. Said public works services shall include, but are not necessarily limited to, road maintenance, snowplowing, ditch and culvert

work, wood chipping, signage, minor storm water management projects, mowing, park maintenance, equipment replacement, salting, and other daily and special maintenance.

b. Public Safety. The Village shall provide fire and rescue services to its own property owners and residents and to the Town's property owners and residents.

c. Refuse and Recycling Services. The Town is presently a party to a contract with a private contracted service providing refuse and recycling services to property owners and residents. Said contract shall continue in force and effect for the duration of their term. When said contracts expire, the Town and Village may jointly negotiate a new contract with a third party of their choosing or may elect to provide refuse and recycling services by any other means.

d. Parks. The Village shall be responsible for the maintenance of all parks located in the Town and Village.

e. Administrative Employees and Staff. At the outset of this Agreement, the Town and Village shall share all employees and administrative staff, including, but not limited to, an Administrator and Planner. Said employees and administrative staff shall be terminated by the Town and shall become employees of the Village, according to the terms outlined in this Agreement. Although said employees and administrative staff shall be employees of the Village for payroll, record keeping, and other purposes, the Town will also proportionally contribute to the total cost of said employees and administrative staff according to the terms herein, and said employees and administrative staff shall serve at the pleasure of both the Village Board of Trustees and the Town Board. In the event that the Town Board and Village Board of Trustees cannot agree on the allocation of time that the Administrator and Planner are spending on Town and Village business, respectively, said time shall be proportionally allocated in accordance with the assessed values of all Town real and personal property versus the assessed value of all Village real and personal property in the prior year. The Town and Village shall attempt to appoint a common clerk and treasurer when practical, and share the cost thereof in accordance with this paragraph. This paragraph is not intended to change or alter the "at-will" or other status of any current employee of the Town when employed by the Village.

f. Payment of Expenses Related to Shared Services and Services Provided by the Town or Village for the benefit of both. Unless otherwise agreed by the Parties, the Town and Village shall be jointly responsible for the cost of all shared services in the nature of public works, public safety, refuse and recycling, parks, administrative staff, and costs resulting from the provision of similar services, as referenced above. The Town and Village shall each pay the proportion of total expenses equal to their respective share of the total assessed value of all real and personal property located in the Town and Village in the prior year.

g. Capital Expenditures. The cost of any new capital equipment or other asset necessary or useful for the provision of the municipal services contemplated herein,

shall be apportioned between the Town and Village in a proportion equal to their respective shares of the total assessed value of all real and personal property located in the Town and Village in the prior year.

V. **Employees.** All employees of the Town shall be terminated by the Town and rehired by the Village on terms identical to the terms of their current employment with the Town. At-will employees shall remain at-will employees and employees under contract or other similar arrangement shall remain a party to said contract or other arrangement except that the Town's rights and obligations under said contract shall become the Village's rights and obligations. The Town and Village shall cooperate with each other and with any state agency to the extent necessary to effectuate this provision. Said transfer of employees from the Town to the Village shall be in a seamless fashion so as not to disrupt the provision of payroll, benefits, or other similar matters.

VI. **Adjustment to Boundary Line Between Town and Village.**

a. Prior to the Effective Date, the boundary line between the Town and Village is/was as indicated in **Exhibit A**.

b. On or after the Effective Date, the Town and Village will alter the boundary line between the Town and Village so that the boundary line between the Town and Village becomes the lines between the Town and Village reflected in **Exhibit B**.

c. The lands transferred from the Town to the Village pursuant to the boundary line change include all lands available to be transferred from the Town to the Village under Wisconsin law described in the attachment hereto as **Exhibit C**.

d. On or after the Effective Date, the Village Board will adopt and file an ordinance to trigger the boundary line change in accordance with Wisconsin statute §66.0301(6). Said ordinance shall be filed and recorded immediately (or as soon thereafter as reasonably possible) in accordance with Wisconsin statute §66.0301(6), to effectuate the boundary line alternation between the Town and Village.

e. In accordance with Wisconsin statute §66.1105(4)(gm)(1), this Agreement constitutes a cooperative plan boundary agreement, and the Village will not be prohibited from exercising its TIF powers for a period of three years following the boundary line change.

