

**BOUNDARY STIPULATION AND INTERGOVERNMENTAL
COOPERATION AGREEMENT BETWEEN THE
TOWN OF MOUNT PLEASANT AND TOWN OF SOMERS**

This is a stipulation and intergovernmental agreement made and entered into as of the 17th day of January, 2000, by and between the Town of Mount Pleasant, a municipal corporation, located in Racine County, Wisconsin and its related utilities (herein collectively referred to as "Mount Pleasant") and the Town of Somers, a municipal corporation, located in Kenosha County, Wisconsin, and its related utilities (collectively "Somers").

RECITALS

WHEREAS, Wisconsin Statutes Section 66.30 authorizes towns as "municipalities" to contract for the joint exercise of any power or duty required or authorized by statute; and

WHEREAS, Mount Pleasant and Somers have long recognized that intergovernmental cooperation and joint planning provide for the best use of land and natural resources, and high quality and efficient services; and

WHEREAS, it is in the best interest of Mount Pleasant and Somers to resolve potential future annexation, boundary, land use and municipal service issues in order to avoid costly and time-consuming litigation, and to provide effective and efficient joint planning to manage their future growth in each Town; and

WHEREAS, fixing the boundaries between Mount Pleasant and Somers to include lands currently within each town will facilitate joint planning and intergovernmental cooperation between Mount Pleasant and Somers regardless of the form of agreement in effect in Mount Pleasant or Somers and irrespective of changes in state law relative to the powers of town government; and

WHEREAS, Mount Pleasant and Somers recognize that this Agreement represents compromises which are required in order to reach a long-term and meaningful agreement;

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, the receipt and sufficiency of which is mutually acknowledged, it is stipulated and agreed as follows:

1. PRESENT BOUNDARIES.

(a) The boundaries of Mount Pleasant and Somers shall be fixed at Racine County and Kenosha County Trunk Highway "KR"; that is, as between the parties to this Agreement and respective successors an/or assigns, all lands located as of the date of this Agreement in Town 3 North, Range 22 and 23 East, Racine County, Wisconsin, which are not located within the corporate limits of the City of Racine, Wisconsin or the Village of Elmwood Park, Wisconsin, or

the Village of Sturtevant, Wisconsin, shall remain in Mount Pleasant. Likewise, all lands located as of the date of this Agreement in Town 2 North, Range 22 and 23 East, Kenosha County, Wisconsin, which are not located within the City of Kenosha, Wisconsin, shall remain in Somers. The lands described herein shall be referred to as the lands subject to this Agreement for the term stated herein, as may be extended from time to time.

2. PROHIBITION ON ANNEXATIONS.

(a) Neither party shall accept or if required to accept, favorably act upon any petition for annexation of lands subject to this Agreement during the term hereof. This provision is designed to be binding upon each of the parties hereto regardless of whether one or both parties incorporate as villages or cities under the laws of the State of Wisconsin or one or both remain as towns.

(b) If any lands are annexed to a party or its successor or assign in violation of subsection 2(a), that party agrees in accordance with the provisions of Wisconsin Statutes Section 66.028 to reimburse the other party as liquidated damages and not as a penalty an amount equivalent to the tax revenue lost to the party losing such lands as a result of such annexation each year for a period of fifty (50) years from the date the annexation ordinance is effective.

(i) Such reimbursement shall be calculated based on the assessed value of all land and improvements in the annexed territory as of January 1 of each year after the annexation took place.

(ii) The assessed value of such lands shall be multiplied by the mill rate established by the party losing such lands for that year to calculate the amount due that party under this formula.

(iii) Such reimbursement shall be made within thirty (30) days of the first of January of each year beginning with the first year after each annexation.

(c) The foregoing provisions of this paragraph shall not apply:

(i) If a court of competent jurisdiction requires by judgment that a party accept an annexation previously rejected by the party; or

(ii) If the party from whom lands are proposed to be annexed shall consent to such annexation in advance by action of its governing body.

