

# **COOPERATIVE PLAN**

Between

**CITY OF OSHKOSH**

And

**TOWN OF BLACK WOLF**

Those Involved in the Preparation of the Cooperative Plan:

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DRAFT as of 9/21/2011

Final Version Dated

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OUTLINE OF CITY OF OSHKOSH AND TOWN OF BLACK WOLF  
COOPERATIVE PLAN  
UNDER WIS. STAT. § 66.0307

The **CITY OF OSHKOSH**, a Wisconsin municipal corporation with offices at 215 Church Avenue, Oshkosh, Wisconsin 54903-1130 and the **TOWN OF BLACK WOLF**, a Wisconsin municipality with offices at 380 East Black Wolf Avenue Oshkosh, WI 54902-9139, enter into this Cooperative Plan, ("**Cooperative Plan**" or "**Plan**"), subject to approval of the State Department of Administration, under authority of Wis. Stat. § 66.0307.

**RECITALS**

- A.** Wis. Stat. § 66.0307, authorizes municipalities to determine the boundary lines between themselves upon approval of a cooperative plan by the State Department of Administration.
- B.** The purpose of a cooperative plan is set forth in Wis. Stat. § 66.0307(3)(b), as follows: The cooperative plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory covered by the plan which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.
- C.** Wis. Stat. § 66.0307(2) permits cooperative plans to provide for future boundary changes.
- D.** On December 19, 2008 the City and Town entered into an Intergovernmental Agreement under the authority of Wis. Stat. § 66.0301 to provide the basic foundation for this Cooperative Plan. The Intergovernmental Agreement is attached hereto as Exhibit J.
- E.** The City and Town entered into the Intergovernmental Agreement for the purposes of establishing a long-term boundary, limiting the City's extraterritorial authority within the Protected Area assuring orderly growth and development outside the Protected Area, protecting Town owners from annexations against their will, and facilitating attachment of lands in the Expansion Area at the will of the owners without threat of lawsuits.

**F.** This Cooperative Plan is intended to implement the Intergovernmental Agreement and to guide and accomplish a coordinated, well-planned and harmonious development of the territory covered by the Plan.

**G.** This Cooperative Plan was developed following a review of regional, county and local plans and after a public hearing on the Plan noticed under Wis. Stat. § 66.0307(4)(b) on September 15, 2008, from which comments were received and said comments are addressed in Exhibit I.

**H.** It is the intention of the City and Town that this Cooperative Plan be a binding and enforceable contract.

## **PLAN**

**THEREFORE**, the City of Oshkosh and Town of Black Wolf enter into this Cooperative Plan under authority of Wis. Stat. § 66.0307, and petition the State of Wisconsin Department of Administration for approval, in accordance with statutory procedures and time frames.

### **SECTION 1 PARTICIPATING MUNICIPALITIES**

This Cooperative Plan applies to the City of Oshkosh and Town of Black Wolf, located in Winnebago County, Wisconsin. The boundary between the City and the Town is shown on Exhibit A.

### **SECTION 2** [This section left intentionally blank.]

### **SECTION 3 TERRITORY SUBJECT TO THE COOPERATIVE PLAN**

The territory subject to this Cooperative Plan is all territory in the Town as of the date of this Plan.

### **SECTION 4 ISSUES, PROBLEMS, OPPORTUNITIES**

This Cooperative Plan will address issues and problems and create opportunities as noted in the subsections below:

**4.01 Existing Character of the Territory (Town of Black Wolf)** The Town of Black Wolf is predominated by undeveloped and agricultural areas. Open space land uses dominate. About 2/3 of the land is cropland, and nine percent is woodlands. Single-family homes are located along many of the section roads in the Town. Limited commercial and industrial developments are located along USH 45 and STH 44. Given that the Town has no central place where development and activity is congregated, institutional uses and public facilities are scattered throughout the Town.

The following table is a breakdown of existing land use in the Town.

<b>Town of Black Wolf Existing Land Use*</b>		
<b>Land Use</b>	<b>Acres</b>	<b>Percent of Total</b>
Single Family Residences	972.36	9.81%
Farm Residences	185.22	1.87
Multi-family Residences	4.91	0.05%
Commercial	61.15	0.62
Industrial	6.30	0.06%
Public/Institutional	39.58	0.40%
Parks/Recreation	252.04	2.54%
Rights of Way	504.53	5.09%
Cropland	6702.81	67.62%
Woodlands/Undeveloped	1182.90	11.94%
<b>Total</b>	<b>9911.80</b>	<b>100%</b>

\*Town of Black Wolf Comprehensive Plan, March 1998

**4.02 Future Road Network** The parties will consult with each other relative to future road planning.

### **4.03 Preservation of Natural, Physical and Socio-Economic Attributes**

The Town of Black Wolf has a rich farming tradition with roughly 80%% of the Town's land area devoted to agricultural and undeveloped space. Farming operations in the Town consist of a balance of family farm operations, rented cropland, and larger corporate farms. Large portions of Town lands are considered to be prime agricultural lands. Contiguous areas of woodlands, wetlands, and other natural areas in the Town have been protected from development. In order to protect prime agricultural lands from residential development pressures, the Town has adopted a Subdivision Ordinance with provisions for cluster and conservation subdivisions.

The Town has not yet completed a comprehensive inventory of its cultural resources. Completion of said inventory is a priority in the Comprehensive Plan to establish priorities for protection of cultural resources. According to the Wisconsin Historical Society, the Town of Black Wolf has 27 registered historic structures s id 2008.

This Plan will promote and enable cooperation between the City and the Town to coordinate their plans for pedestrian trails.

**4.04 Joint Planning** Both the City of Oshkosh and the Town of Black Wolf have completed their respective Comprehensive Plans that were developed per the State's "Smart Growth" statutes. Each of the plans includes an Intergovernmental Cooperation element. With the Plans in place, greater emphasis can be applied to working jointly to resolve any potential land use conflicts or issues, and to promote efficient delivery of services to both the City and Town.

Those portions of the Town in the City Expansion Area will be served (as attachment occurs) with sanitary sewer, water and underground storm sewer system. There are no plans to extend sanitary sewer, water, and underground storm sewer to the protected area.

**4.05 Establish Long-Term Boundaries Between City and Town, Eliminate Annexation Disputes.** In previous years, annexation disputes have occurred between the City of Oshkosh and the Town of Black Wolf. These disputes have absorbed City and Town fiscal resources.

Current Wisconsin annexation statutes and annexations have resulted in fragmentation of the Town into discontinuous geographic areas and irregular peninsulas. The boundaries of the Town and the City are not well defined by built or natural features, which have resulted in service inefficiencies and challenges. The irregular boundary issues are addressed by this Plan.



The term and implementation phases within the Plan recognize an attempt to balance the competing desires of the City, the Town, and existing Town property owners and residents.

The boundary provisions between the City and the Town that provide for a protected area for the Town and an expansion area for the City will enable both municipalities to engage in more orderly land use planning and development, without wasting public resources on divisive boundary disputes and inefficient service provision.

#### **4.06 Assure Orderly Development of City and Town Within the Planning Area.**

The Plan provides a mechanism for joint land use decision making while parcels in the City Expansion remain in the Town. The Plan establishes the City's Comprehensive Plan as the planning document to guide growth in the Expansion Area. Furthermore, the Town agrees that it will not rezone lands in the Expansion Area without first obtaining the City's consent to the rezoning, which consent may not be withheld if the rezoning is consistent with the City's adopted Comprehensive Plan (which may be amended from time to time). The Plan establishes density maximums in the Rural Preservation Area to permit some limited residential development and commercial/industrial development along Old Oregon Road. Within the Protected Area, the Town of Black Wolf will be able to undertake appropriate long range planning with assurance that the Protected Area will remain in the Town.

### **SECTION 5 DEFINITIONS**

For the purposes of this Cooperative Plan, the following words and phrases are defined as follows

- 1. Black Wolf or Town:** The Town of Black Wolf, Wisconsin, a municipal corporation with offices at 380 East Black Wolf Avenue, Oshkosh, Wisconsin 54902.
- 2. Voluntary Attachment:** The method by which land is attached to the City as set forth in section 10 of this Plan.
- 3. Boundary Line:** The boundary between the Protected Area and the City or Expansion and Rural Preservation Area as shown on Exhibit B.
- 4. Exhibits:** Maps, lists, resolutions and other supporting documents that are attached to this Plan and incorporated as part of the Plan.
- 5. City Expansion Area:** Is a geographic area that the parties expect to be developed for urban uses within the City during the term of this Agreement and illustrated on Exhibit B.

- 6. Rural Preservation Area:** Is a geographic area that the parties expect will remain primarily rural and agriculturally oriented during the term of this Agreement and illustrated on Exhibit B.
- 7. Functional Town Island Attachment:** Attachment of areas determined to be functional town islands as set forth in Section 10 of this Plan.
- 8. Town Section Attachment:** Attachment of remaining unincorporated Town areas within individual Town Sections (as identified on Exhibit E) that contain 70% or more of incorporated City of Oshkosh territory and as set forth in Section 10 of this Plan.
- 9. Town Section:** Individual geographic sections of the Town in one mile squares as illustrated on Exhibit E.
- 10. Oshkosh or City:** The City of Oshkosh, Wisconsin, a municipal corporation with offices at 215 Church Avenue, Oshkosh, Wisconsin 54903-1130.
- 11. Plan Territory:** All parcels of land within the Town of Black Wolf as of the date of this Plan.
- 12. Black Wolf Protected Area:** A geographic area shown on Exhibit B that the City agrees not to annex or attach territory during the term of this Agreement.
- 13. Functional Town Island:** For purposes of this Agreement, a functional town island occurs when either man-made or natural barriers, employed in conjunction with City corporate boundaries, isolate a portion of the Town. In determining whether an area is sufficiently isolated so as to constitute a functional town island, the parties shall consider: (i) the extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town, (ii) the extent to which natural borders and political boundaries of the City isolate the area from the balance of the Town, or (iii) the extent to which, for all practical purposes, the area is cut off from the remainder of the Town.
- 14. Voluntary Attachment:** An attachment of land within the Expansion Area pursuant to unanimous request of all owners prior to Final or Intermediate Attachment.

## **SECTION 6**

### **TERM**

The term of this Cooperative Plan shall commence upon the date of its approval by the Wisconsin Department of Administration and shall terminate at 11:59 p.m. on \_\_\_\_\_, 2051. The basis for the 40 year term is that such time period is deemed by the City and Town to be necessary to protect existing Town land owners from annexation against their will and for the City to fully assimilate the territory in the Expansion Area in an orderly and cost-effective manner.

