

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF OSHKOSH AND THE TOWN OF ALGOMA

The Parties to this Agreement are the City of Oshkosh ("City") and the Town of Algoma ("Town"); both located in Winnebago County, Wisconsin.

R E C I T A L S

- A. The City and Town share a common border on the City's west side and the Town's east side.
- B. The City and Town have a history of disputes regarding their border including litigation over annexations from the Town to the City.
- C. Recent developments, including a citizen-initiated effort to incorporate the Town, have caused the City and Town to explore reaching an agreement to secure long-range benefits for both Parties and their citizens.
- D. The petition to incorporate the Town is pending before the State of Wisconsin Department of Administration.
- E. The City's long term growth and development plans envision continued westward development in a logical and well-planned fashion.
- F. The Town desires to protect, indefinitely, the integrity of its territory within certain boundaries.
- G. The Town desires to protect lands from being annexed against the owners' wishes for an extended period of time.
- H. The City and Town both desire that a Transition Area be established so that the eventual City-Town border is well-planned, with compatible development on both sides.
- I. To attain the objectives of both the City and Town and to provide for mutual peace and cooperation beneficial to citizens in both communities, the City and Town desire to enter into this new Intergovernmental Agreement.

AGREEMENT

Therefore, in accordance with the authority granted them under the Wisconsin statutes and for their mutual benefit and in the public interest, the Parties agree as follows:

1. *Establishment of Protected Area.* Lands within the Town are divided into a Protected Area and an Expansion Area as shown on Exhibits A and B attached hereto.
2. *Protected Area.* Within the Protected Area,
 - a. The City shall not annex any lands unless such annexation is approved by a four-fifths (4/5) majority of the entire Town Board.
 - b. Except as otherwise specifically provided in this Agreement, the City shall exercise no extraterritorial jurisdiction. The limitation on the City's exercise of extraterritorial jurisdiction includes, but is not limited to, zoning, land division, and official mapping.
 - c. The City and the Town shall consult with each other concerning a new north-south arterial on or near Clairville Road.
 - d. The City shall not object to nor interfere with applications by the Algoma Sanitary District ("District") to expand its boundaries or extend its sewer service area.
3. *Expansion Area.* Within the Expansion Area,
 - a. All lands within Zone A as shown on Exhibit A (east of U.S. Highway 41) shall attach to the City as of March 1, 2013.
 - b. All lands in Zone B as shown on Exhibit A shall attach to the City as of March 1, 2018.
 - c. All lands in Zone C as shown on Exhibit A (east of Clairville Road) shall attach to the City as of March 1, 2023.
 - d. All lands in Zone D as shown on Exhibit A (west of Clairville Road) shall attach to the City as of March 1, 2043.
 - e. Lands may be annexed to the City prior to the above dates 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, annexations consistent with the terms of this Agreement.

- f. The Town consents 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, (ii) not to interfere with Town utilities, and (iii) to restore the right of way or easement in accordance with commonly accepted practices.
- g. The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.
- h. The City shall provide sanitary sewer, storm sewer and water services to lands prior to annexation or attachment on the same extension, cost and payment terms as those generally applicable to similarly situated lands within the City, provided: (1) such services could be made available to such lands if they were within the City; and (2) the owners of such lands unanimously agree to annexation or attachment to the City effective 5 years after the service is available. Lands under such agreements shall be attached to the City pursuant to this Agreement and shall be subject to City zoning and land use regulation pending the attachment.
- i. The City shall be responsible for all actions necessary to accomplish annexations or attachments as provided herein.

4. *Land Use and Zoning.*

- a. Consistent with Sec. 62.23(7a), Wis. Stats. (1999-2000), the City and the Town shall establish an extraterritorial zoning committee ("EZC"), which shall exercise such power and authority as contained therein, within the Expansion Area of the Town except as provided in section 3h.
- b. A Buffer Zone is established as shown on Exhibit B. Allowable uses within the Buffer Zone shall be limited to those set forth in Exhibit C. Additional uses shall not be permitted unless approved by the EZC, as provided in Sec. 62.23(7a), Wis. Stats.
- c. The EZC shall also have jurisdiction within the Buffer Zone for the purposes of section 4b.

