

**CITY OF MIDDLETON AND TOWN OF
SPRINGFIELD INTERGOVERNMENTAL
AGREEMENT**

**UNDER SECTION 66.0301, WISCONSIN
STATUTES**

Dated: March 25, 2004

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CITY OF MIDDLETON AND TOWN OF SPRINGFIELD

INTERGOVERNMENTAL AGREEMENT

UNDER SECTION 66.0301, WISCONSIN STATUTES

The **CITY OF MIDDLETON**, a Wisconsin municipal corporation with offices at 7426 Hubbard Avenue, Middleton, Wisconsin 53562 (hereinafter "**City**"), and the **TOWN OF SPRINGFIELD**, a Wisconsin municipality with offices at 6157 County Highway P, Dane, Wisconsin 53529 (hereinafter "**Town**"), enter into this Intergovernmental Agreement, hereinafter "Agreement", under authority of Section 66.0301, Wisconsin Statutes.

WHEREAS, Section 66.0301, Wisconsin Statutes, authorizes municipalities to jointly exercise powers delegated to them and, thereby, to make certain agreements concerning the boundary lines between themselves; and,

WHEREAS, the City and the Town desire to enter into a formal structure to define and make predictable the following matters

(a) That specified boundary line changes shall occur during the planning period and the approximate dates by which such changes shall occur.

(b) That specified boundary line changes may occur during the planning period and the approximate dates by which the changes may occur.

(c) That required boundary line change under par. (a) or an optional boundary line change under par. (b) shall be subject to the occurrence of conditions set forth in the plan.

(d) That specified boundary lines may not be changed during the planning period.

The Agreement between the City and the Town is organized around all of the options above; and,

WHEREAS, on June 23, 2003, the City and the Town Plan Commissions entered into a preliminary framework for an agreement under authority of Section 66.0301, Wisconsin Statutes, to provide the basic foundation for this Agreement. The preliminary framework of June 23, 2003 is attached hereto as Exhibit 1; and,

WHEREAS,

The City and Town share a common border on the City's north side and the Town's south side.

The City and Town have joint concerns regarding their border, including consideration of the possibility of litigation over annexations from the Town to the City.

The City's long-term growth and development plans envision continued northward development in a logical and well-planned fashion.

The Town desires to protect, indefinitely, the integrity of its territory north and west of a given line.

The City desires that all other development shall occur in the City, served by all City municipal services and in compliance with all applicable City development standards.

The City and the Town desire, during the term of this Agreement, to prevent new development of the lands within the planning area covered by this Agreement which lie outside the identified development zone, and to assure that all development which may ultimately become part of the City occur in a manner which is compatible with City development standards;

The City desires that owners of lands in the Town not receive a windfall in the form of City improvements, but rather pay a fair share for improvements that benefit lands in the Town.

The Town desires to protect the financial interests of the Town and its citizens as the City grows by arranging favorable terms with respect to taxes, payment for improvements, and revenue sharing.

The City and Town both desire that provisions be made for the timing and location of future urban development so that the eventual City-Town border is well-planned, with compatible development on both sides.

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 entered into the preliminary framework of June 28, 2003.

and,

WHEREAS, the City and Town have entered into the said preliminary framework for the purposes of establishing a long-term boundary, limiting the City's extraterritorial land subdivision review, official mapping and annexation north of the boundary line, assuring orderly growth and development to City standards with the full range of municipal services east of the boundary line, protecting town owners outside the defined growth areas from annexations against their will, facilitating annexation of other lands at the will of the owners without threat of lawsuits and to implement that long-term boundary; and

WHEREAS, this Agreement between the City and Town is intended to implement the preliminary framework to enable the parties to determine their respective boundaries and to guide and accomplish a coordinated, well-planned and harmonious development of the territory covered by the Plan; and

WHEREAS, this Agreement does not adversely affect the exercise of Dane County zoning, land subdivision review and general powers of Dane County in areas of the Town which are not subject to the Agreement; and

WHEREAS, this Agreement was developed following a review of regional, county and Comprehensive Plans and a public review process; and from comments received; and

WHEREAS, it is the intention of the City and Town that this Agreement be a binding and enforceable contract.

WITNESSETH:

The City of Middleton and Town of Springfield enter into this Agreement under authority of Section 66.0301, Wisconsin Statutes, as set forth below:

**SECTION 1
PARTICIPATING MUNICIPALITIES**

This Agreement applies to the City of Middleton and Town of Springfield, located in Dane County, in south central Wisconsin, which respective boundaries are shown on Exhibit 2.