## **SECTION 7**

### **EXPANSION AREA, PROTECTED AREA, AND RURAL PRESERVATION AREA**

The area of the Town subject to boundary adjustments over the term of this Cooperative Plan includes the City Expansion Area and the Rural Preservation Area. The area of the Town protected from boundary adjustments (the Protected Area) is shown on Exhibit B.

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

- (a) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create town or city islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, nor support opposition to, annexation consistent with the terms of this Agreement.
- (b) **Land divisions and Platting.** When requests are made for approval of any certified survey map (CSM), or initiation of development activities that will result in the creation of any non-rural, non-agricultural use, where the CSM, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:
  - (i) An attachment agreement is executed with the City, which requires the property owner and successor owners to annex and/or attach the affected parcel(s) when the parcel(s) become contiguous with the City. The annexation and/or attachment agreement shall also provide provisions for necessary easements (which the City will determine) that may be required for the future extension of utilities to the relevant parcel(s) and development area.

- (ii) The property owner and/or developer prepares and submits to the City a Master Development Plan for the Town Section within which the certified survey map, plat, or development activity is proposed, and a finding is made by the City that the CSM, plat, or development activity is consistent with the City's adopted Comprehensive Plan or can be made consistent with the addition of appropriate conditions, including conditions relative to the installation of public improvements. The City may waive the Master Development Plan requirement based on the size and scope of the proposal.
  - (iii) The CSM, plat, and development activity must be served by a publicly dedicated road built in accordance with the City's Subdivision Regulations, unless those requirements are waived and/or modified by the City.
  - (iv) The maximum lot size of residential parcels shall not exceed two (2) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building sites(s), unless said requirement is waived and/or modified by the City.
- (c) The Town will not rezone land located in the CEA without first obtaining the City's consent to the rezoning, which consent may not be withheld if the proposed rezoning is consistent with the terms of this Agreement and the provisions of the City's adopted Comprehensive Plan.
  - (d) The Town will not interfere with or object to the City applications to extend its sewer service area consistent with this Agreement.

**7.02 Black Wolf Protected Area.** The parties acknowledge that the territory in the Black Wolf Protected Area (BWPA) will be developed and will remain in the Town during the term of this Agreement. The following additional provisions shall apply to the BWPA:

- (a) The City will not annex any land from the BWPA without the Town's prior written consent. A written request for consent will be submitted to the Town upon receipt of an annexation petition. The Town will respond in writing to such request within 45 days. Failure to respond within said 45 days shall be deemed a denial of the request. The Town reserves all legislative prerogatives in deciding whether it wishes to allow the annexation and, to that extent, all rights are reserved.
- (b) The Town reserves the right to permit unsewered development on lands within the BWPA, provided the development is consistent with the Town's Comprehensive Plan. To the extent that the City has jurisdiction to review or approve any land division within the BWPA, the City shall provide timely approval of said land division without conditions its consent on the execution of an attachment agreement.

- (c) In consideration for the rights and privileges granted to the City by the Town under this Agreement, the City agrees that it shall not adopt or exercise extraterritorial zoning and plat approval jurisdiction applicable to the BWPA.

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

- (a) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create town of city islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, nor support opposition to, annexation consistent with the terms of this Agreement.
- (b) The parties acknowledge and agree that any area that, on the effective date of this Agreement or during the term of this Agreement, becomes a functional town island shall be annexed per the provisions of 10.02 of this Agreement.
- (c) The Town shall consent to the construction of City utilities in Town rights of way and easements as necessary to serve annexed lands subject to the City's obligations (i) to maintain access to Town territory, and (ii) to restore the right of way or easement in accordance with commonly accepted practices.
- (d) When a new road is proposed by the City to be built on land located in the RPA, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City must obtain the Town's prior written consent for new roads to be built on land located in the RPA, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.
- (e) The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.
- (f) When requests are made for approval of any CSM, plat, or the initiation of development activities that will result in the creation of any non-rural, non-agricultural use, where the CSM, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:
  - (i) A maximum of twenty-eight (28) non-rural, non-agricultural residential dwellings are permitted within each Town Section, provided, however, that not fewer than ten (10) additional non-rural, non-agricultural residential dwellings will be permitted in each Town Section regardless of the number of non-rural, non-agricultural residential dwellings in existence on the date of this Agreement.

- (ii) The CSM, plat, and development activity must be served by a publicly dedicated road built in accordance with the design (but not construction) standards of Section 30.73 of the City of Oshkosh Municipal Code, as amended from time to time, unless said requirement is waived and/or modified by the City.
- (iii) The minimum lot size of residential parcels shall be five (5) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building sites(s), unless said requirement is waived and/or modified by the City.
- (g) Commercial and light industrial development may be permitted within the Old Omro Road District subject to the following provisions:
  - (i) The property owner(s) execute an attachment agreement with the City requiring the property owner or successor owners to attach to the City within sixty (60) months of the date when the parcel(s) becomes contiguous to the City. The attachment agreement shall provide provisions necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area.
  - (ii) Design Standards. New development shall be required to comply with the design standards found in the City of Oshkosh Zoning Ordinance, as amended from time to time.
  - (iii) Commercial and industrial development may be permitted outside the Old Omro Road District subject to review and approval of development proposals by the City, a finding that any such proposed development is and/or will be deemed compatible with the City's and the Town's Comprehensive Plans, and an attachment agreement is executed with the City that requires the property owner and successor owners to annex and/or attach the affected parcel(s) within sixty (60) months of the date when the parcel(s) become contiguous with the City. The attachment agreement shall provide provisions necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area.
  - (iv) Prior to securing a building permit for non-residential development, property owners/developers shall be required to obtain approval of project plans from the City of Oshkosh Department of Community Development to ensure compliance with the provisions of this section.

## **SECTION 8**

### **LONG-TERM BOUNDARY BETWEEN CITY AND TOWN**

The limits of the City bordering the Town as protected through the creation of a "Town Protected Area" and expanded through the creation of a "City Expansion Area" shall constitute the long-term boundary between the City and Town. The Town boundaries will result in a compact community bounded on the west and north by the City. The boundary agreement will allow for the eventual elimination of Town peninsulas and islands and other irregularities with the municipal border that may create service delivery confusion or inefficiencies. The plan area is and will remain in the Oshkosh Area School District. Terrain and other physical features are virtually uniform throughout the planning area. The expansion of the City into the Town will allow for the orderly development of the City that should lessen urban sprawl and create compactness over time. The staged expansion will also allow for appropriate planning of infrastructure and other service needs into these areas.

The City may attach areas within the Expansion Area and Rural Preservation Area as provided in this Plan, but will not attach or annex during the term of this Plan, any part of the Protected Area except with written approval of the Town Board.

The City and Town have independently determined that the long-term boundary established by this Cooperative Plan best promotes the mutual public health, safety, order, convenience, prosperity and general welfare, as well as efficiency and economy of development within both the City and the Town.

## **SECTION 9**

### **ATTACHMENT OF TERRITORY IN EXPANSION AREA OF TOWN TO CITY**

**9.01 Voluntary Attachment.** Following approval of this Plan by the State of Wisconsin Department of Administration, property owner(s) within the Expansion Area and the Rural Preservation Area will have the right to unanimously request attachment of their land(s) to the City at any time. Procedures to attach land on a voluntary basis are found in Section 10.01 of this Plan.

## **SECTION 10**

### **PROCEDURE - ATTACHMENT OF TOWN LAND TO CITY IN EXPANSION AREA**

**10.01 Procedure for Voluntary Attachment** The procedure for Voluntary Attachment of territory in the Expansion Area to the City shall be as follows:

- (a) Upon written petition for attachment of land filed with the City Clerk on City forms signed by all of the owners of all the land, exclusive of Town roads abutting such land, the City may, with ten (10) days advance, written notice to Town Clerk, without further review and approval of the Town, and without mandatory review and recommendation by the City Plan Commission or any other sub-unit of the City, adopt an attachment ordinance by a majority of the elected members of its Common Council attaching the land. The attachment ordinance may designate a temporary or permanent zoning classification for each parcel as prescribed in Wis. Stat. § 66.0217 (8).
- (b) Following adoption of the attachment ordinance, the City Clerk shall immediately file, record and send copies of the same, in accordance with Wis. Stat. §§ 66.0217(9)(a) and 66.0307(10). Failure to file, record or send shall not invalidate the attachment and the duty to file, record or send shall be a continuing one. The information filed with the Secretary of State shall be utilized in making adjustments to entitlements under the federal revenue sharing program and to distribution of funds under Wis. Stat. chapter 79, and to any successor or other federal or state entitlement or revenue-sharing program.
- (c) No land shall be attached to the City as a Voluntary Attachment without the consent of all of the owners. Petition signatures or other indices of consent shall not be required of residents, occupants or users of property who are not owners of the property.
- (d) Territory may be attached to the City, under this Cooperative Plan, irrespective of the size, or shape of the territory. Such attachments may create Town islands. The City, however, may reject any petition to attach territory that is not contiguous, configured or located in such a manner as will enable the City to provide adequate and timely service. The City is authorized to confer with landowners interested in attachment to recommend the size, shape and contiguity of territory to be covered by a petition.
- (e) The Town shall not oppose any attachments permitted by this Agreement or provide support, financial or otherwise, to those who do.
- (f) Any territory within the Expansion Area not attached to the City as a Voluntary Attachment shall be attached to the City as a "Functional Town Island" attachment or a "Town Section" attachment in accordance with the time frames and procedures governing such Attachments set forth below.



**10.02 Procedure for Functional Town Island Attachment.** The procedure for attachment of geographic areas determined to be 'functional town island(s)' may be attached by Attachment Ordinance adopted by a majority vote of the City of Oshkosh Common Council as follows:

- (a) **Determination.** City of Oshkosh Department of Community Development staff will make the initial determination as to whether an area has become a functional town island per standards identified in Section 5 of this Plan.
- (b) **Public Hearing.** Upon determination that an area has become a functional town island, staff will schedule a public hearing before the City of Oshkosh Common Council to adopt a resolution declaring said area to be a functional town island. At least 30 days prior to said hearing the City of Oshkosh shall send a meeting notice to all property owners of record within the subject area as identified in the City's Geographic Information System (GIS). At least 30 days prior to the hearing, the City shall also send a meeting notice to the Town Clerk.
- (c) **Council Resolution.** After scheduling a public hearing Council may adopt a resolution declaring said area to be a 'functional town island'.
- (d) **Attachment Ordinance.** At anytime following adoption of a resolution declaring an area to be a 'functional town island' the Council may adopt an Attachment Ordinance attaching said property to the City. The effective date of said Attachment Ordinance shall be at least sixty (60) months from the date of Ordinance adoption. Attachment Ordinances may designate temporary or permanent zoning classifications for each parcel of land as prescribed in Wis. Stat. § 62.23(7)(d). The City Clerk shall file, record, or send Intermediate Attachment Ordinances in the same manner as described under paragraph 10.01(b) above.
- (e) **Connection to City's Sewer System.** Following attachment, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system as performed by a Licensed Plumber or Certified Soil Tester.
- (f) Attachment Ordinances of areas declared to be 'functional town islands' shall not require the consent of owners, residents or electors.

