

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT AMONG
THE CITY OF NEENAH, THE TOWN OF NEENAH,
~~THE TOWN OF NEENAH SANITARY DISTRICT #1-1~~
AND THE TOWN OF NEENAH SANITARY DISTRICT #2
TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT
WITHIN AGREED-UPON MUNICIPAL BOUNDARIES

This Agreement is entered into by and among the City of Neenah ("City"), the Town of Neenah ("Town"), ~~the Town of Neenah Sanitary District #1-1~~ and the Town of Neenah Sanitary District #2. The purpose of the Agreement is to set forth the procedures, terms and conditions by which the parties wish to achieve the following mutual goals pursuant to Section 66.0301 of the Wisconsin Statutes and to settle their dispute in Town of Neenah v. City of Neenah, Winnebago Co. Case No. 2001 CV 1142 pursuant to Section 66.0225, Wisconsin Statutes:

- Orderly, planned growth for the City and the Town and the provision of appropriate, cost-effective municipal services for such development;
- Orderly boundaries between the City and the Town, promoting cost-effective provision of services and more efficient operation of all units of government;
- Continual City growth to provide the City with an ever-renewing and expanding tax base and a pool of citizen leadership;
- Continual development for the Town to replace tax base lost due to City growth, so that the Town may also have an ever-renewing and expanding tax base and a pool of citizen leadership;
- Promotion of diversity and balanced development in the City and the Town;
- Prevention of unplanned development leading to urban sprawl, and protection of the area's natural resources, including its lakes, streams, rivers, wetlands, and woodlands; and
- Promotion of quality development in the City and the Town.

ARTICLE I
PLANNING AND GROWTH AREA DEFINITIONS

- 1.1_ City Growth Areas. Attached and incorporated by reference is a ~~32 x 35 inch~~ map marked ~~Map-Exhibit A and dated March 26, 2003, at a scale of one inch equals 1,000 ft.~~, identifying existing City development, shown in white, ~~and 1,795- acres- and additional territory~~ identified as "City Growth Area," shown in pink. The City Growth Areas consist primarily of currently undeveloped land that the parties acknowledge is to be developed within the City's municipal boundaries. The territory within the City Growth Areas will be developed with comprehensive urban services, including but not limited to sanitary sewers and water in conformance with the City's comprehensive plan.
- 1.2 Town Growth Areas. The areas shown in purple on ~~Map-Exhibit A, a total of approximately 3,465 acres,~~ shall be "Town Growth Areas." The Town Growth Areas include areas of existing development and adjacent areas that the parties acknowledge ~~is are~~ to be developed within the Town's municipal boundaries. Within the Town Growth Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by ~~the~~ East Central ~~Wisconsin Regional Planning Commission-~~ and sewer main is installed to a location that could accommodate hook-ups), the Town Sanitary District(s) will provide sewer hook-ups to Town properties. The Town Growth Areas are subject to modification as provided in section 1.7, below.
- 1.3 ~~City Service- Hybrid Areas~~. Existing developed areas shown in blue on ~~Map-Exhibit A, a total of approximately 54 acres,~~ shall be "~~City Service- Hybrid Areas.~~" ~~-"Hybrid Areas" are defined as areas that are considered City Growth, however, have the option to receive sewer for a defined period of time without annexation.~~ Within the ~~City Service Hybrid~~ Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by the East Central Regional Planning Commission and sewer main is installed to a location that could accommodate hook-ups), the City will provide sewer hook-ups to Town properties, at the property owner's cost, provided the property owner guarantees the eventual annexation either upon sale of the property to third parties or the passage of 15 years (but not to exceed the term of this Agreement), whichever comes first. Such guarantee shall be in written recordable form signed by the property owner. The City is responsible to obtain the recordable document. Creation of Town and/or City islands will be permitted and not contested by the parties to this Agreement during this transition period. In the event that any of the properties in the ~~City Service Hybrid~~ Areas require water service from the City, they shall be required to annex to the City upon receipt of that service. For purposes of this Section 1.3, "third parties" are defined as

anyone other than the property owner’s mother, father, child, stepchild or grandparent.

The Town agrees that it will not object should the City at any time annex or attach the entirety of the Armstrong Street right-of-way north of the southern lot line of Parcel 0100509. The City shall defend, indemnify, and hold harmless the Town and its employees, agents, and officials, from and against all claims brought by third-parties related to the City’s authority to annex or attach the Armstrong Street right-of-way.

For all other public rights-of-way within Hybrid Areas, no portion of the right-of-way may be annexed or attached by the City until such time that at least 50% of the frontage on the relevant right-of-way has been annexed or attached or is otherwise located within the City’s jurisdictional boundaries. The City may adopt an ordinance under Wis. Stat. § 66.0301(6)(c)2 annexing or attaching the entire right-of-way. Notwithstanding the above, if at any time a portion of right-of-way in the hybrid area is in the Town but joined on both ends by City right-of-way, the City may annex the portion of right-of-way from the Town to connect the two ends and make one continuous City right-of-way.