VII. **Planning, Finance and Budgeting, and Ad Hoc Committees.**

Planning.

a. The Village of Harrison and the Town of Harrison agree to create a joint planning commission to be known as the Town/Village Joint Planning Commission.

b. The Town/Village Joint Planning Commission shall consist of seven members, three of whom are appointed by the Town Chairperson subject to confirmation by the Town Board and three of whom are appointed by the Village President subject to confirmation by the Village Board. The Town Chairperson and Village President shall appoint two residents of their respective municipalities who are not members of the Town or Village Board. The Town Chairperson shall also appoint one member of the Town Board. The Village President shall also appoint one member of the Village Board. The Village President will serve as chairman of the Town/Village Joint Planning Commission from the third week in April to the following third week in April, starting in odd numbered years and the Town Chairman shall serve as chairman of the Town/Village Joint Planning Commission from the third week in April to the following third week in April, starting in even numbered years.

c. The initial term of appointment for each Party's delegation shall be for a term of three years. The Village Board and Town Board members' terms shall follow their respective board terms. Following initial appointments, regular appointments shall be made in April of each year, as needed. Following initial appointments, all members of the Town/Village Joint Planning Commission shall serve for terms of three years

d. A vacancy shall be created if a Town/Village member's residency terminates during the term of appointment or if the position is otherwise not occupied due to resignation, failure to continue in elected office if a member of the governing board or removal for cause by the governing board or the respective municipality. Vacancies shall be promptly filled for the unexpired term in the same manner as the original appointment and successors shall serve the remaining term.

e. The Town/Village Planning Commission shall have the same duties and responsibilities as granted under the Wisconsin State Statutes and local ordinances for both the Village and the Town in regards to planning commissions. Recommendations of the planning commission shall be forwarded to the appropriate municipalities' Board for review.

Finance and Budgeting.

a. The Village of Harrison and the Town of Harrison agree to create a joint finance committee to be known as the Town/Village Joint Finance Committee.

b. The purpose of the Town/Village Joint Finance Committee is to coordinate the financing and budgeting of both the Town of Harrison and Village of Harrison. The Town/Village Joint Finance Committee will assist the Village Manager in establishing the budget for both the Town of Harrison and the Village of Harrison. The Joint Finance Committee will also make recommendations to their respective boards on the purchase of any capital items or proposed capital improvement programs.

c. The Town/Village Joint Finance Committee shall consist of five members, two of whom are appointed by the Town Chairperson subject to confirmation by the Town Board and two of whom are appointed by the Village President subject to confirmation by the Village Board. The Town Chairperson and Village President shall appoint two members of their respective boards. The Village President will serve as chairman of the Town/Village Joint Finance Committee from the third week in April to the following third week in April, starting in even numbered years and the Town Chairman shall serve as chairman of the Town/Village Joint Finance Committee from the third week in April to the following third week in April, starting in odd numbered years.

d. The initial term of appointment for each Party's delegation shall be for a term of two years. Following initial appointments, regular appointments shall be made in April of each year, as needed. Following initial appointments, all members of the Town/Village Joint Finance Committee shall serve for terms of two years

e. A vacancy shall be created if a Town/Village member's residency terminates during the term of appointment or if the position is otherwise not occupied due to resignation, failure to continue in elected office or removal for cause by the governing board or the respective municipality. Vacancies shall be promptly filled for the unexpired term in the same manner as the original appointment and successors shall serve the remaining term.

Ad Hoc Committees.

The Town Board Chairman and Village President, by agreement, may establish additional ad hoc committees as used for or necessary to accomplish the subject matter contained in this Agreement.