**10.03 Procedure for Town Section Attachment.** Town Sections may be attached by Attachment Ordinance adopted by a majority vote of the City of Oshkosh Common Council as follows:

- (a) **Determination.** City of Oshkosh Department of Community Development staff will make an initial determination as to whether a Town Section area has achieved 70% or more City incorporation. Town Sections are identified on Exhibit E of this Plan.

- (b) **Public Hearing.** Upon determination that an area has achieved 70% or more City incorporation, staff will schedule a public hearing before the City of Oshkosh Common Council to adopt a Town Section Attachment Ordinance attaching the remaining unincorporated lands to the City. At least 30 days prior to said hearing the City of Oshkosh shall send a meeting notice to all property owners of record within the subject area as identified in the City's Geographic Information System (GIS). At least 30 days prior to the hearing, the City shall also send a meeting notice to the Town Clerk.
- (c) **Attachment Ordinance.** The Common Council shall be required to adopt a Town Section Attachment Ordinance. At anytime following adoption of a resolution declaring that a town section has achieved 70% incorporation, the Council may adopt a Town Section Attachment Ordinance attaching said property to the City. The effective date of said Attachment Ordinance shall be sixty (60) months from the date of Ordinance adoption. Attachment Ordinances may designate temporary or permanent zoning classifications for each parcel of land as prescribed in Wis. Stat. § 62.23(7)(d). The City Clerk shall file, record, or send Intermediate Attachment Ordinances in the same manner as described under paragraph 10.01(b) above.
- 1. Exception.** The time frame for attachment of Town Sections 2 and 4 shall be extended to at least ten (10) years from the time after which 70% incorporation has been achieved.
- (d) **Connection to City's Sewer System.** Following attachment, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system as performed by a Licensed Plumber or Certified Soil Tester.
- (f) Attachment Ordinances taking place under this Section shall not require the consent of owners, residents or electors.

#### **10.04 Attachments Shall Include Public Right-of-Way.**

All attachments shall include the full width of abutting Town roads, except those roads the centerline of which is part of the Boundary Line. The City may also include in such attachments any Town road rights-of-way that abut lands previously annexed to the City before the effective date of this Cooperative Plan, even though such inclusions will create Town islands.

**10.05 Effective Date of Attachment.** Town territory in the Expansion Area included in an attachment will be attached to the City effective at 12:01 a.m., on the next Sunday after adoption of the Attachment Ordinance except as provided in sections 10.02, 10.03 and 11.02(c).

**10.06 Immediate Attachment of Right-of-Way.** Effective January 1 following approval of this Plan by the State of Wisconsin Department of Administration, the boundary between the City and the Town is adjusted by this Plan to attach to the City the road rights of way identified on Exhibit K. At that time, the City Clerk shall provide notice of the attachment as provided in section 10.01(b) above. The parties will execute the documents necessary, as may be required by the State, to provided for the transfer of jurisdiction.

## **SECTION 11 LOCAL ORDINANCES**

**11.01 Attached Territory.** Town territory attached to the City from time to time under this Cooperative Plan shall become City territory subject to all City zoning and general ordinances on the effective date of attachment.

**11.02 Town Territory in Expansion Area Not Yet Attached.** Town territory located within the Expansion Area and subject to attachment, but not attached, shall be subject to the following rules:

- (a) The Town consents to the construction of City utilities in Town rights of way and easements as necessary to serve City territory subject to the City's obligations (i) to maintain access to Town territory, (ii) not to interfere with Town utilities, and (iii) to restore the right of way or easement in accordance with commonly accepted practices.
- (b) When a new road is proposed by the City in the Expansion 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 must obtain the Town's prior written consent for new roads to be built on land located in the Expansion Area, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.

## **SECTION 12 CURRENT LAND USE AND PHYSICAL DEVELOPMENT OF THE TERRITORY**

The Town is generally located on the south side of Oshkosh. This section of the Plan describes existing land uses within the Town, the socio-economic characteristics of the population, and other aspects of the physical development of the area.

**12.01 Existing Land Use and Physical Development Summary.** Of the 18,471.31 acres in the Town of Black Wolf, approximately 19.04%, or 3,516.45 acres is developed (see Table 1). Approximately 71.96% of the town's total land area, or 13,291.69 acres, is in agricultural/undeveloped use, while the remaining 8.52% of the town's total land area, or 1,574.45 acres, is vacant and undevelopable (open water areas, woodlands, and land within 75 feet of navigable streams)

The Protected Area covers approximately 6,496.61 acres. Of that total, 13.25% is developed. The Expansion Areas covers approximately 7,204.87 acres, of which 31.53% is developed. The Rural Preservation Area covers approximately 4,769.83 acres, of which 8.04% is developed.

Table 1 provides a comprehensive breakdown of land uses in the Protected, Expansion, and Rural Preservation Areas of the Town of Black Wolf, and what uses would remain in these areas by this Plan. Based on the statistics in Table 1, nearly one third (31.53%) of the land in the Expansion Area has been developed, as compared to about 13% less than a fifth (19.2%) of the Protected Area. Less than 10% of the Rural Preservation Area has been developed. The predominant land use pattern for all areas is agricultural/undeveloped.

**Table 1**  
**Existing Land Use** (As of February, 2008)

Category	Protected Area			Expansion Area			Rural Preservation			Entire Town		
	# Parcels	# Acres	% Area	# Parcels	# Acres	% Area	# Parcels	# Acres	% Area	# Parcels	# Acres	% Area
Total	477	6,496.61	100.00	587	7,204.87	100.00	343	4,769.83	100.00	1,405	18,471.31	100.00
Churches/ Cemeteries	5	5.86	0.09	0	0	0	2	4.67	0.10	7	10.54	0.06
Residential	160	337.56	5.20	187	447.75	6.21	82	147.43	3.09	429	932.74	5.05
Commercial	2	1.50	0.02	14	57.51	0.80	1	1.00	0.02	17	60.01	0.32
Industrial	2	45.50	0.70	3	101.02	1.40	2	1.98	0.04	7	148.50	0.80
Non-Metallic Mining	11	380.72	5.86	15	334.80	4.65	0	0	0	26	715.53	3.87
Utility/ Public Facility	6	24.09	0.37	47	758.39	10.53	0	0	0	53	782.48	4.24
Recreation/ Conservation	0	0	0	0	0	0	2	65.86	1.38	2	65.86	0.36
Undeveloped/ Agricultural	241	5,597.62	86.16	221	4,890.40	67.88	201	4,368.88	91.59	663	14,856.90	80.43
Vacant Single Family	6	4.62	0.07	2	1.69	0.02	7	2.94	0.06	15	9.24	0.05
Transportation (Including ROW)	44	65.59	1.01	98	572.44	7.95	46	162.77	3.41	188	800.79	4.34
Undeveloped area Wetlands	N/A	437.46	6.73	N/A	111.13	1.54	N/A	62.92	1.32	N/A	611.51	3.31
Open Water/ Pools/Lakes	N/A	41.33	0.64	N/A	34.01	0.47	N/A	8.31	0.17	N/A	83.67	0.45
Undeveloped w/ 75' navigable stream	N/A	274.97	4.23	N/A	267.69	3.72	N/A	336.34	7.05	N/A	879.27	4.76
Developed*	230	860.82	13.25	364	2,271.91	31.53	135	383.71	8.04	729	3,516.45	19.04
Undeveloped Developable**	247	4,848.48	74.63	223	4,479.26	62.17	208	3,964.25	83.11	678	13,291.69	71.96
Undeveloped Undevelopable^	N/A	753.76	11.60	N/A	412.83	5.73	N/A	407.57	8.54	N/A	1,574.45	8.52

\*Include Churches, Developed Residential, Commercial, Industrial, Mining, Utility/Public Facilities, Recreation, Transportation

\*\*Includes Agricultural and Vacant Single Family

^Includes Open Water, Wetlands & 75' Buffer from Navigable Streams

**12.02 Socio-Economic Characteristics of the Town.** Table 2 provides a review of the demographic characteristics of the Town of Black Wolf and City of Oshkosh based on the 2010 Decennial Census. 2,330 people reside in the Town of Black Wolf. The minority population within the Town is 83 people, which is .94% of the total population. The minority population in the City of Oshkosh includes 4,577 residents, which accounts for 7.3% of the total population.

**Table 2**  
**Socio-Economic Characteristics**

<b>Category</b>	<b>City of Oshkosh</b>	<b>Town of Black Wolf</b>
Population	62,916	2330
Race		
White	58,339 (92.7%)	2308 (99.06%)
Other	4,577 (7.3%)	22 (.94%)
Median Household Income	\$37,636	\$55,944
Total Occupied Housing Units	24,082	911
Owner-Occupied	13,851	828
Renter-Occupied	10,231	83
Total Housing Units	25,420	911

Source: U.S. Census 2000

The Town's median household income in 2009 (provided by the 2010 Census) was \$55,944, compared to the median household income in the City of Oshkosh of \$37,636.

According to the 2000 Census, rental housing in Town of Black Wolf accounted for 83 units (9%) of the 526 occupied dwelling units in the Town. In contrast, rental housing in Oshkosh constitutes 10,231 units (42.5%) of the total 24,082 housing units in the City.

The Town's higher median income and much lower number of rental housing reflects its predominantly single family residential character.

Table 3 provides a further breakdown of population statistics for the City of Oshkosh and Town of Black Wolf. The Town of Black Wolf experienced significant population growth in the period between 1970-1980, a small decline 1980-2000, with increases projected into the future. Meanwhile, the City of Oshkosh experienced a 6.5% decrease in its population between 1970 and 1980, but rebounded after 1980 to show double-digit growth in the past twenty years.