**SECTION 2
CONTACT PERSON**

The following persons and their successors are authorized to speak for their respective municipalities regarding this Agreement: For the City of Middleton: Eileen Kelly, Middleton City Hall, 7426 Hubbard Avenue, Middleton, Wisconsin 53562, 608-827-1050 FAX (608) 827-1057; For the Town of Springfield: Sherri Endres, Town Clerk/Treasurer, 6157 County Highway P, Dane, WI 53529, 608-849-7887, fax, 608-849-6187.

**SECTION 3
TERRITORY SUBJECT TO THE AGREEMENT**

The territory subject to this Agreement is Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35 and 36 of the Town of Springfield, Dane County, which are sections of the public land survey of the State of Wisconsin lying in Town 8 North, Range 8 East. This Agreement does not limit the authority or discretion of either party to take actions outside of the territory subject to this Agreement.

SECTION 4 ISSUES, PROBLEMS, OPPORTUNITIES

The City and the Town adopt this Agreement in response to a number of issues which have arisen. Dane County enjoys one of the fastest growth rates of any county in the United States. Further, growth pressure on the Town of Springfield will increase as the result of the reconstruction of U.S. Highway 12 through the Town. The Town and City wish to adopt policies designed to respond to these growth pressures in an attempt to manage the growth so that it proves to be a benefit to the community rather than a detriment. This Agreement will address issues and problems and create opportunities as noted in the subsections below:

4.01 Maintain Positive Relationships Between The City and Town Through Defining Boundaries.

The Town of Springfield and City of Middleton have enjoyed a good relationship without the hostility present in many relationships between cities and adjacent towns. These two municipalities share at least parts of a fire and EMS district, and school district. They share a common business and social community and desire to maintain and build those ties. The Town and the City believe that entering into a Agreement will create certainty as to the future relationship between the communities and avoid animosity which otherwise might diminish the good relationship they enjoy.

4.02 Assure Orderly and Economic Development of City and Town Within the Planning Area.

The Town does not believe it is economical for the Town to attempt to provide a full range of urban services to high-density urban development. The Town and City agree that the predominant share of population growth in this part of Dane County can best be accommodated in higher density residential subdivisions served by urban services such as sewer and water. Therefore, the City and Town agree that all defined development within the lands known as Area A shall occur within the City, in compliance with applicable City development standards and requirements, and served by a full range of municipal services provided by the City.

Capital infrastructure improvements typically require a planning, design and construction timeline of several years in length. This Agreement will enable the City confidently to plan and design for the ultimate extension of public infrastructure improvements into all of Area A, which will eventually become attached to and develop in the City. The timely extension of such public infrastructure and the orderly phasing of urban growth and development will be greatly enhanced by the Plan.

4.03 Promote Preservation Of Prime Farmland And Resources

The Town and the City agree that the farmland located in the Town is an irreplaceable resource which provides food and fiber for basic maintenance of the economy. Market forces, unguided by land use planning, may impinge on the viability of farming by introducing incompatible residential and commercial uses in the vicinity of farm operations. Further, inappropriate residential growth may cause the value of farmland to increase to the point where farmers make an economic decision to abandon farming, which causes the withdrawal of valuable land from production. The Town and the City expressly intend to use this Agreement to prevent annexation and development pressure from leading to excessive and unnecessary conversion of farmland to other uses.

4.04 Establish A Mechanism for Joint Planning.

Land uses in the Town and the City have, historically, often resulted from decisions and actions of other entities, public and private. As a result, both the Town and the City have often reacted to forces driving land use decisions rather than anticipating and influencing those forces. Further, the Town and City officials have met only infrequently. This Plan allows the Town and the City to jointly plan for environmental corridors within the areas which are subject to this Agreement. If requested by Town resolution under this Plan, the City and Town shall cooperate to establish joint zoning regulations in the extraterritorial area of the Town. This Plan provides for joint planning and cooperation in the management and control of storm water. The City and Town also believe that this Plan itself provides a mutually beneficial framework for joint discussion and planning; and that it will lead to a reduction in adversarial tension and promote intergovernmental cooperation, planning and problem solving, for more efficient delivery of municipal services.