3. FUTURE LAND USE RESTRICTIONS.

(a) Restricted Extraterritorial Zoning Jurisdiction. Each of the parties acknowledge that they are each currently subject to certain county zoning approvals by the County of Racine, in the case of Mount Pleasant and the County of Kenosha, in the case of Somers. Each further

recognizes that in the event that either party to this Agreement should incorporate as either a village or a city then, pursuant to Wisconsin Statutes Section 62.23(7a), such incorporated area would be in a position to exercise extraterritorial zoning in certain portions of the lands which are subject to this Agreement. Each party recognizes that the imposition of extraterritorial zoning restrictions by one party on the other is both contrary to the intent of this Agreement and would present procedural problems of considerable magnitude, given the administration of zoning ordinances from another county by an incorporated party. To this end, each party hereby warrants and represents that it shall not, during the term of this Agreement or any amendments thereto, enact an extraterritorial zoning resolution for the purpose of imposing extraterritorial zoning jurisdiction on any of the lands which are the subject of this Agreement which are contained in the areas encompassed by the lands of the other party to this Agreement as of the date of this Agreement. Nothing herein shall prohibit, for example, the imposition by a party to this Agreement of an extraterritorial zoning ordinance on lands which are presently within its own sphere of influence—i.e. for example, in the event of the incorporation of less than all of the Town of Somers into a village, the then-Village of Somers could enact an extraterritorial zoning ordinance on such portions of the lands which are subject to this Agreement which are located within its sphere of influence south of County Trunk Highway “KR”. It is also the intent of this provision that in the event that towns are granted extraterritorial zoning authority or limited extraterritorial zoning authority in the future by the Wisconsin legislature, that each party to this Agreement warrants that it shall not impose extraterritorial zoning restrictions upon lands in the other’s sphere of influence.

4. EXTENSION OF UTILITY SERVICE.

Both Mount Pleasant and Somers agree that logical, orderly extensions of sanitary sewer service, extensions of municipal water services and the creation and maintenance of surface drainage/stormwater management facilities within lands subject to this Agreement are desirable goals and that the mutual prohibitions against annexation of lands subject to this Agreement by the parties hereto shall not prohibit the inclusion of such lands into sanitary sewer districts, utility districts, municipal water districts or other districts which cross the county line following approval by both Mount Pleasant and Somers. To this end, each party agrees to the reasonableness and necessity of expanding sanitary sewer service areas, extensions of municipal water services and the creation and maintenance of surface drainage/stormwater management facilities in various lands subject to this Agreement and shall execute such documents or pass such resolutions as are necessary so as to effectuate the purposes of this paragraph. Each party warrants and represents that it will not directly or indirectly oppose any petition by the other to the Wisconsin Public Service Commission, the Southeastern Wisconsin Regional Planning Commission (or any other designee or agent of the United States Environmental Protection Agency) or the Wisconsin Department of Natural Resources, related to any effort by a party to extend or expand its sanitary sewer service area or expand municipal water service into any lands subject to this Agreement. However, any such expansion of sanitary sewer service or municipal water facilities across the county line shall require the consideration, approval and execution of a cooperative agreement between the parties delineating the scope of such understandings which cooperation shall not be unreasonably withheld. Each party agrees that the creation and maintenance of surface

water/stormwater maintenance facilities which will have an impact in both Mount Pleasant and in Somers shall be subject to review and approval of the respective Plan Commissions and Town Boards (or their successors) of each community.

5. NO THIRD PARTY BENEFICIARY.

This Agreement is intended to be solely between Mount Pleasant and Somers and their respective successors and assign, whether by incorporation or, if in part, by annexation. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any nonparty to this Agreement. It is the intention of the parties hereto that in the event either Mount Pleasant or Somers, or both, incorporate all or a portion of their respective territories, that the terms and conditions of this Agreement shall be binding upon the new entity or entities created by such incorporation(s). To that end, all references to a Town, Town Board, Chairperson or other elected or appointed official of a Town shall be interpreted by the parties to this Agreement to include the corresponding political entity, board, commission or elected or appointed officials which may exist after such incorporation(s).

6. ADMINISTRATION OF AGREEMENT.

This Agreement shall be administered on behalf of each Town by the Town Board Chairperson or the Town Board Chairperson's designee. The appointment of a designee must be in writing and the other party to this Agreement must be notified of the appointment. The administration of this Agreement shall include the implementation of policies and procedures which will effectuate the purposes and spirit of this Agreement.

7. ENFORCEMENT.

This Agreement is intended to provide each party with the right and standing to challenge by court action (including action by certiorari or otherwise to declare a governmental act invalid) any act of the other party that violates this Agreement. The covenants and conditions contained herein are construed to be construed as a covenant running with the lands hereby impacted. This Agreement is intended to provide each party with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement. In any action concerning an alleged violation of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses of litigation, including reasonable attorneys' fees.