5. *Services and Utilities.*

- a. Commencing on the first day of the next month starting at least thirty (30) days after a written request from the Town to the City Manager, the City shall provide emergency ambulance services throughout the Town on the same terms under which the City currently provides such services to a portion of the Town.
- b. The District shall continue to own and operate the portions of the sanitary sewer system within the Town for the term of this Agreement regardless of what portion of the patrons of the system is in the City. To the extent supplemental agreements are necessary to implement the terms of this paragraph, the City shall cooperate with the District to enter into such agreements on terms that are fair to both.

6. *Cooperative Plan.* The Town and the City shall fully participate in the preparation of a cooperative plan and seek approval thereof under sec. 66.0307, Stats.

- a. The resolution by which each Party approves this Agreement shall authorize participation in the preparation of a plan as provided in sec. 66.0307(4)(a), Stats., and the clerk of each Party shall give notice of such resolution as required by sec. 66.0307(4)(a), Stats.
- b. Any failure to comply with paragraph a may be cured by adopting a new resolution and giving notice as provided in sec. 66.0307(4)(a), Stats., not later than 45 days after the date of commencement of the term of this Agreement.
- c. To the extent it is determined not to be contrary to the public interest after the hearings, comments and review by the Department of Administration required by sec. 66.0307(4) and (5), Stats., the cooperative plan shall incorporate the terms of this Agreement except as otherwise provided in this section.
- d. The cooperative plan shall permit attachment of territory by ordinance adopted by a simple majority of the City's Common Council in place of annexation under section 3.e of this Agreement upon the written request or agreement of the owner or owners of the parcel attached and notice to the Town.
- e. The cooperative plan shall permit the attachment of territory to the City under section 3.a, b, c, or d of this Agreement by adoption of an ordinance by a simple majority of the City's Common Council.

- f. The cooperative plan shall provide that no part of the Town may be incorporated prior to March 1, 2008.
- g. The Town and the City shall fully cooperate to complete the preparation of the cooperative plan and submit it to the Department of Administration for final approval as soon as reasonably possible after the effective date of this Agreement.
- h. Once approved, the cooperative plan shall govern without respect to subsequent changes in statutory law.

7. *Incorporation Petitions.*

- a. The Town and the City shall jointly request the Department of Administration and the Circuit Court to suspend all proceedings related to the currently pending petition to incorporate a part of the Town while they seek approval of the cooperative plan from the Department of Administration.
- b. Within 30 days after final approval of the cooperative plan under sec. 6.g, the Town shall request the Court and the Department of Administration to dismiss the currently pending incorporation petition. For purposes of this section, final approval means that the Department of Administration has issued its approval under Wis. Stat. sec. 66.0307(5) and either the time for judicial challenge of the approval has elapsed without challenge or the approval has been upheld by the courts and the time for further appeal has elapsed.
- c. Pending final approval of the cooperative plan, the Town shall not support in any way any effort to incorporate any part of the Town.
- d. Pending final approval of the cooperative plan, the City may annex any part of the area subject to the pending incorporation petition with majority Town Board approval, consistent with Chapter 66 of the Wisconsin Statutes. The Town and the City shall sign and file with the circuit court a stipulation deleting such territory from the legal description accompanying the incorporation petition.
- e. If the cooperative plan does not receive approval from the Department of Administration under Wis. Stat. sec. 66.0307(5) by February 28, 2005, or such later date as mutually agreed in writing by the Parties, or if the approval is reversed by the courts and no further appeal or proceeding is possible to have the approval reinstated, then this Agreement shall terminate and the pending incorporation petition may proceed with the Town's support.