VIII. Modification. This Agreement may be modified by the mutual agreement of the Town and Village.

IX. Construction of Agreement. Any court of competent jurisdiction that is interpreting and reviewing this Agreement, shall review it in the context that most favors enforceability. If a reviewing court interprets the statutes so as to require separate agreements for sharing of services under §66.0301(1-5) and boundary agreements under §66.0301(6), then a reviewing court shall read this Agreement as two separate Agreements, with one agreement addressing the issues addressed in §66.0301(1-5) and the other agreement addressing the issues presented in §66.0301(6). If, however, a reviewing court believes that this Agreement is most enforceable if interpreted as a single agreement, then it should interpret this Agreement as a single agreement.

The below-signed authorized individuals certify that this Intergovernmental Cooperation Agreement has been duly approved by their respective governing bodies in accordance with state

and local laws, rules and regulations, and that each has caused their duly authorized officers to execute this Agreement on the dates written before their respective signatures.

Dated: July 2nd 2013

VILLAGE OF HARRISON,
a Wisconsin municipal corporation

By: James J. Salm
Jim Salm

Dated: July 2nd 2013

TOWN OF HARRISON,
a Wisconsin municipal corporation

By: John A. Sloten
John Sloten

DRAFTED BY:
Andrew J. Rossmeissl
Herrling Clark Law Firm Ltd.
800 N. Lynndale Drive
Appleton, WI 54914
920/882-3219

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF OSHKOSH AND THE TOWN OF NEKIMI
TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT
WITHIN AGREED-UPON MUNICIPAL BOUNDARIES**

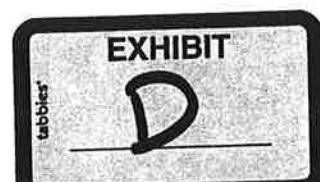
Agreement effective as indicated herein by and between the City of Oshkosh ("City"), and the Town of Nekimi ("Town").

**ARTICLE I
PURPOSE OF AGREEMENT**

- 1.1 Purpose. The purpose of this Agreement is to set forth the procedures, terms and conditions by which the parties wish to achieve the following mutual goals pursuant to Wis. Stat. §§ 66.1001, 66.0301 and 66.0307:
- (A) Orderly, planned growth for the City and the Town and the provision of appropriate, cost-effective municipal services for such development;
 - (B) Orderly boundaries between the City and the Town, promoting cost-effective provision of services and more efficient operation of all units of government;
 - (C) Continual City growth to provide the City with an ever-renewing and expanding tax base and a pool of citizen leadership;
 - (D) Continual development for the Town to replace tax base lost to the City by reason of annexations or attachments so that the Town may also have an ever-renewing and expanding tax base and a pool of citizen leadership;
 - (E) Prevention of unplanned development leading to sprawl, and the protection of the area's natural resources, including its lakes, streams, rivers, wetlands, woodlands and prime agricultural land; and
 - (F) Promotion of quality development in the City and the Town.

**ARTICLE II
AREA GROWTH DELINEATIONS**

- 2.1 Introduction. The parties intend to identify and accept three geographical delineations, as follows:
- (A) Nekimi Protected Area. The Nekimi Protected Area (sometimes referred to as "NPA") is an area from which the City agrees not to annex or attach territory during the term of this Agreement. The NPA is delineated in the attached map,



which is identified as Exhibit 1 and which is incorporated by reference. Additional provisions relating to the NPA are identified in Section 2.2, below.

- (B) City Expansion Area. The City Expansion Area (sometimes referred to as “CEA”) is an area that the parties expect to be developed for urban uses within the City during the term of this Agreement. The CEA is delineated in the attached map, which is identified as Exhibit 1 and which is incorporated by reference. Additional provisions relating to the CEA are identified in Section 2.3, below.
- (C) Rural Preservation Area. The Rural Preservation Area (sometimes referred to as “RPA”) is an area that the parties expect will remain primarily rural and agriculturally oriented during the term of this Agreement. The RPA is delineated in the attached map, which is identified as Exhibit 1 and which is incorporated by reference. Additional provisions relating to the CEA are identified in Section 2.4, below.