4.05 Orderly Urban Growth.

Without provision of urban services of municipal sewer and water, new development in the Town within the Boundary Adjustment Area could result in a patchwork of non-compact Town and "leap-frog" City growth. The Town agrees to prohibit or restrict urban development in the Boundary Adjustment Area and to permit this Area to be attached to and developed to City standards served by the full range of City municipal services and facilities. The Town will be better able to focus upon planning for and serving the lower density areas outside the boundary line; and City development of the Boundary Adjustment Area will promote a more uniformly compact, economical and orderly urban development under a single local jurisdiction.

4.06 Provide A Full Range of Urban Services Available to Areas of Town Annexed to City.

Municipal sewer and water, storm water and transportation infrastructure will be timely constructed by the City to serve new urban development within the Boundary Adjustment Area. These facilities will enhance public health through protection of ground and surface waters, and enhance public safety through availability of sufficient fire suppression water flows and adequate transportation systems. These public health and safety amenities will enhance the quality of life for both Town and City properties within the Area.

SECTION 5 BOUNDARY ADJUSTMENT AREA OF TOWN

The area of the Town subject to boundary adjustments over the term of this Agreement and reserved for City growth (hereinafter "Boundary Adjustment Area"), subject to possible future modification in accordance with this Plan, is located in the Town of Springfield, Dane County, Wisconsin [T8N, R8E], with the following defined areas:

5.01 Area A: The area denoted on the attached Exhibit 2 as Area A, which consists of Section 36 of the Town, and specified portions of Section 35.

5.02 Area B: The area denoted on the attached Exhibit 2 as Area B, which consists of land lying in sections 32, 33, 34 and 35.

5.03 Area C: The area denoted on the attached Exhibit 2 as Area C, which consists of land lying in sections 25, 26 and 35.

5.04 Extraterritorial Jurisdiction: Certain portions of the Town lie within the Extraterritorial Jurisdiction of the City but outside of Area A, B or C. These lands are depicted on the attached Exhibit 1 and lie within the area bounded by the red dotted line. These lands include part of sections 13, 14, 15, 20, 21 and 22, and all of section 23, 24, 25, 26, 27, 28, and 29. [Sections 32, 33, 34, 35 and 36 are also within the Extraterritorial Jurisdiction of the City, but are treated separately in this Agreement].

SECTION 6 DEFINITIONS

For the purposes of this Agreement:

- (a) "Area A" means the area of the Town described in section 5.01.
- (b) "Area B" means the area of the Town described in section 5.02.
- (c) "Area C" means the area of the Town described in section 5.03.
- (d) "Extraterritorial Jurisdiction" means the area of the Town described in section 5.04

(e) "Develop" or "development", refers to division of land, or construction of more than one principal structure on a parcel of land, or rezoning a parcel from a residential or agricultural classification to a more intense residential classification or a non-residential classification. Use or division of land by the Town or City for governmental purposes does not constitute development.

(f) "Exhibits" referred to in this Agreement are attached to the Plan and incorporated as part of the Plan.

SECTION 7 CURRENT LAND USE AND PHYSIOGRAPHIC CONDITIONS OF THE TERRITORY INCLUDED IN THE AGREEMENT

7.01 Territory Subject. The territory subject to this Agreement is Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35 and 36 of the Town of Springfield, Dane County, which are sections of the public land survey of the State of Wisconsin lying in Town 8 North, Range 8 East.

7.02 Current Land Use Plans. Certain of the lands included in the boundary adjustment area are included in adopted City neighborhood development plans. These neighborhood development plans include a description of existing conditions within each of these planned neighborhoods at the time the neighborhood development plans were prepared. The existing conditions section of these plans provides a narrative summary of existing land uses, zoning, topography and natural features, stormwater drainage, and site analyses. Each of the neighborhood development plans include a series of maps summarizing existing conditions and growth and development problems and opportunities.

The land use plans covering the boundary adjustment area include:

1. The Town of Springfield's Comprehensive Plan.
2. The City's Northwest Quadrant Plan
3. The City's Comprehensive Plan

The adopted land use plans guide the City's growth and development and extension of urban services within each of the neighborhoods.

The City has undertaken studies leading to adoption of a Northwest Quadrant plan. The studies prepared for the plan contain useful background information on conditions which existed within the boundary adjustment area, and the growth and development policy recommendations applicable to this area.

In addition to the City of Middleton adopted plans, the Town of Springfield has prepared a Comprehensive Plan, adopted in May, 2002. This plan provides a general description of the physiographic conditions within the Town of

Springfield, a demographic profile, household characteristics, population projections and a summary of existing and proposed land uses.