8. *Term.* This Agreement shall commence upon being signed by the Parties and shall terminate at 11:59 p.m. on February 28, 2063, unless extended by mutual agreement. No later than March 1, 2053, the Parties shall meet and confer to extend this agreement on such terms and conditions as the Parties may then agree. Failure to agree on extension shall not be considered a breach or dispute subject to resolution under section 10.
9. *Challenge to Agreement.*
 - a. The Parties waive all rights to challenge the validity or enforceability of this Agreement or any of its provisions or to challenge any actions taken pursuant to or in accordance with this Agreement.
 - b. In the event of a court action by a third party challenging the validity or enforceability of the Agreement or any of its provisions, the Parties shall fully cooperate to vigorously defend the Agreement.
 - (1) If only one Party is named as a party to the action the other Party shall seek to intervene and the named Party shall support such intervention.
 - (2) No settlement of such an action shall be permitted without the approval of the governing bodies of the Parties.
 - (3) The workload to defend the Agreement shall be shared equally.
 - c. A challenge to the Agreement by one of the Parties or a failure to vigorously defend the Agreement constitutes a breach of the Agreement.
10. *Dispute Resolution.* In the event of a breach of this Agreement or a dispute between the Parties involving the application, interpretation or enforcement of this Agreement,
 - a. The Parties shall meet to seek a resolution within 10 days following written notice by one Party to the other Party of the breach or dispute.
 - b. If the issue is not resolved at such meeting or at an extension thereof mutually agreed to by the Parties, either Party may demand mediation. The Parties shall submit to mediation if demanded by either Party.
 - (1) If the Parties cannot agree on a mediator within five (5) days after the demand for mediation, either Party may request appointment of a qualified mediator 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.

- (2) The mediation session must take place within thirty (30) days of the appointment of the mediator.
 - (3) Each Party must designate a representative with appropriate authority to be its representative in the mediation of the dispute.
 - (4) Each Party must provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least ten (10) days prior to the scheduled mediation session. The Parties must also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any Party to supplement such information.
 - (5) The mediator does not have authority to impose a settlement upon the Parties, but will attempt to help the Parties resolve their dispute. The mediation sessions shall be private. The Parties and their representatives may attend the mediation sessions.
 - (6) The cost of the mediator shall be borne equally by the Parties.
 - (7) The Parties shall maintain the confidentiality of the mediation and may not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding (i) views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute; (ii) admissions made by the other Party in the course of the mediation proceedings; (iii) proposals made or views expressed by the mediator; or (iv) the fact that the other Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- c. In the event the issue is not resolved as a result of the meeting or mediation as provided in paragraphs a and b, the matter shall be submitted to binding arbitration upon written demand by either Party to the other with notice to the Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration of such demand. The arbitration shall be performed by a person designated by the Director in accordance with such rules and procedures such person may specify, subject to the terms of this Agreement. In the event the Director does not appoint an arbitrator within 30 days of the Director's receipt of a written request to do so, then:
- (1) The arbitration must be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the arbitration ("Rules"), except as such Rules may be modified by this Agreement.

- (2) A Party desiring to submit a dispute to arbitration hereunder must file a Demand for Arbitration ("Demand") with the AAA at its office in Chicago, Illinois. A copy of such Demand must be sent to the other Party at the same time. The arbitration proceeding must be conducted by a panel of three (3) arbitrators selected from a list of qualified arbitrators supplied by the AAA. The arbitrators must be selected as follows: Within ten (10) days after filing, each Party shall appoint one (1) arbitrator. Within ten (10) days after they are chosen, the two (2) arbitrators shall choose a third arbitrator who acts as chairperson of the arbitration proceedings. If the two (2) arbitrators are unable to agree upon a third arbitrator within ten (10) days, then the third arbitrator shall be appointed by the AAA. The arbitrators in the arbitration proceeding must be individuals with the necessary expertise and competency to pass on the matters presented for arbitration, but said arbitrators may have no interest in or prior connection with any Party.
- (3) Following the appointment of the arbitrators, each Party has the right to mail to any other Party (with a copy to the arbitrators) a written request for the production of certain identified documents or of all documents in possession of the other Party relevant to any claims or counterclaims in the arbitration. Within 10 days of receipt of any such request, the receiving Party must respond to such request but may object to all or part of said request (with a copy to the arbitrators), on the ground that it is unduly burdensome, that the documents requested are irrelevant or privileged, or that such documents are equally available to the requesting Party. The arbitrators will rule on the validity of any such objection and the Parties must produce documents in accordance with the ruling.
- (4) The site of the arbitration shall be in Winnebago County, Wisconsin, unless otherwise agreed to by the Parties. The Parties must diligently and expeditiously proceed with arbitration. Upon the conclusion of any hearing, the Parties shall have 30 days to submit written briefs in support of their respective positions. The arbitrators must make an award within 45 days after the filing of such briefs, subject to any reasonable delay due to unforeseen circumstances.
- (5) Except to the extent the Parties' remedies may be limited by the terms of this Agreement, the arbitrators are empowered to award any remedy available under the laws of the State of Wisconsin including, but not limited to, monetary damages, and specific performance. The arbitrators have no authority to award punitive or other damages not measured by the prevailing Party's actual damages and may not, in any event, make any ruling, finding, or

award that does not conform to the terms and conditions of this Agreement. The award of the arbitrators must be in writing with a statement of reasons for such award and signed by the arbitrators. A written decision of a majority of the arbitrators is binding upon the Parties. An award rendered by the arbitrators in an individual or consolidated arbitration may be entered in any court having jurisdiction thereof.