- 1.4 Non-annexed City Service Areas. The areas shown in gray on ~~Map~~ Exhibit A along Dixie Road and U.S. Highway 41, a total of approximately 132 acres, shall be “Non-annexed City Service Areas.” Within the Non-annexed City Service Areas, the City will provide sanitary sewer extensions. Town properties within these areas will be allowed to connect to the City Sanitary sewers provided the Town properties pay their proportionate share of the extension and hook up to the City Sanitary sewers. The Town properties within Non-annexed City Service Areas will not be required to annex to the City in order to receive City Sanitary sewers. The Town agrees to cooperate with the City to assess any special assessments required to extend City sanitary sewers to Town properties in the Non-annexed City Service Area. There shall be only one assessment for each benefiting public improvement component (e.g., road pavement, curb & gutter, public sidewalk, street-lights, sanitary sewers, water, etc.). In the event that any of the properties in the Non-annexed City Service Areas require water service from the City, they shall be required to annex to the City upon receipt of that service. If all or any portion of the non-annexed City Service Areas are annexed, the City will make revenue sharing payments to the Town until April 15 2033 over a period of the years remaining under this Agreement in equal annual payments. The revenue sharing payments will be calculated by using the assessed value of the real estate and personal property on the date of the annexation. In the event

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that the assessed value changes due to a change in how the State assesses property, the payment will be recalculated to reflect such change. The revenue sharing formula will be based on the Town tax rate in effect on the date of the annexation. Creation of Town and/or City islands will be permitted and not contested by the parties during the term of this Agreement.

- 1.5 Town Service Areas. The areas shown in yellow on ~~Map~~-Exhibit A, a total of approximately 32 acres, shall be “Town Service Areas.” Within the Town Service Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by the East Central Regional Planning Commission and sewer main is installed to a location that could accommodate hook-ups), the Town Sanitary District(s) will provide sewer hook-ups to Town properties. No City water service will be provided until property is annexed. Annexations will be according to state statutes; no Town and/or City islands will be permitted.
- 1.6 Parks/Environmentally Sensitive Areas. The areas shown in green on ~~Map~~-Exhibit A shall be “Parks/Environmentally Sensitive Areas.” Existing parks shall be as they exist as of the date of this Agreement. Non-park environmentally sensitive areas shall be those areas identified on DNR wetland maps and floodplains designated by FEMA or other governmental agencies, as areas where development is prohibited. In Parks/Environmentally Sensitive Areas, no development shall be permitted except such development necessary to promote recreational use and/or necessary to protect the natural environment. Notwithstanding the foregoing, nothing in this Agreement is intended by the parties to restrict the ability of either party to modify the boundaries of existing environmental areas in accordance with shoreland, floodplain or wetland zoning or other regulations. If a Town park become surrounded by the City, the Town shall transfer its entire interest in the park to the City and the City shall accept the transfer and, thereafter, assume jurisdiction over and liability for the park. The parties acknowledge that the City’s agreement to assume jurisdiction over and liability for the park constitutes adequate consideration for the transfer. The parties further acknowledge that the definition of “Parks/Environmentally Sensitive Areas” differs from the official definition used by East Central Wisconsin Regional Planning Commission and the Wisconsin Department of Natural Resources for Sewer Service Area planning purposes.
- 1.7 Boundaries Of Growth Areas. The parties agree that the Growth Areas identified for each party have been determined after considerable negotiation and, as so delineated, serve the best interests of each of the parties. No party will seek or

allow, through any annexation or detachment process, any change in the delineated boundaries that would be contrary to the terms of this Agreement, unless the change is by mutual consent of the City and the Town. Each party retains the right to determine the sequence of sewer development of each specific parcel of land within its Growth Areas, and to exchange like numbered acres of sewer land between designated Sanitary Sewer Service Area boundaries and land outside said boundaries.

- 1.8 Unsewered Development in Town. The Town also reserve the right to permit unsewered development on land in the Town Growth Areas, provided the development is consistent with the ~~relevant~~ Town's comprehensive plan, which plan will not be adopted or amended without providing the City with an opportunity to comment thereon. While the City's right to comment on the Town's comprehensive plan shall not be construed as a right to approve or disapprove of the plan or its components, the Town will consider the City's comments before adoption or amendment of their plans. The Town will not permit any additional unsewered development in the City Growth Areas beyond the development that is permitted in Sections 2.2 and 2.3(c), below.
- 1.9 City/Town Road Boundaries. Where a road is proposed in an annexation to serve as a boundary between the City and the Town, the governments will discuss the exact location of the boundary in order to avoid jurisdictional confusion over the governmental services to be provided within or by way of that segment of highway. In general, the City will either annex all or none of the road right-of-way. The Town will cooperate with the City on the City's reconstruction of the road to urban standards according to the City's capital improvement program. The City must obtain the Town's consent before the Town is financially obligated to pay for any portion of the reconstruction of the relevant road.
- 1.10 East Central Wisconsin Regional Planning Commission. The East Central Wisconsin Regional Planning Commission ("East Central") is the official comprehensive planning agency for the East Central Wisconsin Counties of Calumet, Fond du Lac, Green Lake, Marquette, Menominee, Outagamie, Shawano, Waupaca, Waushara and Winnebago. As a Regional Planning Commission, East Central participates in the process of defining geographical areas where sanitary sewers may be extended ("Sewer Service Area"). The boundary of a Sewer Service Area delineates those areas which can be provided public sanitary sewer more cost-effectively than on-site treatment methods over a 20-year period. The Sewer Service Area is ultimately defined and approved by the Wisconsin Department of Natural Resources under Wisconsin Administrative

Code NR-121. The parties acknowledge that the extension of sanitary sewers as referenced in this Agreement is subject to review and approval by East Central and the Wisconsin Department of Natural Resources. Nothing contained in this Agreement is intended to modify the planning and review processes administered by East Central.