**Table 3  
Population Change, 1970-2000**

Year	Town of Black Wolf	% Change	City of Oshkosh	% Change
1970	1,193		53,082	
1980	1,516	27.07%	49,620	-6.52%
1990	1,475	-2.70%	55,006	10.85%
2000	1,419	-3.80%	62,916	14.38%
2010	1,500	5.71%	67,757	7.69%
2020	1,594	6.27%	69,991	3.30%

Source: U.S. Census: 1970-2000 & 2010 & 2020 projections from ECWRPC

**12.03 Land Values.** There are 1,405 individual parcels of land in the Town of Black Wolf. The Protected Area encompasses 477 parcels of which 241 are undeveloped, while the Expansion Area includes 587 parcels of which 221 are undeveloped. The Rural Preservation Area contains 343 individual parcels of land of which 201 are undeveloped.

The assessed value of land in the Protected Area of the Town is \$38,635,600, while the assessed value of land in the Expansion Area is \$59,465,600. The assessed value of land in the Rural Preservation Area is \$24,572,600.

\*\*\*\*\*

**12.04 Existing Development Plans.** The Town and City have both completed Comprehensive Plans under the State of Wisconsin's Smart Growth legislation that provide guidance on the use and development of properties covered by the Plan. Existing adopted plans and future comprehensive plans of the Town and City shall govern development in the plan area. The following section provides a summary of the plans currently in place for the area covered by this Plan.

**12.05 Town of Black Wolf Plans.**

(a) The land use plans, prepared by the Town in the last eight years, which guide land use decision-making and physical improvement projects within the Town, are as follows:

1. The Town of Black Wolf Smart Growth Comprehensive Plan dated October, 2003, was prepared for the Town by Omni Associates. The Plan was developed under the requirements of Wisconsin's Smart Growth Law (WI 1999 Act 9). The Plan addresses the nine required elements of a comprehensive plan and includes a series of specific implementation goals and objectives with milestone dates.

2. The Town of Black Wolf contains 27 registered historic structures (according to the Wisconsin Historical Society historic places inventory).

**12.06 City of Oshkosh Plans.** The City has prepared a number of plans that cover the Plan territory. These plans include the following:

(a) Urban Growth Plan – Recommendations for Peripheral Area Land Use and Development, adopted by the City in 1990. The Plan includes growth projections and it included an identification of priority growth areas and recommended land uses.

(b) City of Oshkosh Comprehensive Plan, adopted by the City in 2005. The Plan was developed under the requirements of Wisconsin's Smart Growth Law (WI 1999 Act 9). The Plan addresses the nine required elements of a comprehensive plan and includes a series of specific implementation goals and objectives with milestone dates.

(c) Pedestrian and Bicycle Circulation Plan, adopted by the City in 1998. The Plan includes a variety of recommendations aimed at improving and implementing pedestrian circulation and trail development within the community as well as in peripheral growth areas, including areas within the Town of Black Wolf.

(d) Southwest Industrial Park Expansion Area Site Master Plan prepared for the City in 2001 by Foth & Van Dyke. The Plan provides a general strategy and guide for the City to follow in its expansion of the Southwest Industrial Park, including into areas within the Town of Black Wolf.

(e) Southwest Area Sanitary Sewer Study prepared for the City by Earth Tech, Inc. in 2002. The plan provides technical data and planning recommendations to allow for the orderly expansion of sanitary sewer facilities to areas south and west of the City that includes lands within the expansion and buffer areas.

**12.07 Coordination of Future Planning.** This Plan will facilitate efforts to implement a coordinated, adjusted, and harmonious development of the territory covered by the plan, and promote consistency of future land use as the two communities develop their own comprehensive plans. Any future land use plans or amendments to existing plans made by either community will need to be consistent with this Cooperative Plan.



**SECTION 13  
RELATIONSHIP OF THE COOPERATIVE PLAN TO NONPARTICIPATING  
ENTITIES**

Exhibit D shows the political entities within Winnebago County and their relationship to the territory included in the Plan. There are six municipalities shown on the map. The territory included in the Plan is adjacent to the City of Oshkosh and the Towns of Utica, Algoma, Nekimi, and Omro. The area is covered by the Oshkosh Area School District.

Wisconsin Statute Section 66.0307 requires that any boundary maintained or changed under the Plan must be reasonably compatible with the characteristics of the surrounding community. In preparing the Plan, Oshkosh and the Town have taken into consideration the location of services that must be provided to areas subject to the Plan, including the transportation infrastructure, the fiscal capacity of the communities to provide the services needed, the existing and ultimate political boundaries, the current boundaries of the school district, and shopping and social customs. For the purposes of this section, the "surrounding community" includes a 5-mile radius outside of the boundaries of the area included in the agreement.

Growth in the City of Oshkosh is constricted on its east by Lake Winnebago and on the northwest due to a boundary agreement with the Town of Algoma. The City's primary growth corridor has been to the west. However, there are several City residential subdivisions in the City's southern areas and adjacent to the Town of Black Wolf and areas covered by the Plan. This plan will provide for a structured approach that will enable the City to absorb areas within the Town on a continuing north to south basis.

The provision of services by the City and Town are made more difficult by confusing boundaries in many areas. Implementation of the Plan should improve the ability of the City and Town to serve residents in the area covered by the Plan.

It is anticipated that over the plan period residential development will occur to a substantial extent in both the Protected Area and the Expansion Area. It should also be recognized that without a plan, residential development would still occur in the subject areas. However, with the plan in place it will be possible to provide for a more organized and coordinated pattern of development, where basic urban services will be provided in a more efficient and cost effective manner. Given the presumption that significant residential development would occur in the subject areas with or without a plan in place, it would not appear implementation of the plan would result in significant changes in the provision of school services from that which would otherwise occur.

## **SECTION 14 SERVICES**

**14.01 Water.** The City of Oshkosh has a central water supply system. The City's Water Utility, which receives staff support from the Department of Public Works, includes the community's new state-of-the-art water filtration plant between Merritt Avenue and Washington Avenue on the shore of Lake Winnebago. The Utility maintains a distribution system with over 300 miles of water main, which includes approximately 7,000 valves, approximately 2,410 fire hydrants, approximately 20,000 water services, and over 22,500 water meters of various sizes.

As annexations or attachments occur and as areas within the Town come into the City under the various attachment expansion time frames, the City will plan for and undertake the extension of water service to the Expansion Areas.

**14.02 Sanitary Sewer.** The Town of Black Wolf has a sanitary sewer districts but has no plans to establish its own wastewater collection and treatment system in the future, since it contractually provides these functions through the City of Oshkosh. The majority of parcels are served by individual on-site wastewater systems as will be most new development occurring in the Protected Area.

Those portions of the Town in the Expansion and/or Rural Preservation Area will be served (as annexation occurs) with City of Oshkosh sanitary sewer, water and storm sewer system.

The City's Sewer Utility, which receives staff support from the Department of Public Works, includes the Wastewater Treatment Plant on Campbell Road and over 267 miles of sanitary sewer lines. The Wastewater Treatment Plant, which completed a \$20 million upgrade in 1998, is designed to treat a daily flow of 20 million gallons per day (MGD). In 2001 the plant received an average of 11.1 MGD, while servicing a population of approximately 73,000. About 8% of the flow to the plant comes from industrial sources.

The City's Sewer Utility has 32.33 full time equivalent employees.

As annexations or attachments occur and as areas within the Town come into the City, the City will plan for and undertake the extension of sanitary sewer service to these expansion areas.

**14.03 Stormwater.** The Town of Black Wolf primarily utilizes ditches for the conveyance of storm water. The Town of Black Wolf has formed a storm water district to manage and control flooding, using an annual surcharge to assure continuing funding for this purpose. New development within the Town is subject to provisions of the Winnebago County Zoning Ordinance. The Town has also adopted the ordinances necessary to assure the effective use of ditch drainage.

The City of Oshkosh has a Storm Water Utility for the purpose of managing and maintaining its storm water facilities. The City has over 227 miles of storm sewer and various other streams, creeks, ditches, drainage ways and detention ponds. The City's Storm Water Utility has 7 full time equivalent employees.

The City has had a Storm Water Management and Retention Ordinance in place for a number of years, and through its enforcement the City has been able to minimize problems associated with storm water runoff and control.

**14.04 Streets.** By eliminating uncertainty about future jurisdiction over, and responsibility for, roads in the Town, this Plan is expected to promote better maintenance of roads and cooperation between the City and the Town over road improvements.

**14.05 Police, Fire, and Emergency Services.** Police services within the Town are provided by the Winnebago County Sheriff's Department.

The City is currently protected by a full time fire department responding from 6 fire stations. Total staff for the department is 108. The City operates 4 front line engine companies, 2 quints (combination engine and ladder company), 1 heavy rescue, a grass/brush fire unit, 1 command car, and 7 paramedic ambulances (3 front line, 4 cross staffed with engine companies). The Fire Department also staffs 3 airport fire apparatus at its Wittman Regional Airport station, and 2 hazardous materials units. Reserve equipment includes 2 engines, 2 ambulances, and a variety of support vehicles.

The Village of Van Dyne volunteer fire department serves the Town of Black Wolf. This department provides on-call volunteer based fire and first responders service to residents in need. The Town participates in a countywide mutual aid agreement and also has a mutual aid agreement with the City of Oshkosh. These agreements allow the town to call on additional service from neighboring communities, including the City of Oshkosh, should the need arise.

The fire station is located at N9515 Van Dyne Road, Van Dyne, WI. The department has 32 trained volunteer firefighters. Since 1990, the Town has also had first responder volunteers. Currently, the Town has 12 EMS trained first responder volunteers. These individuals are prepared to provide initial medical assistance with appropriate equipment until an ambulance can reach the scene.

The Van Dyne fire department has the following equipment: a 1250 gal/minute pumper w/1000 gal. tank ; 1250 gal/minute pumper w/3000 gallon tank that can be used as a pumper or tanker; a medium size four-wheel truck 1250 gallon pumper used for filling tankers and is also used for grass fires; a trailer w/6x6 Polaris ATV (used for grass fires); a 3000 gallon tanker for hauling water; and a rescue vehicle that responds to all EMS calls and carries rescue equipment (e.g.2 sets of jaws, cribbing, air bags, etc.). The Department responded to 60 fire calls and 125 EMS calls in the year 2010.

For fire-rating purposes, the Department has an automatic mutual aid agreement w/Town of Nekimi for all structural calls. They are also paged when calls come to the Town of Friendship and North Fond du Lac.

The fire department provides 911 based emergency service. The response time within the Town of Black Wolf varies depending on the location of the call and the time of day. Typical response times average between 2-3 minutes.

The City is currently protected by a full time fire department responding from 6 fire stations. Total staff for the department is 108. The City operates 4 front line engine companies, 2 quints (combination engine and ladder company), 1 heavy rescue, a grass/brush fire unit, 1 command car, and 7 paramedic ambulances (3 front line, 4 cross staffed with engine companies). The Fire Department also staffs 3 airport fire apparatus at its Wittman Regional Airport station, and 2 hazardous materials units. Reserve equipment includes 2 engines, 2 ambulances, and a variety of support vehicles.