2.2 Nekimi Protected Area. The parties acknowledge that the territory in the Nekimi Protected Area will be developed and will remain in the Town during the term of this Agreement. The following additional provisions shall apply to the NPA:

- (A) The City will not annex any land from the NPA without the Town’s prior written consent. A written request for consent will be submitted to the Town upon receipt of an annexation petition. The Town will respond in writing to such request within 45 days. Failure to respond within said 45 days shall be deemed a denial of the request. The Town reserves all legislative prerogative in deciding whether it wishes to allow the annexation and, to that extent, all rights are reserved.
- (B) The Town reserves the right to permit unsewered development on lands within the NPA, provided the development is consistent with the Town’s comprehensive plan. To the extent that the City has jurisdiction to review or approve any land division within the NPA, the City shall provide timely approval of said land division without conditioning its consent on the execution of an attachment agreement.
- (C) In consideration for the rights and privileges granted to the City by the Town under this Agreement, the City agrees that it shall not adopt or exercise extraterritorial zoning and plat approval jurisdiction applicable to the NPA.

2.3 City Expansion Area. The parties acknowledge that the territory within the City Expansion Area is likely to be developed with comprehensive urban services, including, but not limited to, sanitary sewers and water in conformance with the City’s comprehensive plan. The following additional provisions shall apply to the City Expansion Area:

- (A) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create town or city islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, nor support opposition to, annexation consistent with the terms of this Agreement.
- (B) The parties acknowledge and agree that any area that, on the effective date of this Agreement or during the term of this Agreement, becomes a functional town island shall be annexed or attached to the City within sixty (60) months, except as otherwise provided in subsection 2.3(C), below. The Town shall cooperate with the City on the annexation or attachment of the relevant area. For the purposes of this Agreement, a 'functional town island' occurs when either man-made or natural barriers, employed in conjunction with City corporate boundaries, isolate a portion of the Town. In determining whether an area is sufficiently isolated so as to constitute a 'functional town island,' the parties shall consider: (i) the extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town, (ii) the extent to which natural borders and political boundaries of the City isolate the area from the balance of the Town, or (iii) the extent to which, for all practical purposes, the area is cut off from the remainder of the Town. Following annexation, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system performed by a Licensed Plumber.
- (C) Once seventy (70%) percent or more of the land within a Town Section has been annexed or attached to the City, the remaining land within the Town Section shall attach to the City within seven (7) years; provided, however, that once 70% or more of the land within Town Sections 2 and 4 have been annexed or attached to the City, the remaining land within these Sections shall attach to the City within ten (10) years. Following annexation, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system performed by a Licensed Plumber.
- (D) The Town shall consent to the construction of City utilities in Town rights of way and easements as necessary to serve annexed lands subject to the City's obligations (i) to maintain access to Town territory, and (ii) to restore the right of way or easement in accordance with commonly accepted practices.
- (E) When a new road is proposed by the City to be built on land located in the CEA, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City must obtain the Town's prior written consent for new roads to be built on land

located in the CEA, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.