ARTICLE II
DEVELOPMENT WITHIN CITY GROWTH AREAS

- 2.1 General Agreement. The City and the Town covenant to take action, or refrain from taking action, as set forth in this Article II, with respect to those areas delineated as City Growth Areas.
- 2.2 Town Covenants. The Town agrees as follows concerning the City Growth Areas:
- (a) The City may condition any extension of sewer and water services (collectively “City Services”) into the City Growth Areas on annexation of those to the City, notwithstanding the agreement of the parties with regard to any other areas subject to this Agreement. Any property owner in the City Growth Area that seeks and receives City Services will be required to annex to the City without objection by the Town.
 - (b) The Town will cooperate to maintain currently undeveloped lands in an undeveloped state, in order to preserve them for future City development. It is acknowledged that City development of such lands may be gradual, extending over several decades.
 - (c) The Town will discourage premature development by ~~imposing and maintaining~~ recommending that Winnebago County maintain deny any request for zoning classifications that do not permit, or that discourage, such development and by informing its assessor of the nature of this Agreement so that assessments consistent with preserving land until needed by the City are promoted to the extent allowed by assessment laws. If at any time during the term of this Agreement, the Town exercises town zoning, the Town will prohibit premature development by maintaining zoning classifications that do not permit, or that discourage, such development. Notwithstanding the restrictions in this section, property owners within the City Growth Areas will be permitted to develop land in accordance with the zoning classifications in effect as of ~~the date of this Agreement. April 15, 2003.~~

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- (d) The Town will recommend that Winnebago County maintain zoning classifications in existence as of April 15, 2003~~the date of this Agreement~~. If at any time during this Agreement, the Town exercises town zoning, the Town will maintain zoning classifications in existence as of the April 15, 2003. Any changes to zoning classifications will be recommended for approval, or as applicable, approved by the Town only after consultation with, and the agreement of, the City. Development in the City Growth Areas proposed for purposes other than those that are authorized under ~~Town~~ zoning in effect as of the date of this Agreement shall be subject to City approval in accordance with development standards set forth in the City's ordinances. Consultation by the Town, and the agreement or disapproval of the City, shall be in writing. Failure of the City to respond within 3045 days of notice shall be deemed an approval. Failure of the Town to abide by the City action of disapproval shall void the subject amendment, to the extent permitted by law. Notwithstanding the foregoing, nothing in this Agreement shall limit the one-time division of a five-acre or larger parcel existing as of the date of this Agreement into two parcels for residential purposes if otherwise permitted by the Town's zoning and subdivision regulations in effect at the time of this Agreement.
- (e) To the extent authorized by law, the Town will refuse to approve or as applicable, recommend approval of ~~certified survey maps, or~~ platted subdivisions, unless the City consents to the m. land divisions. Failure of the City to respond within 3045 days of notice shall be deemed an approval. Failure of the Town to abide by the City action of disapproval shall void the subject amendment. Further, the Town will refer all conditional use permit applications to the City for its review and recommendation and will consider all recommendations before acting on the application. Failure of the City to respond within 30 days of notice shall be deemed a denial.
- (f) The Town will not challenge, judicially or otherwise, any annexation that is in accordance with the terms of this Agreement. The Town also agrees not to financially or otherwise support anyone who opposes or contests any such annexation. The City further agrees to meet with Town officials prior to or shortly after the filing of any annexation petition to discuss matters of mutual concern. If a party other than the City impleads the Town in any annexation lawsuit, the Town will immediately stipulate that it does not oppose the contested annexation. The Town will also cooperate with the City on the dismissal of the Town as a party to the relevant lawsuit. The

Town agrees that the City may exercise powers pursuant to sec. 236.10(4), Stats., for the approval of all subdivision plats and land divisions (certified survey maps) within the annexation territory. The City's authority under the preceding will include, without limitation, the right to require full compliance by all proposed subdivision plats and land divisions with all City land subdivision regulation ordinance requirements then in effect. The Town consents to, and will not challenge directly or indirectly, the City creating Town islands through annexations of land in the City Growth Areas.

- (g) The Town will permit the City to use Town right-of-ways to extend sewer, water and other utilities into the City Growth Area and further consents to the City obtaining private easements for the extensions of City Services into the City Growth Area if public rights-of-way cannot be used.
- (h) At the City's written request, the Town will levy special assessments against the parcel in the City Growth Area for improvements that specially benefit the parcel, subject to the following conditions:
 - (i) The owner may challenge the special assessment as if he or she were owners of property in the City;
 - (ii) The special assessment is not payable and interest shall not accrue until the parcel is annexed to the City. In the alternative, if the City revises its special assessment policy to allow for a credit against the special assessment for depreciation, then the City may charge and accrue interest on the special assessment, offset by the depreciation factor;
 - (iii) Upon annexation the assessment is payable in 8 annual installments with interest in accordance with the then existing City special assessment policy. (Note: if the City permits a longer payment schedule, that schedule would apply.);
 - (iv) Prior to annexation, there shall be only one assessment for each benefiting public improvement component (e.g. road pavement, curb & gutter, public sidewalk, street-lights, sanitary sewers, water, etc.);
- (i) The Town shall not acquire, directly or indirectly, an ownership interest in any additional land in the City Growth Area. The preceding does not apply to unsolicited donations, provided the donation is restricted for use as parkland or comparable public uses. The Town agrees that it would be contrary to the intent of this Agreement for it to acquire land within any

portion of the City Growth Area for the purpose of directly or indirectly impeding the expansion of the City into the subject land.