Ambulance Services. The City of Oshkosh Fire Department responds to emergency service calls in the Town of Black Wolf.

**14.06 Fiscal Capacity.** Town property valuation generates the second lowest per capita tax base of all municipalities in Winnebago County and the fourth lowest overall tax rate. The City has a diversified tax base and the attachment of lands in the expansion area will strengthen that base.

## **SECTION 15**

### **ENVIRONMENTAL EVALUATION OF THE COOPERATIVE PLAN**

The City and Town have evaluated the potential environmental consequences of the Cooperative Plan, including air and water pollution impacts, energy use and the protection of environmentally sensitive lands. The Cooperative Plan identifies areas which will become part of the City and be developed within the City consistent with the City's growth and development ordinances. The Plan also identifies an area which will remain within the Town and which will eventually be developed by the Town, consistent with Town and County ordinances and development standards. The parties have found no significant adverse environmental consequences of the Plan to the natural

environment including air and water pollution, energy use, environmentally sensitive lands, and development outside compact urban areas that contribute to urban sprawl.

In the negotiation and preparation of this Plan, the parties considered alternatives. No practical alternatives were discovered that would avoid or reduce adverse environmental consequences. In particular, policies to discourage development are not feasible as growth pressures in the southern area of Oshkosh commit this area to urbanization due to the eastward growth restriction of Lake Winnebago and convenient access to US 41 from the southern growth area.

**15.01 Air Quality Impacts.** The existing adopted plans covering the area do not recommend a significant change in the type of development which currently exists within the Town.

**15.02 Water Quality Impacts.** The plans and regulations of the City and Town recognize and are consistent with the areawide water quality plans adopted by the East Central Wisconsin Regional Planning Commission. Few water quality impacts are anticipated related to the Plan. As noted in Sections 14.02 and 14.03, areas within the City are served by the City's sanitary sewer system and both parties are governed by storm water regulations.

**15.03 Energy Use.** The City and Town believe the Plan will serve to reinforce implementation of smart growth planning principles, which should serve to create more compact and contiguous development patterns overall. As a result, energy use impacts associated with implementation of the Plan will be comparatively lower than energy use impacts associated with development that could occur on a more fragmented basis without the Plan.

**15.04 Environmentally Sensitive Lands.** The City, Winnebago County, and the East Central Wisconsin Regional Planning Commission have identified environmentally sensitive lands in the area covered by the Plan as shown on Exhibit L, and the Plan will promote cooperation between the City and the Town to protect these resources. Environmentally sensitive lands are identified and protected as part of the development review and approval process that occurs in the City and Town. The environmentally sensitive lands that are identified include wetlands, floodplain lands, navigable streams, significant woodlands, and steep slopes (6-12%).

**15.05 Compliance with Environmental Regulations.** Lands covered by this Plan are and will remain under the jurisdiction of state and federal environmental laws and regulations as applicable. There are relatively few lands where state shoreland zoning jurisdiction applies and legal requirements arising from shoreland designations will be met by the Town and City as applicable.

**SECTION 16  
HOUSING NEEDS**

**16.01 Town Housing.** According to the 2000 census, the Town of Black Wolf contained 540 dwelling units, of which 455 were owner-occupied; 71 were rental; and 14 were vacant. Of these approximately 37% (201 units) are located in the Protected Area, 44% (236 units) are located in the Expansion Area, and 19% (103 units) in the Rural Preservation Area. In general, residential units in the expansion areas contain some of the older single family housing stock in the Town of Black Wolf. Due to higher median income levels and high home ownership rates in the Town's protected area as compared to the City of Oshkosh, the Town expects to have relatively few residents of low income seeking housing opportunities.

**16.02 Oshkosh Housing.** The City contains a broad spectrum of housing types to meet the various needs of its citizens. Oshkosh's adopted Comprehensive Plan includes strategies aimed at preserving and maintaining the community's housing stock, as well as promoting housing affordability, diverse housing opportunities, and neighborhood viability.

**SECTION 17  
COMPREHENSIVE/MASTER PLANNING**

The territory subject to this Plan is covered by adopted plans of the City and Town, as described in Section 12 above. The existing adopted plans and future updated Comprehensive Plans will govern new development, infill development, and redevelopment within the City and Town.

The Plan will allow the City and Town to move forward with confidence over the plan period in planning for the delivery of municipal services to the affected territory. The Plan identifies prospective cooperation in the area with regard to zoning, and it provides a foundation for further cooperation between the City and Town in other areas of mutual public interest.

This Plan is consistent and compatible with existing local, County, State and Federal plans, ordinances, codes and statutes. The Plan was developed in recognition of the multiple jurisdictions with an interest in the planning area.

**SECTION 18  
AUTHORIZING RESOLUTIONS, RECORD OF PUBLIC PARTICIPATION  
AND COOPERATIVE PLAN ADOPTION RESOLUTIONS**

**18.01 Initial Authorizing Resolutions.** Both the City of Oshkosh and Town of Black Wolf adopted resolutions authorizing the initial support of a boundary agreement, with copies located in Appendix G & H.

**18.02 Record of Public Participation and Comment.**

Public participation for this effort has included numerous public discussions and a hearing held at the Black Wolf Town Hall on October 3, 2011. The record of this hearing is included in Exhibit I.

**18.03 Resolution Indicating Adoption and Authorizing Transmittal of the Cooperative Plan to the State.**

On \_\_\_\_\_, 2011 the City of Oshkosh adopted a resolution to adopt the Cooperative Plan (Exhibit), and on \_\_\_\_\_, 2011, the Town of Black Wolf adopted a resolution to adopt the same Cooperative Boundary Plan (Exhibit).

**SECTION 19**

**BINDING EFFECT OF COOPERATIVE PLAN**

This Cooperative Plan shall bind, and accrue to the benefit of, all successors of the City and Town, whether one or more. For example, if a part of the Town should be incorporated, both the incorporated and unincorporated entities would be considered to be bound by the terms of the Plan. Except as to the rights of the District and owners of land currently in the Town as expressly set forth herein, this Cooperative Plan is for the exclusive benefit of the Town and the City and their successors and assigns and shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity.

**SECTION 20**

**ADMINISTRATION OF THIS COOPERATIVE PLAN**

This Cooperative Plan shall be administered on behalf of the Town by Frank Frassetto, Town Board Chairperson, a successor to this position, or a designee approved by the Town Board, and on behalf of the City by Oshkosh, by Allen Davis, Director of Community Development, a successor to this position, or a designee approved by the Common Council. Notification of the appointment of a designee must be given in writing to the other party to this Cooperative Plan.

**SECTION 21**

**DISPUTE RESOLUTION**

In the event of a breach of this Plan or a dispute between the Parties involving the application, interpretation or enforcement of this Plan,

- a. The Parties shall meet to seek a resolution within 10 days following written notice by one Party to the other Party of the breach or dispute.

b. If the issue is not resolved at such meeting or at an extension thereof mutually agreed to by the Parties, either Party may demand mediation. The Parties shall submit to mediation if demanded by either Party.

(1) If the Parties cannot agree on a mediator within five (5) days after the demand for mediation, either Party may request appointment of a qualified mediator by the State of Wisconsin – Department of Administration – Department of Intergovernmental Relations.

(2) The mediation session must take place within thirty (30) days of the appointment of the mediator.

(3) Each Party must designate a representative with appropriate authority to be its representative in the mediation of the dispute.

(4) Each Party must provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least 10 days prior to the scheduled mediation session. The Parties must also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any Party to supplement such information.

(5) The mediator does not have authority to impose a settlement upon the Parties, but will attempt to help the Parties resolve their dispute. The mediation sessions shall be private. The Parties and their representatives may attend the mediation sessions.

(6) The cost of the mediator shall be borne equally by the Parties.

(7) The Parties shall maintain the confidentiality of the mediation and may not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding (i) views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute; (ii) admissions made by the other Party in the course of the mediation proceedings; (iii) proposals made or views expressed by the mediator; or (iv) the fact that the other Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

c. In the event the issue is not resolved as a result of the meeting or mediation as provided in paragraphs a and b, the matter shall be submitted to binding arbitration upon written demand by either Party to the other with notice to the Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration of such demand. The arbitration shall be performed by a person designated by the Director in accordance with such rules and procedures such person may specify, subject to the terms of this Plan. In the event the Director does



not appoint an arbitrator within 30 days of the Director's receipt of a written request to do so, then:

(1) The arbitration must be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time of the arbitration ("Rules"), except as such Rules may be modified by this Plan.

(2) A Party desiring to submit a dispute to arbitration hereunder must file a Demand for Arbitration ("Demand") with the AAA at its office in Chicago, Illinois. A copy of such Demand must be sent to the other Party at the same time. The arbitration proceeding must be conducted by a panel of three (3) arbitrators selected from a list of qualified arbitrators supplied by the AAA. The arbitrators must be selected as follows: Within 10 days after filing, each Party shall appoint one (1) arbitrator. Within 10 days after they are chosen, the two arbitrators shall choose a third arbitrator who acts as chairperson of the arbitration proceedings. If the two arbitrators are unable to agree upon a third arbitrator within 10 days, then the third arbitrator shall be appointed by the AAA. The arbitrators in the arbitration proceeding must be individuals with the necessary expertise and competency to pass on the matters presented for arbitration, but said arbitrators may have no interest in or prior connection with any Party.

(3) Following the appointment of the arbitrators, each Party has the right to mail to any other Party (with a copy to the arbitrators) a written request for the production of certain identified documents or of all documents in possession of the other Party relevant to any claims or counterclaims in the arbitration. Within 10 days of receipt of any such request, the receiving Party must respond to such request but may object to all or part of said request (with a copy to the arbitrators), on the ground that it is unduly burdensome, that the documents requested are irrelevant or privileged, or that such documents are equally available to the requesting Party. The arbitrators will rule on the validity of any such objection and the Parties must produce documents in accordance with the ruling.

(4) The site of the arbitration shall be in Winnebago County, Wisconsin, unless otherwise agreed to by the Parties. The Parties must diligently and expeditiously proceed with arbitration. Upon the conclusion of any hearing, the Parties shall have 30 days to submit written briefs in support of their respective positions. The arbitrators must make an award within 45 days after the filing of such briefs, subject to any reasonable delay due to unforeseen circumstances.