In 2002, the Dane County Regional Planning Commission published a report based on the 2000 Decennial Census and the results of a 2000 Land Use Inventory for the County. This report entitled Dane County and Community Data 1970-2000, provides updated data on the socio-economic characteristics of both the Town of Springfield and the City of Middleton and a land use inventory for both communities.

SECTION 8 PROVISIONS FOR LAND USES AND DELINEATION OF THE BOUNDARIES BETWEEN THE TOWN AND THE CITY

8.01 Restrictions. The following conditions and restrictions shall govern the use of land and the actions of the Town and the City in the respective Areas, as herein described. These Agreements pertain to certain decisions or reviews concerning rezonings, conditional use permits, subdivision plats, certified survey maps and any other land use regulation, which are known in this section as “Development Proposals.”

8.02 Area A. Area A is designated as the primary growth area of the City in the Town for the term of this Agreement. This area shall be regulated by the Town in a fashion which will avoid conflicts with future urban development. Specific limitations imposed under this Agreement are:

(a). The Town shall review Development Proposals consistently with the policies of the A-1 Exclusive Agricultural Preservation District, sec. 10.123, Dane County Code of Ordinances, and with Exhibit 2 to this Agreement. The Town concludes that because full urban development of Area A is likely to occur within the term of this Agreement, there is no need for construction of additional farm residences in Area A, and therefore, the Town agrees not to approve farm plans or other approvals which would authorize construction of additional residences in Area A, except for residences for immediate family members of the farm owner who are involved in the farm operation.

(b). As the City contemplates development of portions or all of Area A, the City agrees to consult with the Town and affected residents concerning said plans. The purpose of said consultations will be to assure that the Town and its residents are aware of the City’s planning and development efforts and can take those plans into consideration.

(c). The City contemplates that the growth planned for Area A will be predominantly residential uses, although commercial and low-impact or technological industries may be located along the U.S. 12 corridor.

(d) The City and Town agree to require the recording of a perpetual deed restriction over all lots in new residential subdivision plats or certified survey maps within Area A, with such deed restriction reading as follows:

NOTE: Through section 823.08 of the Wisconsin Statutes, the Wisconsin Legislature has adopted a right to farm law. This statute limits the remedies of later established residential property to seek changes to pre-existing agricultural practices in the vicinity of residential property. Active agricultural operations are now taking place and may continue in the vicinity of the Plat of _____. These active agricultural operations may produce noises, odors, dust, machinery traffic, or other conditions during daytime and evening hours.

8.03 Area B, Long-Term Preservation Area. The Town and City agree that the land lying in Area B on the attached Exhibit 2 shall be a long-term community buffer area between them which shall be developed, if at all, only in accord with mutually defined acceptable uses.

(a). The area included in Area B is mapped for Agricultural Preservation pursuant to the Ag 1-Exclusive Agricultural Preservation District, sec. 10.123, Dane County Code of Ordinances. Beyond the restrictions embodied in that ordinance, the parties contemplate that lot splits and farm residences should lead to construction of new residential units only if done pursuant to a Development Proposals approved by the Town and the City which is consistent with the provisions of Exhibit 2 of this Agreement.

(b). The City agrees not to annex land nor to extend urban services to land located in Area B without the permission of the Town.

(c). The Town agrees not to object to the orderly development and expansion of Middleton Municipal Airport -- Morey Field.

8.04 Area C, Town/City Interest Area. The Town and the City agree that the land lying in Area C on the attached Exhibit 2 shall be an area in which full urban development may occur under the provisions of this Agreement (see sec. 16.01).

(a). Development in Area C shall be conducted with due regard for the protection of the Dorn Creek.

(b). The area included in Area C is mapped for Agricultural Preservation pursuant to the Ag 1-Exclusive Agricultural Preservation District, sec. 10.123, Dane County Code of Ordinances. Beyond the restrictions embodied in that ordinance, the parties agree that lot splits and farm residences should lead to construction of new residential units only if done pursuant to a Development Proposal approved by the Town and the City which is consistent with the provisions of Exhibit 2 of this Agreement.

(c). The City agrees not to annex land nor to extend urban services to land located in Area C until seventy five percent (75 %) of the developable land in Area A has been platted, unless permitted by the Town.