- (j) The Town will cooperate with, and not object to, the City's efforts to obtain, by eminent domain or other method permitted by law any highway right-of-way necessary to extend planned City streets through the City Growth Area, including, but not limited to connecting Pendleton Road to County Highway JJ at the intersection with County Highway CB.
- (k) Except as authorized under Section 1.7 above and as exists as of the date of this Agreement, the Town will not extend sewer service from Sanitary Districts located within the boundaries of the Town Growth Areas into territory located beyond the boundaries of the Town Growth Areas. The Town will refuse to permit sanitary sewer hookups or extensions in City Growth Areas prior to annexation or City permission. Furthermore, the Town shall not create a new Town Sanitary District or enlarge existing sanitary districts in the City Growth Areas without the City's prior written consent, which consent may be withheld at the City's sole discretion.
- (l) The Town and District will cooperate with the City to carry City-generated sewage in Town or District sewer lines upon such execution of a master sewer agreement between the City and District that authorizes the relevant connection. All rights are reserved by the District and Town with respect to the review and approval of the relevant connection, which will include (but not limited to) review of the District's current and anticipated future capacity at the connection point and downstream, at the usual and customary fees, excluding "hook-up" and other capital related fees in those areas of the City Growth Areas that are within or adjacent to Town Sanitary Districts. The Town will levy its usual and customary service charges, such as annual sewer use fee, to the property so affected, not to the City, excluding "hook-up" and other capital related fees in these areas of City Growth Areas that are within or adjacent to Town Sanitary Districts. —The City will cooperate with the Town in the collections of any unpaid District Utility Charges. The provisions of this Section 2.2 (l) apply only to sewer connections occurring after the date of this Agreement.
- (m) The Town will utilize any planning and construction standards proposed by the City for new or reconstructed roads, utilities and other public facilities in the City Growth Areas, which are based upon the ultimate development capacity of said areas. The preceding does not apply to the maintenance or

repair of existing roads. The planning and construction standards referenced above cannot be more stringent than the planning and construction standards then-existing in the City.

- (n) The Town shall not take any action to remove acreage, or otherwise amend the boundaries of the Sewer Service Area in the City Growth Areas as defined by East Central or its successor organization.

2.3 City Covenants. The City agrees as follows concerning the City Growth Areas:

- (a) In general, the City will annex territory from City Growth Areas whenever orderly, planned development reasonably dictates that the land should be developed within the City. However, where developed land is presently contiguous to the City on several sides, the City will encourage annexation in order to eliminate problems associated with duplication of services, or difficulties in provision of services due to illogical municipal boundaries.
- (b) The City will only annex those lands from the City Growth Areas whose owners consent to said annexation. All annexations from the City Growth Areas to the City must comply with the then existing procedural requirements of the Wisconsin Statutes, except as otherwise provided for in this Agreement. In addition to the Town's agreement not to challenge annexations as outlined in Section 2.2 above, the Town agrees not to raise any de minimis technical objection to an annexation by the City in the City Growth Area.
- (c) If a property owner owning land within the City Growth Areas submits a proper annexation petition, the City shall annex the subject territory within the then-current statutory deadline and, furthermore, the City shall extend sewer and water to the subject property within 12 months of the date of the annexation ordinance, provided sewer and water are contiguous to the subject property. For purposes of determining contiguity, road rights-of-way are not taken into consideration. The property owner and the Town are released from the development restrictions in Section 2.2 if the City fails to meet the above 12-month deadline. The 12-month deadline may be extended by agreement between the owner and the City.
- (d) Notwithstanding paragraph 2.3(b) above, the parties agree that any parcel not annexed from the City Growth Area that is assessed for services by the City pursuant to paragraph 2.2(h) shall be designated a ~~City-Service~~Hybrid

Area (blue) requiring annexation upon transfer to a third party or after 10 years, or the end of the term of this Agreement, whichever is earlier.

- (e) All annexations from the City Growth Areas shall include the full width of abutting Town roads except those roads, the centerline of which is a designated borderline and those Town roads where the City of Neenah has no other right of way ownership on either side of the right-of-way which would otherwise be annexed under this paragraph (e.g., South Park Ave.). In any event, the City shall be required to either annex all or none of the adjoining Town right-of-way.
- (f) Where a new road is proposed by the City to be built on land located in the City Growth Area, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City shall 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 in the City Growth Area.
- (g) The City shall provide notice of zoning and other land use hearings, decisions and actions to the owners of record of properties in the Town located in the City Growth Areas in the same manner as it gives notice to the owners of record of properties in the City. The Town shall cooperate with the City to enable such notices to occur.
- (h) Where the City extends sanitary sewer interceptors or mains across or adjacent to properties located outside the corporate boundaries of the City and outside the boundaries of a current Town Sanitary District but within a Town Growth Area, the relevant Town property owner will be allowed to connect to the sewer, provided that the hook-up was to a developed parcel or lot of record existing at the time of the Agreement and the Town property owner paid the usual and customary charges for connecting to the City sewer system. This connection privilege only applies if the City sewer must pass through a portion of the Town Growth Area and to those properties by which it passes.
- (i) To the extent that the City utilizes Town road right-of-way to extend City Services into the City Growth Areas, the City shall restore the Town road right-of-way in accordance with the Town policy on restoring road right-of-way after repairs.