(5) Except to the extent the Parties' remedies may be limited by the terms of this Plan, the arbitrators are empowered to award any remedy available under the laws of the State of Wisconsin including, but not limited to, monetary damages and specific performance. The arbitrators have no authority to award punitive or other damages not measured by the prevailing Party's actual damages and may not, in

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

(6) The arbitrators' authority is limited solely to resolving disputes under this Plan.

(7) The pendency of any arbitration hereunder does not relieve either Party of any of its obligations under this Plan.

(8) The Parties shall share equally the fees and expenses of the arbitrators as well as all fees imposed by the AAA including, but not limited to, transcripts, hearing room rentals and administrative costs. Each Party to the arbitration proceeding is responsible for its own costs and legal fees, if any, except that the arbitrators are empowered to award such costs and fees against a Party who prosecutes or defends an arbitration hereunder in bad faith or as otherwise provided in section 11.b.

d. Paragraphs a, b, and c of this section shall be the exclusive method of resolving the issues specified in the introduction to this section and both Parties waive their rights under sec. 893.80, Stats. and their rights to seek remedies in court as to such issues except that the prohibition on court actions shall not apply to

(1) Actions to enforce an arbitration award under c;

(2) Actions for injunctive relief necessary to protect the public health, safety or welfare during the dispute resolution process;

(3) Disputes involving a necessary third party who refuses to consent to arbitration as provided above; or

(4) Disputes involving a necessary third party when the Municipal Boundary Review Director fails to appoint an arbitrator.

e. In the event any of the entities designated to perform mediation or arbitration services under this section ceases to exist or for some other reason cannot or does not perform said services, the Parties shall use their best efforts to agree on a substitute to perform the services.

## **SECTION 22**

### **NO CHALLENGES TO THIS COOPERATIVE PLAN**

a. The Parties waive all rights to challenge the validity or enforceability of this Plan or any of its provisions or to challenge any actions taken pursuant to or in accordance with this Plan.

b. In the event of a court action by a third party challenging the validity or enforceability of the Plan or any of its provisions, the Parties shall fully cooperate to vigorously defend the Plan.

(1) If only one Party is named as a party to the action the other Party shall seek to intervene and the named Party shall support such intervention.

(2) No settlement of such an action shall be permitted without the approval of the governing bodies of the Parties.

(3) The workload to defend the Plan shall be shared equally.

c. A challenge to the Plan by one of the Parties or a failure to vigorously defend the Plan constitutes a breach of the Plan.

## **SECTION 23 REMEDIES**

In the event of a breach of this Plan;

(a) Except as limited by section 21 above, either Party may seek declaratory judgment or specific performance of this Plan by court action in addition to any other remedies available at law or in equity. No Party shall challenge the standing of the other in such an action.

(b) The breaching Party shall pay the other Party's attorney fees reasonably incurred in seeking remedies for the breach provided that the breaching party has been given notice and a reasonable opportunity to cure the breach prior to commencement of any proceedings for a remedy. Following the dispute resolution procedure outlined in section 21 a and b constitutes sufficient notice and reasonable opportunity to cure under this paragraph

## **SECTION 24 AMENDMENT**

**24.01** The procedure for amendment of this Cooperative Plan is found in Sec. 66.0307(8), Wis. Stats.

**24.02** In the event a change in state or federal law substantially affects this Plan, either party may request that modifications be made to the Plan to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Cooperative Plan. In the event they are not able to reach agreement in such situation, either the City or Town may require submission of such dispute to arbitration under Section 21.

**SECTION 25  
GOOD FAITH AND FAIR DEALING**

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

**SECTION 26  
INVALID OR INEFFECTIVE ORDINANCE**

In the event that any Ordinance, including but not limited to Attachment and Zoning Ordinances, which parties are required or entitled to enact and/or enforce by this Cooperative Plan 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 Cooperative Plan 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 Cooperative Plan. If necessary, they shall negotiate appropriate amendments of this Cooperative Plan to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Cooperative Plan. In the event they are not able to reach agreement in such situation, either the City or Town may require submission of such dispute to arbitration under Section 21.

**SECTION 27  
IMPLEMENTATION**

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

**SECTION 28  
MISCELLANEOUS INTERPRETATION**

**28.01 References.** Any references in this Cooperative Plan 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

Cooperative Plan to any particular statute or ordinance shall be interpreted as applying to such statute or ordinance as recreated or amended from time to time.

**28.02 Section Titles.** Section and subsection titles in this Cooperative Plan are provided for convenience only and shall not be used in interpreting this Cooperative Plan.

**28.03 Governing Law.** This Cooperative Plan shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Wisconsin.

**28.04 Interpretation.** If any term, section or other portion of this Cooperative Plan is reviewed by an administrative agency, court, mediator, arbitrator or other judicial or *quasi*-judicial entity, such entity shall treat this Plan as having been jointly drafted by both the City and the Town. By the terms of this Plan, neither Party shall benefit from not having drafted this document.

**28.05 Entire Agreement.** The entire agreement of the City and the Town is contained in this Cooperative Plan and it supercedes any and all oral representations and negotiations between the municipalities, and supercedes and replaces that certain Intergovernmental Agreement of July 24, 2007. However, in the event of any ambiguity in this Plan, the Intergovernmental Agreement may serve as a guide to interpretation of this Plan.

## **SECTION 29 NOTICES**

All notices required by or relating to this Cooperative Plan shall be in writing. Each notice shall specifically refer to this Cooperative Plan 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 at the Clerk's office. Each notice shall be effective upon delivery in person, or mailing, or upon actual receipt without regard to the method of transmission, whichever occurs first.

**IN WITNESS WHEREOF**, the City and Town certify that this Cooperative Plan has been duly approved by their respective governing bodies in accordance with State and local laws, rules and regulations, and each has caused their duly authorized officers to execute this Cooperative Plan on the dates written before their respective signatures.

**THE CITY OF OSHKOSH, a Wisconsin Municipal Corporation**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_, City Manager

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_, City Clerk

**TOWN OF BLACK WOLF, a Wisconsin Municipality**

Date: \_\_\_\_\_, 2011

By: \_\_\_\_\_, Town Chairperson

Date: \_\_\_\_\_, 2011

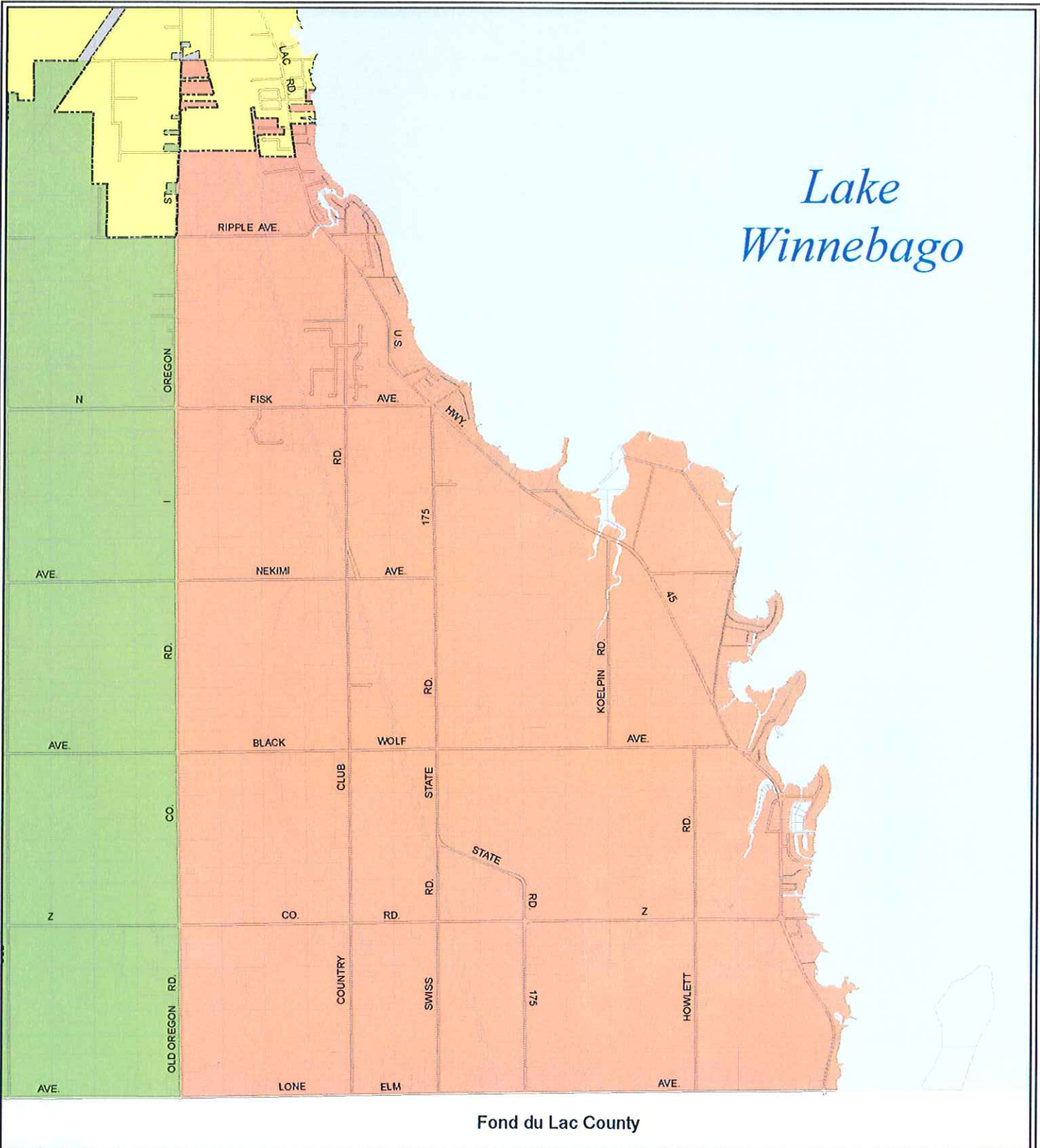
By: \_\_\_\_\_, Town Clerk

**EXHIBIT A**

**CITY/TOWN BOUNDARY MAP**

**DRAFT**

# Lake Winnebago

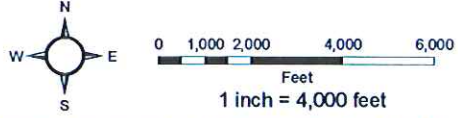


Fond du Lac County

- City of Oshkosh
- Town of Black Wolf
- Town of Nekimi
- Town of Algoma
- Fond du Lac County