8. TERM.

The term of this Agreement is twenty-five (25) years, commencing on the first day of the first month after both parties have fully executed this Agreement. At the expiration of the first and each subsequent term, the Agreement will automatically be renewed for additional five (5) year terms unless either party notifies the other in writing, at least one (1) year prior to the expiration of the initial term, or any additional term, of its intention not to renew the Agreement. No breach

or violation of any of the terms of this Agreement by either party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined or otherwise remedied by the exercise of any lawful contractual enforcement remedies then available to be used by the aggrieved party to enforce the terms of the Agreement.

9. AMENDMENT.

This Agreement may be amended only by written agreement approved by a majority vote of at least seventy-five (75%) percent of the members of the governing bodies of both parties.

10. COMPLETE AGREEMENT.

This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.

11. SEVERABLE PROVISIONS.

All of the Agreement's terms are intertwined and interconnected and shall not be severed or modified. It is agreed that the terms and provisions are interdependent. If any material part of this Agreement is held by a court of competent jurisdiction to be invalid or ineffective or if subsequently enacted federal or state law, rule or regulation renders any of the material terms of this Agreement unlawful, the parties shall have thirty (30) days in which to negotiate in good faith to remedy the unlawful or unenforceable provisions.

12. 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 Southeastern Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources, Kenosha County, Racine County 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 documents requesting the approval.

13. ENFORCEABILITY.

The parties have entered into this Agreement under the authority of Section 66.30 of the Wisconsin Statutes. Its enforceability will not be affected by changes in the forms of Town government or from Town government to Village government or City 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. The parties will not challenge the provisions of the Agreement or they that this Agreement be construed so as to be binding on their respective

successors, agents and employees. The parties will not challenge the provisions of the Agreement or they will be subject to the penalty provisions herein, except upon breach by the other party.

14. 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 any 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 it not sign the waiver or release.

15. 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 duty of good faith and fair dealing.

By executing this Agreement, the parties below acknowledge that this Agreement was passed by duly authorized public meeting of the respective governing boards of the Town of Mount Pleasant and the Town of Somers wherein a quorum of Board members was present and a majority of such quorum voted in favor of the passage of a motion or resolution approving this Agreement. Such approvals as recited herein shall presumptively establish that the action of the Board shall also be binding upon the utilities associated with such Town, whether Mount Pleasant or Somers. Such meetings were held at the Town Halls, respectively, on the dates and times as follows:

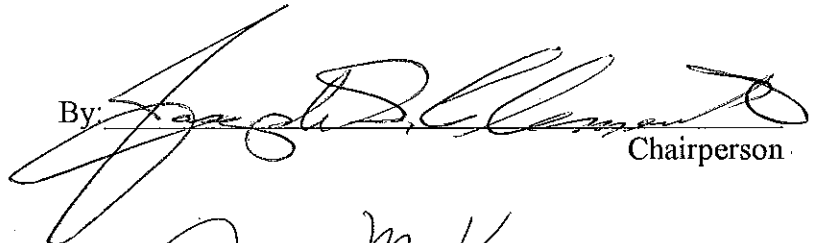
Town of Mount Pleasant Board meeting conducted on the 17th day of January, 2000, at 7:00 o'clock p.m.

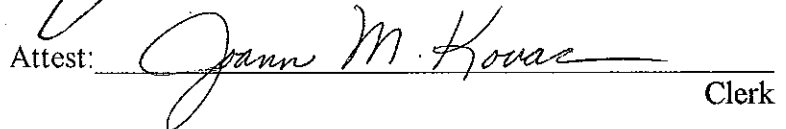
Town of Somers Board meeting conducted on the 11th day of January, 2000, at 7:00 o'clock p.m.

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement by their duly authorized officers as of the date first written above.

TOWN OF MOUNT PLEASANT

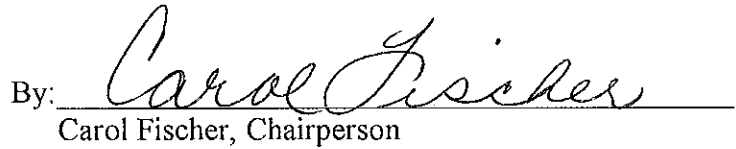
EXECUTED IN DUPLICATE

By: 
Chairperson

Attest: 
Clerk

TOWN OF SOMERS

EXECUTED IN DUPLICATE

By: 
Carol Fischer, Chairperson

Attest: 
Kay Goergen, Clerk