- (j) The City agrees to indemnify and hold the Town harmless in the event a court of competent jurisdiction imposes liability or damages as a result of the Town's promises relating to the Town's obligations applicable to the City Growth Area under this Agreement.
- (k) The City Growth Area map includes an 80-acre parcel located in Section 4, T. 19-20 N., R. 17 E., Town of Neenah, Winnebago County, Wisconsin, owned by Bank One for the benefit of what is referred to as the "DeKeyser Trust." The City agrees that the "DeKeyser Trust" land shall be developed consistent with the principles set forth in the City's 1999 2020 Plan.

ARTICLE III
DEVELOPMENT WITHIN TOWN GROWTH AREAS

- 3.1 General Agreement. The City and the Town covenant to take action, or refrain from taking action, as set forth in this Article III, with respect to those areas delineated as Town ~~Planning and~~ Growth Areas.
- 3.2 City Covenants. The City agrees as follows concerning the Town Growth Areas:
 - (a) The City will not annex any land from Town Growth Areas 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 a request within ~~30, 45~~ days. Failure to respond within said ~~30-45~~ days shall be deemed to be a denial.
 - (b) At the Town's option, the City will permit, without requiring annexation, extension of sanitary sewer services within the Town Growth Areas. The various agreements between the City and the Town of Neenah Sanitary District ~~2s 1-1 and 2~~ are hereby amended to reflect the additional territory eligible to receive sanitary sewer services. The City shall cooperate fully with the extension of sanitary sewer services to the territory within the Town Growth Areas, provided that the design and operations plans meet then-existing professional engineering standards and further provided that the interceptor capacity is adequate to accept such projected quantities of wastewater. The relevant Sanitary District is responsible for the costs of the relevant extensions.

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- (c) The City will permit the Town to use City right-of-ways to extend sewer, water and other utilities into the Town Growth Area and further consents to the Town obtaining private easements for the extensions of Town Services into the Town Growth Area if public rights-of-way cannot be used.
- (d) The City will permit the Town to use City right-of-ways to extend utilities into the Town Growth Area and further consents to the Town obtaining private easements for the extensions of Town Services into the Town Growth Area if public rights-of-way cannot be used.
- (e) The City shall not take any action to remove acreage, or otherwise amend the boundaries of the Sewer Service Area in the Town Growth Areas as defined by East Central or its successor organization.
- (f) Except as provided in Section 3.4, The City is not obligated to provide water service to any property within the Town Growth Areas without annexation unless the following conditions are met:
 - (i) Water service by the City of Neenah Water Utility will only be considered for residential development or lots of record existing on ~~the date of this Agreement.~~ April 15, 2003. New development shall not be eligible for City water service unless such development annexes to the City.
 - (ii) The Town and property owners requesting water service from the City have exhausted all other reasonable options for the provision of water to the affected properties;
 - (iii) The City of Neenah Water Commission has reviewed the steps taken by the Town and affected property owners and determined that no other feasible option for water exists;
 - (iv) The City of Neenah Water Commission has reviewed the plans for extension of water into the Town Growth Area and determined that the Neenah Water Utility has the present and future capacity to provide for the expected demand created by the Town's access to the City's water system;
 - (v) The Neenah Water Utility will only provide water on a wholesale basis to the Town through a single meter. The Town shall be responsible to provide for all infrastructure from the single connection with the Neenah Water Utility to the areas to be served in the Town Growth Area and for billing to individual customers in the Town Growth Areas utilizing water obtained by the Town from the

Neenah Water Utility on a wholesale basis. The Town will be responsible for all costs associated with providing the wholesale connection with the Neenah Water Utility. Notwithstanding the foregoing, nothing in this Agreement shall limit the ability of the Town to assess the costs of the connection with the Neenah Water Utility, and any associated costs to provide for distribution to individual properties, in accordance with the Town's special assessment authority under §66.0703, Wis. Stats.;

- (vi) Under no circumstances shall any water connection permitted under subsection be allowed to loop and create a second connection point with the Neenah Water Utility System. In the event that such a second connection is necessary to provide the water service, the properties served by the looped water service shall be required to annex to the City before such second connection is made.
- (vii) The Neenah Water Utility may temporarily deny access to water by the Town under this provision after a connection has been established in the event that the expected output of the water treatment plant exceeds 9 million gallons in a 24-hour period. Such interruption of service shall continue until such time as the expected output of the water treatment plant declines below 9 million gallons in a 24-hour period.

The parties acknowledge that, in lieu of the above water provisions, they discussed allowing the Town to participate in the City's water utility system as if the Town were a part of the City. The parties further acknowledge that they were unable to agree on this issue. Nevertheless, the City agrees that, upon the Town's written request, it will negotiate with the Town over the subject of adding Town territory to the City's water utility jurisdiction as if the territory were located within the City. The preceding does not obligate the City or the Town to reach an agreement on this subject matter. All rights are reserved.

3.3 Town Covenants. The Town agrees as follows concerning the Town Growth Areas:

- (a) The Town will require neighborhood development plans prior to development that address storm water control issues of concern to both the Town and the City (where the development could adversely affect storm water flows within the City's municipal boundaries or City Growth Areas).