## EXHIBIT A

### City - Town Boundary Map



### City of Oshkosh / Town of Black Wolf Boundary Agreement

September, 2011

Sources: City of Oshkosh GIS, Winnebago County WINGS Project

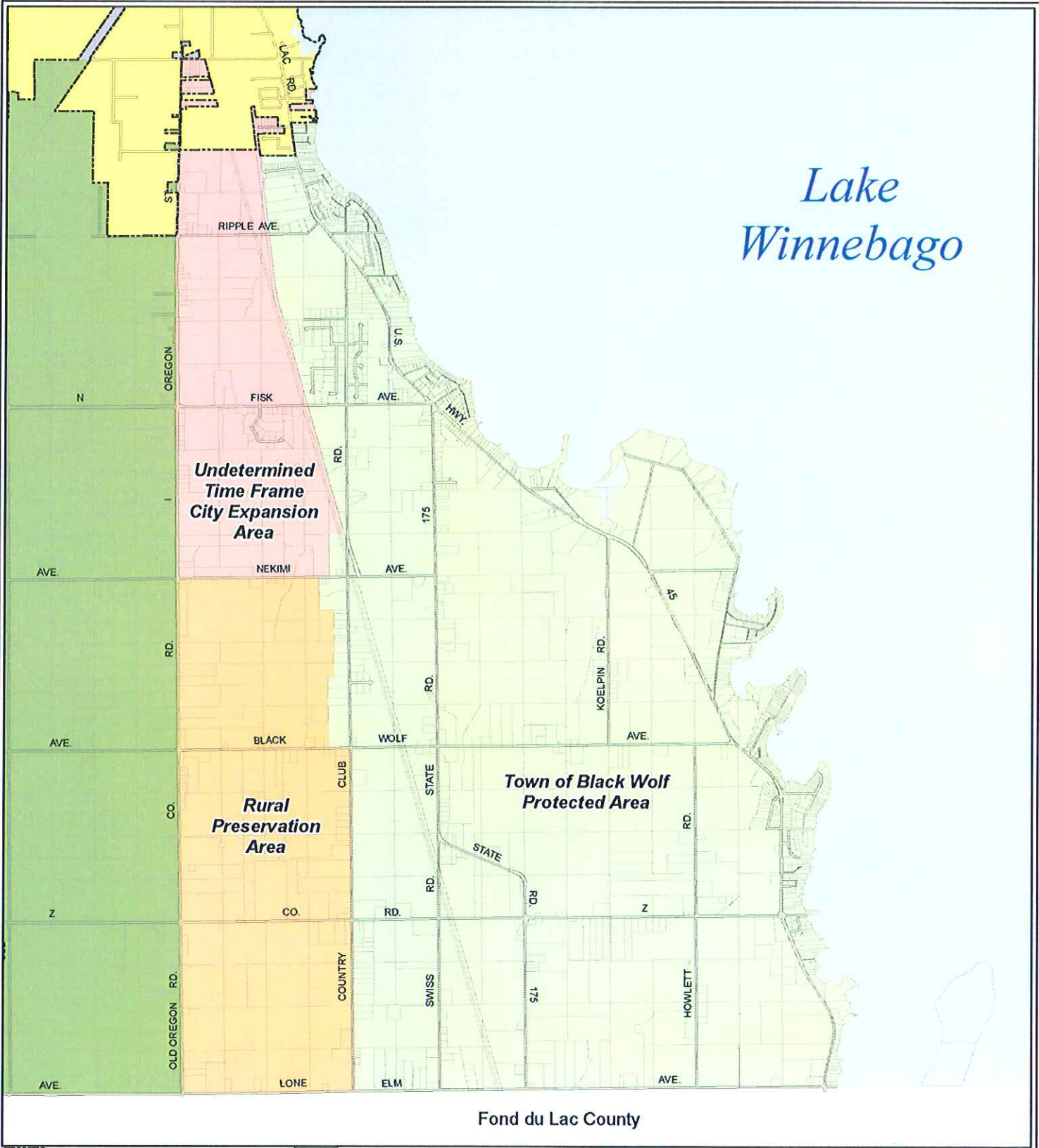


**EXHIBIT B**

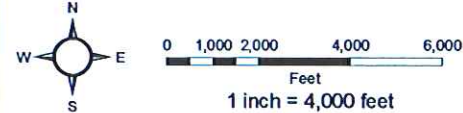
**PROTECTED/EXPANSION/RURAL PRESERVATION ZONES**

DRAFT

# Lake Winnebago



- City of Oshkosh
- Rural Preservation Area
- Town of Black Wolf Protected Area
- Undetermined City Expansion Area
- Town of Algoma
- Fond du Lac County



Sources: City of Oshkosh GIS, Winnebago County WINGS Project

## EXHIBIT B

### Town Protected, City Expansion & Rural Preservation Areas

### City of Oshkosh / Town of Black Wolf Boundary Agreement

**EXHIBIT C**

**TOWN OF BLACK WOLF LAND USE PLAN**

**DRAFT**

# Exhibit C

## Town of Black Wolf Land Use Plan



Legend

Land Use Categories

- Farms/Fields
- Low Density Residential
- Medium Density Residential
- Commercial
- Industrial
- Rail Transportation
- Public/Institutional Facilities
- Parks and Recreational Facilities
- Golf Courses
- Agricultural Land/Pasture
- Open Land
- Water Features
- Corporate Limits

Land Coverages

- Wetlands Overlay
- Woodlands Overlay

Oshkosh/Black Wolf Boundary  
Agreement Future Growth Areas

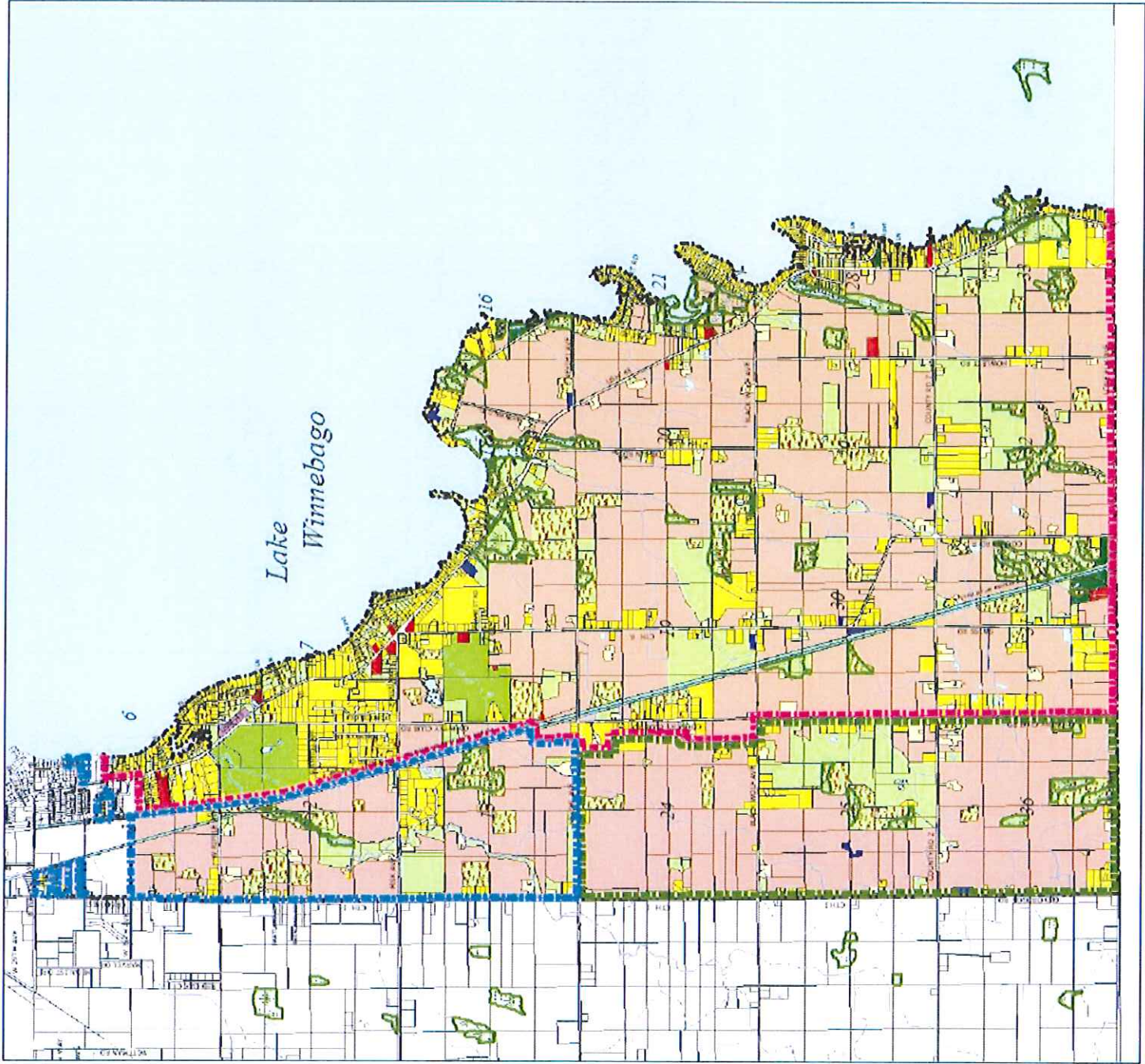
- Black Wolf Protected Area
- Rural Preservation Area
- Undetermined Timeframe - Oshkosh Expansion

The wetlands digital data was created from the Wisconsin Wetland Inventory Maps by the DNR Bureau of the Watershed Management. who is the custodian and sole distributor of this data. The DNR assumes no liability for the accuracy of this data or any use or misuse of its content.

The base map data was created by Winnebago County Planning Department and The 2002 Existing Land Use data was created by East Central Wisconsin Regional Planning Commission. Neither entity assumes any liability for the accuracy of this data or any use or misuse of its content.