(d). The Town and City contemplate that Area C will become a growth area for the City for residential and commercial development after the platting of seventy five percent (75%) of the developable land in Area A. Current demographic information, trends and circumstances make it appear likely that Area C will not be developed for approximately twenty years. Property owners in Area C should make land use and development decisions in contemplation of the ultimate urban development of Area C. Therefore, new agricultural uses (which shall not include existing agricultural operations) shall not be located in Area C. No factory farming requiring a permit from the Department of Natural Resources or the Department of Agriculture, Trade and Consumer Protection may be located in Area C.

8.05 Extraterritorial Jurisdiction. The Extraterritorial Jurisdiction shall be an area of joint concern. In the Extraterritorial Jurisdiction area, the following restrictions and limitations shall apply.

(a). The Town shall follow its adopted Land Use Plan in approving proposed zoning changes, condition use permits and land divisions. The Town may amend its land use plan if the amendments are consistent with this Agreement and the policies contained herein.

(b). The City shall follow the land uses identified in Exhibit 2 of this Agreement, and shall not object to land divisions or rezonings adopted by the Town which are consistent with the plan as identified in Exhibit 2 of this Agreement.

8.06 Annexation and Maintenance of Roads. If the City annexes land which includes road right-of-way, but the area annexed is only part of the road, the City shall negotiate, prepare and execute an Agreement specifying the responsibilities for maintenance of the roads in a fashion which minimizes the inefficiency which otherwise might result from split responsibility for a length of roadway.

8.07 Dane County Actions. The parties recognize that Dane County has certain authority in land use planning and regulation which neither party can control. However, each party agrees to oppose actively any decisions or actions by Dane County which are inconsistent with the provisions of this Agreement.

SECTION 9 EXTRATERRITORIAL AUTHORITY OF THE CITY

The City has been granted certain authority to adopt zoning ordinances applying lands within three miles outside of its corporate limits by sec. 62.23 (7a), Wis. Stats. The City may engage in comprehensive planning, official mapping, or other land use planning within that area. Further, the City has the power to review proposed land divisions within that three-mile area by sec. 236.02(5) and 236.10 (1)(b), Wis. Stats. In order to further the cooperative purposes of this Agreement and provide for orderly and efficient development of land, the City agrees as follows:

9.01 The City shall not exercise its extraterritorial authority over any land lying in sections 19, 30 or 31 of the Town unless requested by the Town.

9.02 The area of the City's extraterritorial jurisdiction shall not be computed using the boundaries of the City of Middleton Metropolitan Community Park, until and unless that Park becomes contiguous to the remainder of the City.

9.03 With respect to the areas denoted in section 9.01, the Town agrees that it shall, before giving preliminary approval to any preliminary plat in such area, require the plat's proponent to submit the proposed for review by the City's planning and engineering staff to receive the City staff's comments on stormwater, traffic and groundwater impacts of the proposed subdivision.

SECTION 10 TAXES AND REVENUE SHARING UPON ANNEXATION

10.01 Whenever a property zoned A-1 Agricultural (Exclusive) is annexed to the City from the Town, the City shall provide revenue sharing to the Town under the terms of an agreement executed with respect to each annexed area. Such revenue sharing agreements shall be in the form of the exemplar agreement which is attached as Exhibit 3.

10.02 Notwithstanding Section 74.48(2), Wis. Stats., the City may subtract and retain the prorated reasonable administrative costs of collection from any agricultural use-value penalty amount paid to the Town.

SECTION 11 NEW AND AMENDED CITY AND TOWN PLANS

11.01 City and Town agree to amend their respective Comprehensive Plans to be consistent with the terms of this Agreement. The formulation and preparation of such amended Comprehensive Plans shall be had pursuant to the procedures herein.

11.02 Within Area A on Exhibit 1, the City agrees to actively consult with Town and residents of Area A before City adoption of detailed City neighborhood development plans or "quadrant" plans affecting Area A.

11.03 The City agrees that its plans will show future development of Area A as a predominantly residential neighborhood, except that lands near Highway 12 may be planned for low-impact, high-technology businesses.

11.04 The City and Town agree not to subsequently amend or update their Comprehensive Plans affecting lands within Areas A, B or C on Exhibit 1, unless the other party agrees to that amendment or update in writing. Such mutually agreeable Comprehensive Plan amendments shall automatically constitute amendments to Exhibit 2 without further action by the City or Town.