The Town will cooperate with the City in the implementation of applicable Wisconsin Priority Watershed projects.

- (b) To the extent that the Town utilizes City road right-of-way to extend Town Services into the Town Growth Areas, the Town shall restore the City road right-of-way in accordance with the City policy on restoring road right-of-way after repairs, or, in the alternative, the City shall perform the restoration work and charge the Town at the same rate that the City would internally account for the expense. It is the intent of the preceding that the price of construction be the same on both sides of the border.
- (c) The Town will provide notice to the City prior to new commercial or industrial development (including billboards), abutting or within 300 feet of Federal or State highways. The City will comment on the development plans to assure highway accessibility, aesthetics, and appropriate building design, site landscaping as well as paved surfaces for drives and parking. The City may waive its right of comment after the Town has adopted and successfully administered amendments to its land division and/or zoning ordinances regulating development along said highways.
- (d) The Town will include in its neighborhood plans, together with implementing Town zoning changes, a range of housing types that tends to create a diversity of population within the Town, as compared to county or metropolitan averages.
- (e) The Town will provide the City with the first right and exclusive option of offering water service to any Town Growth Areas, without annexation, if regulatory approval is being sought by a Town for the establishment of municipal water service in that growth area. The parties agree that this subsection does not preclude the City from offering annexation as a condition of water service, in which case the exclusive option provision above is waived. Nor does this subsection preclude the Town from obtaining water service from the ~~Town of Menasha-Village of Fox~~ Crossing.
- (f) The Town agrees to indemnify and hold the City harmless in the event a court of competent jurisdiction imposes liability or damages as a result of the City's promises relating to the City's obligations applicable to the Town Growth Area under the Agreement.

- (g) The parties agree that Marathon Avenue, Industrial Drive and Maple Grove Drive may eventually be extended to the south consistent with the City's 1999 2020 Plan. The Town shall not directly or indirectly bring any form of legal action opposing any potential extensions as long as the extensions are consistent with the City's 1999 2020 Plan. However, the Town reserves its right to express its policy objections concerning the merits of a contemplated extension. Whether the extension is in a City Growth Area or a Town Growth Area, it shall be constructed in accordance with the City's then-existing road standards. The City shall pay the entire cost of any road extension project it initiates. If a road extension project is initiated by the Town, the City shall promptly reimburse the Town for the additional costs incurred by the Town to construct the road to City road standards. The Town will provide advance written notice of its intent to initiate a road project. ~~Notwithstanding the preceding, the City shall not extend Industrial Drive through land located within the Town Growth Area for at least 7 years from the date of this Agreement unless the relevant property owner(s) otherwise consents.~~ Nothing in this subsection 3.3 (g) precludes the Town from opposing, legally or politically, the alignment of CTH "A."

3.4 Utility Service in Tullar/Oakridge Corridor.

(a) The City will, without requiring annexation of any property, permit the Town of Neenah Sanitary District #2 (the "District") to connect to the City's sanitary sewer main connection point at Rockledge Lane. The Town may extend sanitary sewer service from this connection point to service any property located within Town Growth Area provided that the Connection point will be controlled to not exceed 0.6 cubic feet per second of flowage. The sanitary sewer collection system connecting to the Rockledge Lane connection point will be owned, operated, and maintained by the District at no cost to the City.

The parties further acknowledge that some sewer extensions in this area may necessitate Sewer Service Area Amendments. The District will be responsible for obtaining approval of all required Sewer Service Area Amendments. The City agrees to not object to all applications by the District for Sewer Service Area Amendments for property to be serviced by the Rockledge Lane connection point, provided that the Sewer Service Area Amendment does not involve a swap of territory from a location outside of the Town. The District may not extend sewer service from the Rockledge

Lane connection point outside of the Town without prior written approval of the City.

(b) Attached as Exhibit B is a map depicting a City Water Service Area. The City will provide extraterritorial water service to this area without requiring annexation of any property. The water distribution system within this area will be owned, operated, and maintained by the City at its sole cost. However, the Town will be responsible for the initial construction of the system (and may pass on the responsibility to developers as the Town determines appropriate).

(c) The City will charge sewer and water rates to Town users that are consistent with the charges applicable to similarly-situated City residents. The Town will cooperate with the City in the collection of any unpaid City utility charges.

ARTICLE IV

COOPERATION WITH GOVERNMENTAL AGENCIES

- 4.1 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, the East Central, the Wisconsin Department of Natural Resources and the Wisconsin Department of Transportation. In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of all relevant agencies. To the extent practicable, the parties will, where necessary to obtain such required approval, submit a single, joint request or other appropriate document requesting the approval. The cooperative provisions of this Section 4.1 shall not be deemed a waiver or a delegation of the parties' respective municipal powers; nor shall they be construed as the grant of a power of attorney to either party.
- 4.2 Examples of Joint Requests. Examples of joint requests that shall require the cooperation of the parties include, but are not limited to, the following:

- (a) Approvals to size and cost sharing of future sanitary sewer extensions to accommodate anticipated growth over a period of 50 years, rather than the usual 20-year planning.
- (b) Approvals to size and cost sharing of future wastewater treatment plant capacity improvements to accommodate anticipated growth over a period in excess of usual planning periods, or to plan for staged capacity increases to accommodate anticipated growth several decades in advance.
- (c) Approvals for access to Federal, State or County roadways.
- (d) Stormwater management, soil erosion control, wetlands and woodlands management.
- (e) Approvals required by East Central, including, without limitation, amendments to Sewer Service Area boundaries and the exchange (swap) of vacant lands within the Sewer Service Area boundaries.