- (F) The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.
- (G) When requests are made for approval of any certified survey map, plat, or initiation of development activities that will result in the creation of any non-rural, non-agricultural use, where the certified survey map, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:
 - (i) An attachment agreement is executed with the City, which requires the property owner and successor owners to annex and/or attach the affected parcel(s) when the parcel(s) become contiguous with the City. The annexation and/or attachment agreement shall also provide provisions for necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area.
 - (ii) The property owner and/or developer prepares and submits to the City a Master Development Plan for the Town Section within which the certified survey map, plat, or development activity is proposed, and a finding is made by the City that the certified survey map, plat, or development activity is consistent with the City's adopted Comprehensive Plan, or can be made consistent with the addition of appropriate conditions, including conditions relative to the installation of public improvements. The City may waive the Master Development Plan requirement based on the size and scope of the proposal.
 - (iii) The certified survey map, plat, and development activity must be served by a publicly dedicated road built in accordance with the City's Subdivision Regulations, unless said requirement is waived and/or modified by the City.
 - (iv) The maximum lot size of residential parcels shall not exceed two (2) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building site(s), unless said requirement is waived and/or modified by the City.
- (H) The Town will not rezone land located in the CEA without first obtaining the City's consent to the rezoning, which consent may not be withheld if the proposed rezoning is consistent with the terms of this Agreement and the provisions of the City's adopted Comprehensive Plan.

2.4 Rural Preservation Area. The parties acknowledge that the majority of land within the Rural Preservation Area is likely not to be developed to urban densities within the term of this Agreement. Nevertheless, the parties agree to the following provisions applicable to the RPA:

- (A) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create town or city islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, nor support opposition to, annexation consistent with the terms of this Agreement.
- (B) The parties acknowledge and agree that any area that, on the effective date of this Agreement or during the term of this Agreement, becomes a functional town island shall be annexed or attached to the City within sixty (60) months. The Town shall cooperate with the City on the annexation or attachment of the relevant area. For the purposes of this Agreement, a 'functional town island' occurs when either man-made or natural barriers, employed in conjunction with City corporate boundaries, isolate a portion of the Town. In determining whether an area is sufficiently isolated so as to constitute a 'functional town island,' the parties shall consider: (i) the extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town, (ii) the extent to which natural borders and political boundaries of the City isolate the area from the balance of the Town, or (iii) the extent to which, for all practical purposes, the area is cut off from the remainder of the Town.
- (C) The Town shall consent to the construction of City utilities in Town rights of way and easements as necessary to serve annexed lands subject to the City's obligations (i) to maintain access to Town territory, and (ii) to restore the right of way or easement in accordance with commonly accepted practices.
- (D) When a new road is proposed by the City to be built on land located in the RPA, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City must obtain the Town's prior written consent for new roads to be built on land located in the RPA, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.
- (E) The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.
- (F) When requests are made for approval of any certified survey map, plat, or the initiation of development activities that will result in the creation of any non-

rural, non-agricultural use, where the certified survey map, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:

- (i) A maximum of twenty-eight (28) non-rural, non-agricultural residential dwellings are permitted within each Town Section, provided, however, that not fewer than ten (10) additional non-rural, non-agricultural residential dwellings will be permitted in each Town Section regardless of the number of non-rural, non-agricultural residential dwellings in existence on the date of this Agreement.
- (ii) The certified survey map, plat, and development activity must be served by a publicly dedicated road built in accordance with the design (but not construction) standards of Section 30.73 of the City of Oshkosh Municipal Code, as amended from time to time, unless said requirement is waived and/or modified by the City.
- (iii) The minimum lot size of residential parcels shall be five (5) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building site(s), unless said requirement is waived and/or modified by the City.
- (iv) Commercial and light industrial development may be permitted within the Highway 41 Corridor Overlay District for all parcels abutting the right-of-way of U.S. Highway 41 and/or the U.S. Highway 41 frontage roads, but excluding any portion of abutting parcels lying more than one thousand three hundred twenty (1,320) feet beyond the most westerly and easterly right-of-way line of U.S. Highway 41 and/or the U.S. Highway 41 frontage roads. The frontage roads include Black Oak School Road and Plainview Road. Any such commercial and light industrial development permitted shall also be required to execute an attachment agreement with the City which requires the property owner and successor owners to annex and/or attach the affected parcel(s) within sixty (60) months of the date when the parcel(s) become contiguous with the City. The annexation and/or attachment agreement shall also provide provisions for necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area.
- (v) Commercial and light industrial development may be permitted outside the Highway 41 Corridor Overlay District, subject to the review and approval of development proposals by the City, a finding that any such proposed development is and/or will be deemed compatible with the City's and the Town's Comprehensive Plans, and an attachment agreement is executed with the City which requires the property owner and successor owners to annex and/or attach the affected parcel(s) within sixty (60) months of the date when the parcel(s) become contiguous with the City. The annexation