11.05 The Town and City agree not to amend their Comprehensive Plans affecting lands in all other parts of City's extraterritorial jurisdiction (outside of Areas A, B, or C) unless the other party agrees.

SECTION 12 STORMWATER MANAGEMENT IN UPPER PHEASANT BRANCH CREEK SUB-WATERSHED

The water resources represented by the basin of the Upper Pheasant Branch Creek in the Town and the City is of substantial importance to both communities as a source of groundwater recharge, a recreational and physical asset, and in surface water management. Protection and effective management of this resource is complicated by the fact that the Creek and its watershed lies in both jurisdictions, and hence, requires cooperative efforts to assure effective resources management programming.

Based on the importance of stormwater management, erosion control, and infiltration in this watershed, as depicted on Exhibit 2, City and Town agree to:

12.01 Work with the local office of the U.S. Geological Survey (USGS) to incorporate Best Management Practices for stormwater management into City and county ordinances and into the review of development proposals, including but not limited to measures to enhance infiltration and water quality.

12.02 Require stormwater management plans for all development proposals in this sub-watershed that meet the thresholds in Section 14.46 of the Dane County Erosion Control and Stormwater Management Ordinance, including on-site stormwater detention in such plans where appropriate.

12.03 Work with the USGS, the City of Middleton Water Resources Management Commission, and other interested entities to identify, officially map, acquire title or development rights, and/or preserve and restore areas that would provide particular infiltration and water quality benefits in this sub-watershed.

SECTION 13 NATURAL/RECREATION CORRIDOR CONCEPT

The City and Town agree in concept to the permanent preservation of an undeveloped green space corridor and a related possible trail extending west from Metropolitan Community Park along the Dorn Creek, as depicted in Exhibit 2, and agree to jointly commence more detailed planning to determine the exact character, extent, methods of protection, trail possibilities, timing, and other aspects of that green space corridor.

**SECTION 14
POSITION ON DANE COUNTY FARMLAND INITIATIVE**

City and Town agree to generally support Dane County's program to purchase development rights from willing property owners in the Highway 12 area. City and Town agree to oppose specific development rights purchase proposals under that program if within Areas A or C, or if otherwise contrary to the terms of this Agreement.

**SECTION 15
TERM OF THE PLAN AND BOUNDARY ADJUSTMENT PERIOD AND
DISCUSSIONS FOR SUCCESSOR**

15.01 The term of this Agreement shall commence upon the date of its approval by the parties and shall terminate at 11:59 p.m. on the twentieth (20th) anniversary of said approval.

15.02 The City and the Town agree that they shall, not less than five (5) years prior to the expiration of this Agreement, commence discussions for a successor boundary Agreement and Agreement which shall address land uses and other issues of joint concern under the circumstances then existing between the communities.

**SECTION 16
BOUNDARY ADJUSTMENT AREA AS LONG-TERM BOUNDARY
BETWEEN CITY OF MIDDLETON AND TOWN OF SPRINGFIELD**

16.01 Long Term Boundary. The limits of the City bordering the Town, as expanded during the term of this Agreement through the annexation and development of Area A, shall constitute the long-term boundary between the City and Town. The City, as provided in Section 8.02 of this Agreement, may annex areas within Area A and, if in conformity with the terms of Sections 8.04(c) and (d) of this Agreement, may also annex areas within Area C. The City will not annex during the term of this Agreement, and hereby waives its right to annex portions of the Town outside Areas A or C, except with the approval of the Town Board.

SECTION 17

NO CHALLENGES TO THIS AGREEMENT; REMEDIES

17.01 Challenge to Agreement.

(a) Both the City and Town waive any and all rights each may have to commence or maintain any civil action or other proceeding to contest, invalidate or otherwise challenge this Agreement or any of the actions required or contemplated by this Agreement, or to take any actions, either directly or indirectly, to oppose in any other way, or to initiate, promote or support the opposition of this Agreement or any of the actions required or contemplated by 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, both the City and Town shall fully cooperate to vigorously defend the Agreement.

1. If only the City or the Town is named as a party to the action the other 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 both the City and Town.

3. The cost 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.

17.02 Remedies. In the event of a breach of this Agreement,

(a) Either the City or Town may seek specific performance of this Agreement in addition to any other remedies available at law or in equity.

(b) The breaching municipality shall pay the other's attorney fees reasonably incurred in seeking remedies for the breach.