4.3 Hydrant Usage. The existing hydrant usage agreement between the Town and the City shall be extended to any territory within the Town not already covered by the hydrant usage agreement in effect on the date of this Agreement. Only hydrants in the vicinity of the relevant fire may be accessed by the Town. The existing hydrants available to the Town under this Section 4.3 are set forth in ~~Exhibit B, which will be reviewed and updated every 24 months if requested in writing by the Town~~ a list kept on file with the City. Furthermore, the respective Town and City fire departments shall make a reasonable effort to cooperate in the provision of fire response services. However, the preceding is not intended to impose a formal mutual aid arrangement. Formal mutual aid agreements, if any, are beyond the scope of this Agreement.

ARTICLE V
MISCELLANEOUS PROVISIONS

5.1 Sale of Town Property. The Town agrees to sell to the City the Town-owned property along Dixie Road in the northeast quarter of Sec. 8, Township 19 North, Range 17 East, Town of Neenah, Winnebago County, Wisconsin for the purpose of expansion of the City's industrial park. The sale price shall be the greater of either the total value of the Town's investment (consisting of the purchase price, closing costs, engineering and legal fees and an amount equal to the time value of the total of the preceding investment, all as set forth in Exhibit C) or the fair

market value as determined by an independent appraisal. If the parties cannot agree on a single appraiser, each shall designate their own appraiser to perform fair market value appraisals and the arithmetic average of the appraised values shall be used. In addition to other factors, the appraisal shall take into account the value of any tower leases applicable to the property. Sale of this land is contingent on the Town obtaining approval of the sale by the Town Meeting pursuant to §60.10(2)(g), Wis. Stats. In the event that the Town is unable to obtain Town Meeting approval of the sale of the Town-owned property on or before May 13, 2003, then the City may void this Agreement in its entirety.

- 5.2 CTH “JJ” Parcels. The parties acknowledge that various parcels of real estate owned by James A. Miringoff, Thomas Braun and Wiegman, located north and west of CTH “JJ” are currently for sale. The combined acreage that is for sale is approximately 65 acres. Exhibit A designates this area as being within the City Growth Area. Notwithstanding this designation, this acreage will be transferred to the Town Growth Area on Exhibit A if, prior to the date of this Agreement, the City receives a letter from the owner or the prospective purchaser requesting that the land in question be designated as Town Growth Area not City Growth Area. The letter shall be accompanied by a copy of an executed offer to purchase (with the purchase price and other confidential information redacted). The offer shall provide that the closing will occur within 6 months of the date of this Agreement. The transmittal letter or the offer shall also represent and warrant that the subject land will be platted within 12 months of the date of this Agreement. The land described in this Section 5.2 shall remain City Growth Area if the above documentation is not received by the City on or before the date of this Agreement.
- 5.3 South Park Storm Water. The City and Town agree to cooperate to develop plans to mitigate the storm water drainage problems along South Park Avenue between County Highway A and Bell Street. Both parties agree to not approve any developments within their respective jurisdictions that will result in the net increase in the rate of 2, 10 and 100 year storm events of storm water discharge into the South Park Avenue storm water drainage system. Notwithstanding this Agreement, nothing in this paragraph is intended to obligate either party to expend sums to correct any pre-existing storm water drainage problem.
- 5.4 Existing Sewer Agreement. To the extent that this Agreement conflicts with any agreement the City has with a Town sanitary district over the extension of sanitary sewers within the Town Growth Areas the City agrees to abide by the terms of this Agreement.

5.4.1 Special Attachment Parcels.

(a) County Road CB Parcel. Attached hereto as Exhibit C is a map depicting the parcel located at 200 County Road CB. The City has, by ordinance adopted pursuant to Wis. Stat. § 66.0301(6)(e), attached that parcel to the City .

The parties further agree that if at any time the City fails to make any payment to the Town in accordance with the City-Town Shared Services Agreement, the Town may demand that the parcel be detached to the Town and may accomplish a detachment through adoption of an ordinance under Wis. Stat. § 66.0301(6)(e). In that event, the City shall take all action necessary to accomplish such a detachment.

(b) Breezewood Parcels. Attached hereto as Exhibit D is a map depicting an area of property with Parcel ID Numbers 0100346, 0100347, 0100349, and 0100351. At the earlier of (i) the expiration of all life estates described in the Life Estate Agreement recorded at the Winnebago County Register of Deeds Office as Document No. 1824652, or (ii) 45 days prior to the expiration of this Agreement, the City may, by ordinance adopted pursuant to Wis. Stat. § 66.0301(6)(e), attach that parcel to the City.

5.4.2 Tullar Road Access. The Town will notify the City of any requests for access to Tullar Road and will consider all comments provide by the City prior to acting on such requests.

5.5 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.

- 5.6 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 Chairman and City Mayor. Any action taken by a party in violation of the relevant notice requirement is voidable unless, under the facts of the particular case, the public interest outweighs strict enforcement of the notice requirement.
- 5.7 Enforceability. The parties have entered into this Agreement under the authority of Sections 60.22(1), 66.0225 and 66.0301 of the Wisconsin Statutes. Its enforceability will not be affected by statutory amendments, changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Agreement be construed so as to be binding on their respective successors, agents and employees.
- 5.8 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. 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 Wisconsin Public Service Commission. 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' 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.