and/or attachment agreement shall also provide provisions for necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area. If the City's and the Town's respective Comprehensive Plans are inconsistent with regard to the proposed development, the parties agree to meet for the purpose of attempting to reconcile the inconsistencies, either through amendments to the Comprehensive Plans or by other mutually agreed upon means.

ARTICLE III

COOPERATION WITH GOVERNMENTAL AGENCIES

- 3.1 Advancement of Mutual Interests. The parties acknowledge that in order to effectively implement this Agreement, it may be necessary to obtain the cooperation and approval of other governmental agencies, including, but not limited to, East Central Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources, the Wisconsin Department of Transportation, the Wisconsin Department of Administration and Winnebago County. In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of the relevant agency. To the extent practicable, the parties will, where necessary, submit a single, joint request or other appropriate document requesting the approval.
- 3.2 New West Side Arterial. In addition to the subjects of cooperation referenced in Section 3.1 above, the parties agree that they will cooperate in the mapping of a possible new west side arterial running from State Highway 21 on the north to State Highway 26 on the south. The City acknowledges the Town's opposition to this project south of State Highway 44 and, therefore, agrees not to map this project south of State Highway 44. The City will periodically provide the Town with reports of the status of this project together with all relevant background documents that the Town may need to make informed decisions concerning the project.
- 3.3 Road Transfer. Effective January 1 following approval of the Cooperative Plan by the State of Wisconsin Department of Administration under Wis. Stat. § 66.0307, the boundary between the City and the Town is adjusted by the Plan to attach to the City the road rights-of-way identified on Exhibit 4. At that time, the City Clerk shall provide notice of the attachment as provided in the Cooperative Plan. The parties will execute the documents necessary, as may be required by the State, to provide for the transfer of jurisdiction.

ARTICLE IV

DISPUTE RESOLUTION

- 4.1 Dispute Resolution. All disputes over the interpretation or application of this Agreement shall be resolved according to the following dispute resolution procedures:

- (A) If the dispute cannot be resolved by the personnel directly involved, the parties will conduct the following mediation process before invoking formal arbitration:
- (i) Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
 - (ii) Either representative may request the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within five 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.
 - (iii) The mediation session shall take place within 30 days of the appointment of the respective representatives designated by the parties, or the designation of a mediator, whichever occurs last.
 - (iv) 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 10 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.
 - (v) 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. To the extent authorized by law, the mediation session(s) 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 maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, 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.
 - (vi) The expenses of a mediator, if any, shall be borne equally by the parties.
- (B) If unresolved after (a) 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 a 5-person panel list from the Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration, or his successor. Each party will have two strikes from the 5-person panel. The parties may agree to an alternative method for the selection of the single arbitrator.

- (C) The City and the Town will be responsible for the fees of their own arbitrator and will equally divide the fees of the third arbitrator, as well as the costs of court reporters, if any. The City and the Town will be responsible for their own attorneys' fees and expert fees.
- (D) The arbitration panel shall not be bound by rules of evidence or the substantive, internal laws of Wisconsin. The award of the panel is final and binding, and shall be enforceable at law. The arbitration provisions of Chapter 788 of the Wisconsin Statutes shall apply to the arbitration proceedings, unless the parties agree on different arbitration procedures.
- (E) The parties agree that arbitration proceedings must be instituted within one year after the claimed breach occurred, and that the failure to institute arbitration proceedings within such periods shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims.