(c) If the breach involves development or an annexation or a challenge to an annexation, all taxes, assessments and other revenues realized by the breaching municipality from the subject property during the remaining term of the Agreement shall be paid to the other municipality to the extent of its mill rate for the relevant time periods. Utilities, special assessments and other non-general taxes shall not be affected.

(d) To the extent necessary, the parties shall jointly retain counsel to represent their interests in this matter.

17.03 Mediation. In the event that the parties are unable to resolve a dispute as to the meaning or application of this Agreement, or either party believes there has been a breach by the other party, the parties shall participate in mediation of

the dispute. The mediator shall be an impartial individual chosen jointly by the parties. The parties shall attempt in good faith to avoid the need for litigation of disputes through mediation. This paragraph, however, does not preclude either party from instituting litigation if necessary in the opinion of the party for the protection of the party's interests.

SECTION 18 AMENDMENT

This Agreement may be amended by the approval of a written amendment by the parties.

SECTION 19 GOOD FAITH AND FAIR DEALING

The City and the Town hereby acknowledge that this Agreement imposes upon each of them a duty of good faith and fair dealing in its implementation.

SECTION 20 INVALID OR INEFFECTIVE ORDINANCE

In the event that any Ordinance, including but not limited to annexation and zoning Ordinances, which parties are required or entitled to enact and/or enforce by this Agreement is adjudged by any court of competent jurisdiction to be invalid or ineffective, in whole or in part, the City and Town shall promptly meet to discuss how they might satisfy the intent of this Agreement by alternative means, including, without limitation, enacting another ordinance designed to satisfy the court's objections. The Town and City shall use their best efforts to find, design and implement a means of successfully accomplishing the intent of this Agreement. If necessary, they shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Agreement. In the event they are not able to reach Agreement in such situation, either the City or Town may, by thirty (30) days written notice to the other, require submission of such dispute to an impartial mediator, to be mutually selected during such thirty (30) day period, for mediation as provided in subsection 17.03 of this Agreement.

SECTION 21 IMPLEMENTATION

Town and City shall each take such actions as may be necessary or desirable to implement and effectuate the provisions and intent of this Agreement.

SECTION 22 MISCELLANEOUS INTERPRETATION

22.01 References. Any references in this Agreement to any particular agency, organization or officials shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by statute or ordinance. Any references in this Agreement to any particular statute or ordinance shall be interpreted as applying to such statute or ordinance as recreated or amended from time to time.

22.02 Section Titles. Section and subsection titles in this Agreement are provided for convenience only and shall not be used in interpreting this Agreement.

22.03 Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Wisconsin.

22.04 Interpretation. If any term, section or other portion of this Agreement is reviewed by a court or other judicial or *quasi*-judicial entity, such entity shall treat this Agreement as having been jointly drafted by both the City and Town. By the terms of this Agreement, neither municipal party shall benefit from not having drafted this document.

22.05 Entire Agreement. The entire Agreement of the City and Town is contained in this Agreement and it supercedes any and all oral representations and negotiations between the municipalities, and supercedes and replaces that certain Intergovernmental Agreement of June 23, 2003.

SECTION 23 NON-DISCRIMINATION

In the performance of the services under this Agreement, the City and Town agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The City and Town further agree not to discriminate against any subcontractor or person who offers to subcontract on this Plan because of race, religion, color, age, disability, sex or national origin.

SECTION 24 NOTICES

All notices required by or relating to this Agreement shall be in writing. Each notice shall specifically refer to this Agreement by name and shall refer specifically to the number of the section(s), subsection(s), paragraph(s) or subparagraph(s) to which the notice relates. Any such notice shall be delivered in person to the Clerk of the municipality receiving the notice or to the person apparently in charge of the Clerk's office during normal business hours, or shall be mailed to such Clerk by certified mail, return receipt requested (or equivalent

By: _____
James Ripp, Town Chairperson

Date: _____
By: _____
Sherri Endres, Town Administrator/Clerk

STATE OF WISCONSIN)
) SS.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 2004, James Ripp, Town Chairperson, and Sherri Endres, Town Administrator/Clerk, of the **TOWN OF SPRINGFIELD**, Dane, Wisconsin, a Wisconsin municipality, to me known to be such Administrator and Town Administrator/Clerk of said municipality, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said municipality, by its authority.

Notary Public, Dane County WI
My Commission

This instrument was drafted by:
Mark Hazelbaker
Attorney At Law
State Bar No. 1010302