- 5.9 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.
- 5.10 Other Agreements. Except as specifically provided herein, this Agreement does not supersede prior or other contracts, agreements, Court Decisions, or Arbitration Awards between the parties. All other intergovernmental agreements between the parties remain in full force and effect. All rights are reserved.
- 5.11 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.
- 5.12 Term of Agreement. The ~~initial~~ term of this Agreement shall ~~be 30 years from the date of the last signature.~~ expire on April 15, 2040. 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.
- 5.13 Performance Standard. This Agreement requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a party, the consent or approval shall not be unreasonably withheld.

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- 5.14 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.
- 5.15 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.
- 5.16 ~~Approval Deadline. This Agreement must be approved by the Town Board and, with regard to the sale of the Town property identified in Section 5.1 above, by the Town electors by 5:00 p.m., May 13, 2003. Otherwise, this Agreement is null and void.~~
- 5.17 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 5.8 (a), above. If unresolved after mediation, the Agreement is void.

ARTICLE VI
GRACE EVANGELICAL ANNEXATION

- 6.1 Resolution of Pending Litigation. The parties agree to stipulate to the dismissal of Town of Neenah v. City of Neenah, Winnebago County Case No. 2001 CV 1142, as follows:
- (a) The property owned by Clifton A. Schultz and Marjorie Schultz, 1370 Breezewood Lane and Lynn A. Keyes, 1430 Breezewood Lane shall be detached from the City if requested by the property owner;

- (b) The property owners of 1330 Breezewood Lane (Sukanen property) will be given the opportunity of electing to remain in the City or to be detached from the City. The parties shall jointly draft and submit a letter to the property owners explaining their option to remain in the City or to be detached from the City. The letter will offer the opportunity for a meeting. If a meeting is requested, the Town Chairman and the City Mayor will meet with the Sukanen residents in order to elicit their preference; and
- (c) The remaining property owners who petitioned for annexation shall remain in the City in accordance with their annexation petition.

6.2 Town Approvals. The Town shall grant the City all approvals, including easements, necessary to extend sewer and water to the properties referenced in Section 6.1, above, remaining in the City. Those properties referenced in Section 6.1, above, that are to be detached from the City will thereafter be identified as City Service Hybrid Areas.

6.3 Submission Pursuant to Sec. 66.0225, Wis. Stats. Sec. 66.0225, Wis. Stats., authorizes municipal boundaries to be fixed by a court judgment. The Town and the City agree to submit this Agreement to the Circuit Court having jurisdiction in Winnebago County Case No. 2001 CV 1142 pursuant to sec. 66.0225, Wis. Stats., for the purpose of (a) the resolution of the pending Grace Evangelical annexation lawsuit, Winnebago County Case No. 2001 CV 1142, and (b) fixing the common boundary line between the Town and the City in accordance with the terms of this Agreement. This Agreement shall be incorporated into a stipulation for submission and approval by the Circuit Court.

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[Signature pages follow]

CITY OF NEENAH

Date: _____ By: _____
Dean Kaufert, Mayor

Attest: _____
Charlotte Nagel, City Clerk

TOWN OF NEENAH

Date: _____ By: _____
_____ Robert Schmeichel, Chairperson

Attest:

Ellen Skerke, Administrator-Clerk-Treasurer

TOWN OF NEENAH SANITARY DISTRICT #2

Date: _____ By: _____
_____ Dan Osero, President

Attest:

Ellen Skerke Administrator- Clerk-Treasurer

~~CITY OF NEENAH~~

~~The undersigned officers of the City of Neenah have executed this Agreement pursuant to a duly adopted resolution of the City Council dated April 2, 2003.~~

~~By: /s/ George Scherek 4/3/03 Attest: /s/ Patricia A. Peterson 4/3/03
George Scherek Date Patricia A. Peterson Date
Mayor City Clerk~~

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~~TOWN OF NEENAH~~

~~The undersigned officers of the Town of Neenah have executed this Agreement pursuant to a duly adopted resolution of the Town Board dated March 31, 2003.~~

~~By: /s/ Steven J. Spanbauer 3/31/03 Attest: /s/ Carita Williams 3-31-03
Steven J. Spanbauer Date Carita Williams Date
Chairman Town Clerk~~

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~~TOWN OF NEENAH SANITARY DISTRICT #1-1~~

~~The undersigned officers of the Town of Neenah Sanitary District #1-1 have executed this Agreement pursuant to a duly adopted resolution of the Sanitary District dated April 10, 2003.~~

~~By: /s/ Pam Swanson 4-10-03 Attest: /s/ Carita Williams 4-10-03
Pam Swanson Date Carita Williams Date
President Secretary~~

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~~TOWN OF NEENAH SANITARY DISTRICT #2~~

~~The undersigned officers of the Town of Neenah Sanitary District #2 have executed this Agreement pursuant to a duly adopted resolution of the Sanitary District dated April 15, 2003.~~

~~By: /s/ Don Verbrick 4-15-03 Attest: /s/ Jan DeKeyser 4-15-03
Don Verbrick Date Jan DeKeyser Date
President Secretary~~

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