ARTICLE V

MISCELLANEOUS PROVISIONS

- 5.1 Amendments. This Agreement may be amended, from time to time, by mutual consent of all parties hereto. Any party wishing to propose such an amendment will give written notice to all other parties. The notice will identify the proposed amendment and the reasons supporting such amendment. Within 30 days after receipt of the notice, the parties will meet to discuss and, if necessary, negotiate the proposed amendment. If, after 90 days, the parties are unable to agree upon and approve the proposed amendment, it shall be automatically deemed to have been withdrawn and shall not thereafter be proposed for a period of 2 years after the date of the initial notice, unless a majority of the parties jointly re-submit it for consideration.
- 5.2 Notices. All notices required under this Agreement must be served, either personally or by certified mail, upon the parties' respective municipal clerks. A copy of the notices shall also be mailed via regular U.S. mail to the Town Chairperson and City Mayor. Any action taken by a party in violation of the relevant notice requirements is voidable unless, under the facts of the particular case, the public interest outweighs strict enforcement of the notice requirement.
- 5.3 Enforceability. The parties have entered into this Agreement under the authority of Wis. Stats. §§ 66.1001, 66.0301 and 66.0307. 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 be construed so as to be binding on their respective successors, agents and employees.
- 5.4 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 filed with the Register of Deeds of Winnebago 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.

- 5.5 No Waiver. The failure of any 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 any other party that did not sign the waiver or release.
- 5.6 Term of Agreement. The initial term of this Agreement shall be 40 years from the date of the last signature. No breach or violation of any of the terms of this Agreement shall operate to void or terminate this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined, or otherwise remedied by exercise of any lawful, contractual enforcement remedies then available to be utilized by the aggrieved party to enforce the terms of this Agreement. Despite the preceding, this Agreement shall automatically terminate when the parties mutually agree that the purposes recited in Section 1.1, above, are no longer relevant.
- 5.7 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 imposed 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.
- 5.8 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.
- 5.9 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.

5.10 Non-Severability. The parties acknowledge that the provisions of this Agreement are interconnected. Therefore, if any provision of this Agreement is held invalid, illegal or unenforceable, the entire Agreement will be void if the parties are unable to replace the invalid provision through the process described below.

If any provision of this Agreement is held invalid, illegal or unenforceable, the parties shall make a concerted, good faith effort to substitute a valid and enforceable provision as similar as possible to the provision at issue. If agreement is not reached within 90 days of the adverse determination, the parties shall submit the issue to mediation pursuant to the mediation provisions of Section 5.1(a), above. If unresolved after mediation the Agreement is void.

CITY OF OSHKOSH

The undersigned officers of the City of Oshkosh have executed this Agreement pursuant to a duly adopted resolution of the Common Council dated July 24, 2007 Res. 07-203

By: Mark Rohloff 6/1/11
Mark Rohloff Date
City Manager

Attest: Pamela R. Ubrig 6/3/11
Pamela R. Ubrig Date
City Clerk

APPROVED

STATE OF WISCONSIN)
)ss
WINNEBAGO COUNTY)

[Signature]
CITY ATTORNEY
OSHKOSH, WISCONSIN

Personally came before me this 3rd day of June, 2011, the above-named Mark Rohloff, City Manager and Pamela R. Ubrig, City Clerk, to me known to be said officer(s) who executed the foregoing instrument and acknowledged that they executed the same as such officers by its authority, for the purpose therein contained.

[Signature]
Notary Public, Winnebago County, Wisconsin
My commission is permanent/expires: 2-24-13

TOWN OF NEKIMI

The undersigned officers of the Town of Nekimi have executed this Agreement pursuant to a duly adopted resolution of the Town Board dated May 11, 2011.

By: Glen Barthels 5/11/11
Glen Barthels Date
Chairperson

Attest: Jerome Braasch 5-11-11
Jerome Braasch Date
Deputy Town Clerk