- (6) The arbitrators' authority is limited solely to resolving disputes under this Agreement.
 - (7) The pendency of any arbitration hereunder does not relieve either Party of any of its obligations under this Agreement.
 - (8) The Parties shall share equally the fees and expenses of the arbitrators as well as all fees imposed by the AAA including, but not limited to, transcripts, hearing room rentals, and administrative costs. Each Party to the arbitration proceeding is responsible for its own costs and legal fees, if any, except that the arbitrators are empowered to award such costs and fees against a Party who prosecutes or defends an arbitration hereunder in bad faith or as otherwise provided in section 11.b.
- d. Paragraphs a, b, and c of this section shall be the exclusive method of resolving the issues specified in the introduction to this section and both Parties waive their rights under sec. 893.80, Stats., and their rights to seek remedies in court as to such issues except that the prohibition on court actions shall not apply to
- (1) Actions to enforce an arbitration award under c;
 - (2) Actions for injunctive relief necessary to protect the public health, safety or welfare during the dispute resolution process;
 - (3) Disputes involving a necessary third party who refuses to consent to arbitration as provided above; or
 - (4) Disputes involving a necessary third party when the Municipal Boundary Review Director fails to appoint an arbitrator.
- e. In the event any of the entities designated to perform mediation or arbitration services under this section ceases to exist or for some other reason cannot or does not perform said services, the Parties shall use their best efforts to agree on a substitute to perform the services.

11. *Remedies.* In the event of a breach of this Agreement,

- a. Except as limited by sec. 10 above, either Party may seek declaratory judgment or specific performance of this Agreement by court action in addition to any other remedies available at law or in equity. No Party shall challenge the standing of the other in such an action.
 - b. The breaching Party shall pay the other Party's attorney fees reasonably incurred in seeking remedies for the breach provided that the breaching party has been given notice and a reasonable opportunity to cure the breach prior to commencement of any proceedings for a remedy. Following the dispute resolution procedure outlined in section 10 a and b constitutes sufficient notice and reasonable opportunity to cure under this paragraph.
12. *Binding Effect.* This Agreement shall bind, and accrue to the benefit of, all successors of the Parties, whether one or more. For example, if a part of the Town should be incorporated, both the incorporated and unincorporated entities would be considered to be Parties bound by the terms of the Agreement. Except as to the rights of owners of land currently in the Town as expressly set forth herein, and except as to the provisions for the benefit of the District as expressly set forth in sections 2.d. and 5.b., this Agreement is for the exclusive benefit of the Parties and their successors and assigns and shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity.
13. *Recording.* A notice of this Agreement may be recorded by any Party.
14. *Entire Agreement.* This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and all prior discussions, drafts, agreements and writings are specifically superseded by this Agreement. This Agreement represents the mutual intent of the Parties and the fact that one or more of its provisions was drafted by one Party or the other shall not be construed to the benefit or detriment of any Party.
15. *Authority.* Each Party represents that it has the authority to enter into this Intergovernmental Agreement and that all necessary procedures have been followed to authorize the Agreement. Copies of the resolutions of the City's Common Council, and the Town's Board authorizing this Agreement are attached. Each person signing this Agreement represents and warrants that he or she has been duly authorized to do so.
16. *Counterparts.* This Agreement may be signed in counterparts which, when taken together, shall be effective as if all signatures appeared on the same original.

Dated this 11th day of March 2003.

TOWN OF ALGOMA

By: _____
Richard Spanbauer, Town Chairperson

By: _____
Betsy Kunde, Town Clerk

Approved as to Form:

By: _____
Robert C. Wertsch, Town Attorney

Dated this 11th day of March 2003.

CITY OF OSHKOSH

By: _____
Richard A. Wollangk, City Manager

By: _____
Pamela R. Ubrig, City Clerk

Approved as to Form:

By: _____
Warren P. Kraft, City Attorney