**Martenson & Eisele, Inc.**

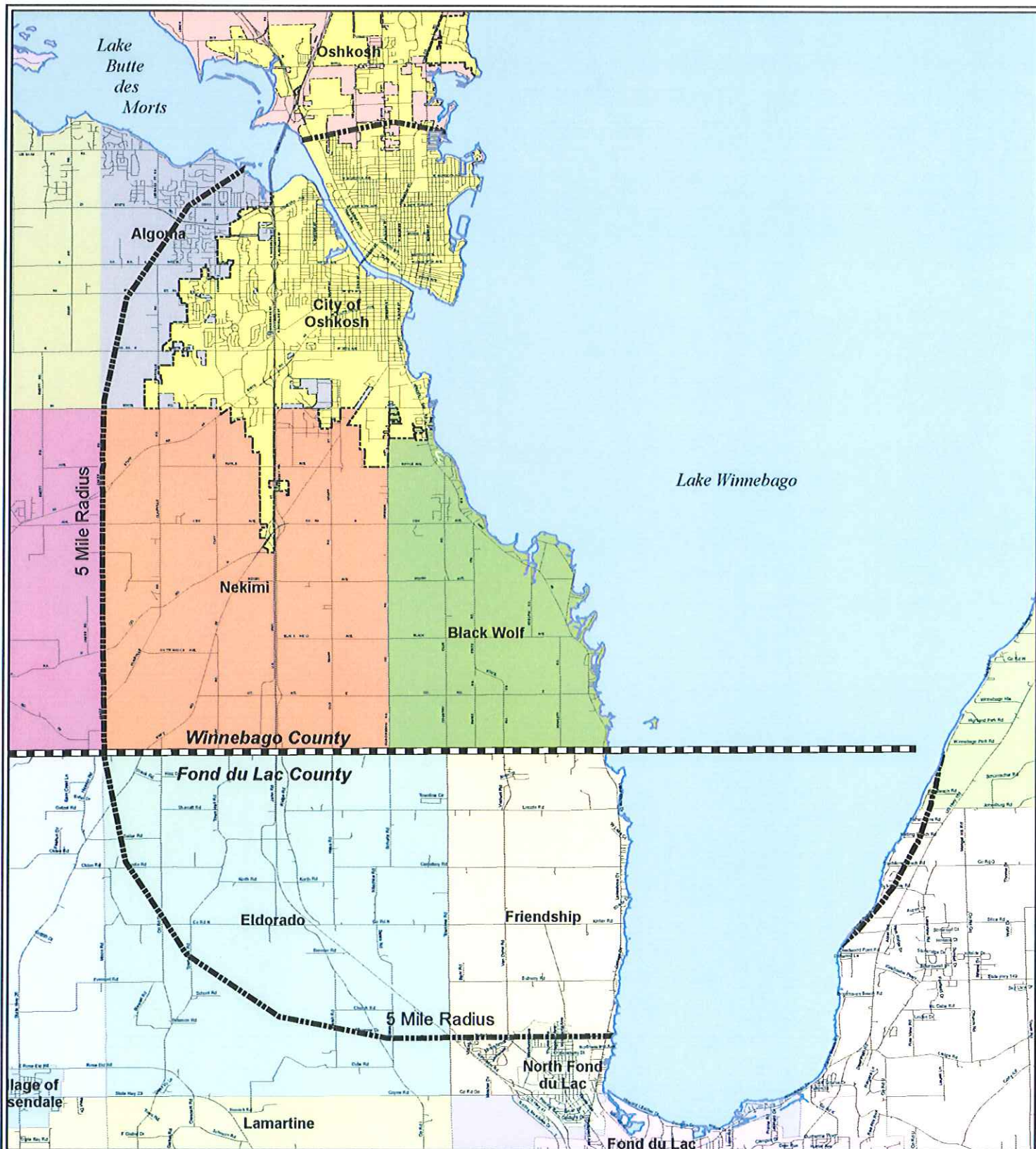
1277 Michay Road  
Plainville, WI 53152  
www.martenson-eisele.com  
info@martenson-eisele.com  
920.73.1328 / 1.800.226.0381  
Architectural  
Planning  
Environmental  
Survey  
Engineering  
Architecture



**EXHIBIT D**

**MAP SHOWING RELATIONSHIP  
OF THE  
COOPERATIVE PLAN  
TO  
NONPARTICIPATING ENTITIES**

**DRAFT**



# EXHIBIT D

Non Participating Entities

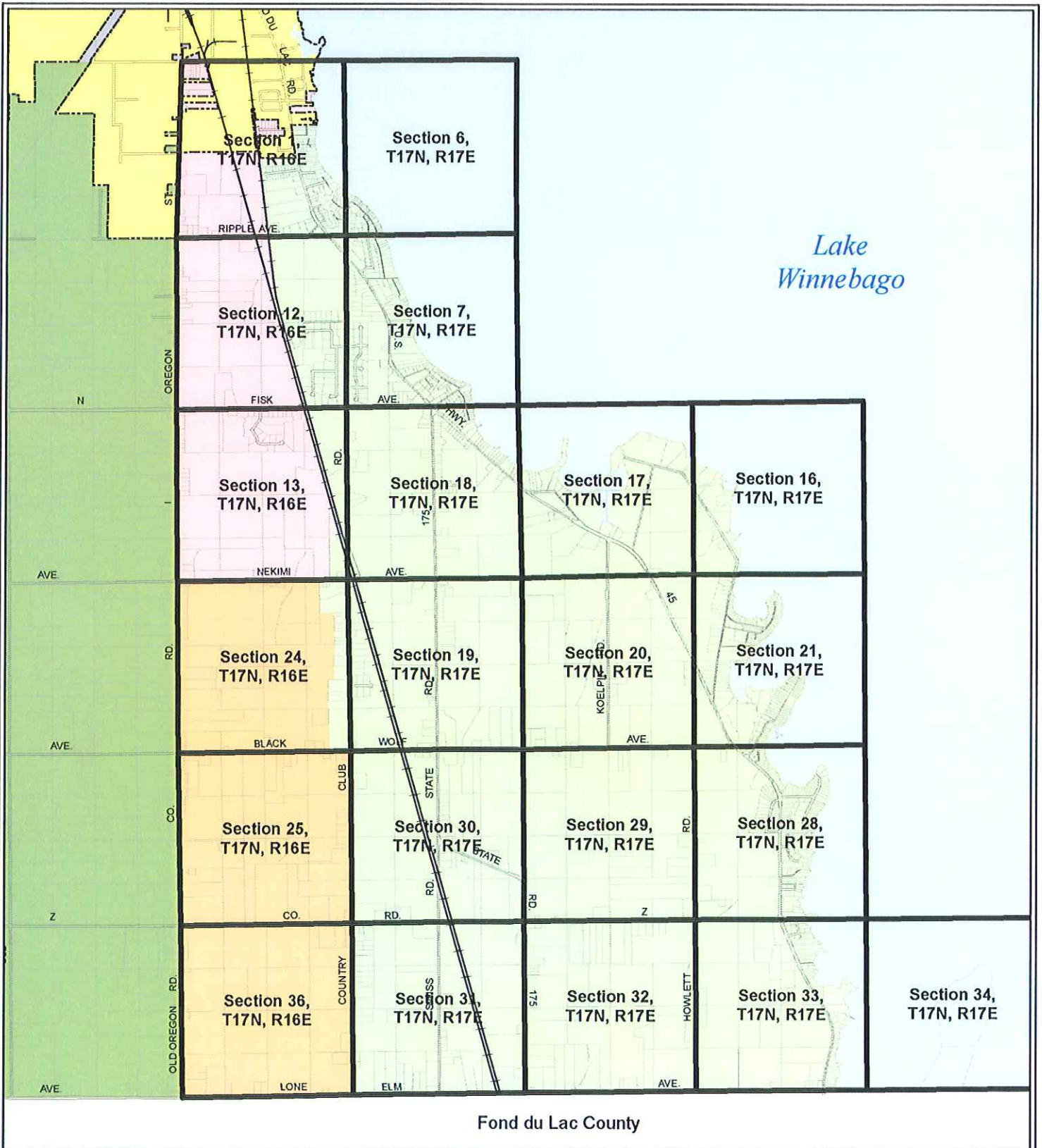
City of Oshkosh / Town of Black Wolf  
Boundary Agreement



**EXHIBIT E**

**TOWN OF BLACK WOLF SECTIONS MAP**

DRAFT



Fond du Lac County

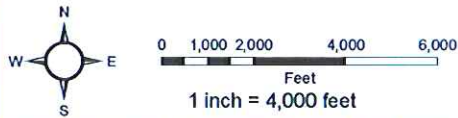
- City of Oshkosh
- Rural Preservation Area
- Town of Black Wolf Protected Area
- Undetermined City Expansion Area
- Town of Nekimi
- Town of Algoma
- Fond du Lac County

# EXHIBIT E

## Town of Black Wolf Sections

City of Oshkosh / Town of Black Wolf Boundary Agreement

September, 2011



Sources: City of Oshkosh GIS, Winnebago County WINGS Project



**EXHIBIT F**

**US HIGHWAY 41  
CORRIDOR OVERLAY DISTRICT MAP**

**THIS EXHIBIT DOES NOT APPLY TO THIS  
COOPERATIVE PLAN –  
TO BE DELETED**

**DRAFT**

**EXHIBIT G**

**TOWN OF BLACK WOLF RESOLUTION  
AUTHORIZING SUPPORT OF BOUNDARY AGREEMENT**

DRAFT

TOWN OF BLACK WOLF  
WINNEBAGO COUNTY, WISCONSIN

Town Board Resolution Approving Intergovernmental Agreement  
With the City of Oshkosh and Initiating Cooperative Plan Hearing Process

WHEREAS, the Town of Black Wolf ("Town") and the City of Oshkosh ("City") previously approved an intergovernmental agreement that provides for the orderly growth and development with agreed-upon municipal boundaries ("Agreement"), and

WHEREAS, the parties wish to initiate the Cooperative Plan process set forth in Wis Stat Sec 66 0307

RESOLVED, that the Town Board does hereby declare its intention to participate in the preparation of a cooperative plan pursuant to the procedures set forth in Wis Stat Sec 66 0307 and, upon completion, to hold a joint public hearing on the proposed cooperative plan as required by law, and

FURTHER RESOLVED, that after the public hearing described above the Town Board shall duly consider the comments of the public and, if appropriate, revise the cooperative plan, and then present the final cooperative plan for action, and

FURTHER RESOLVED, that the Town Clerk and the Town Attorney are authorized and directed to take all further action required by law to accomplish the intended purposes of these resolutions

Adopted this 13<sup>th</sup> day of June, 2011

TOWN OF BLACK WOLF

By.   
Frank Brassetto, Town Chairperson

Attest.

  
Ellen Chmielewski, Town Clerk

**EXHIBIT H**

**CITY OF OSHKOSH RESOLUTION  
AUTHORIZING SUPPORT OF BOUNDARY AGREEMENT**

**DRAFT**

JUNE 14, 2011

11-245

RESOLUTION

(CARRIED 7-0 LOST \_\_\_\_\_ LAID OVER \_\_\_\_\_ WITHDRAWN \_\_\_\_\_)

PURPOSE:            AUTHORIZE PREPARATION OF COOPERATIVE PLAN WITH  
                                 THE TOWN OF BLACK WOLF

INITIATED BY:      COMMUNITY DEVELOPMENT

WHEREAS, the City of Oshkosh ("City") and the Town of Black Wolf previously approved an intergovernmental agreement that provides for the orderly growth and development within agreed-upon municipal boundaries; and

WHEREAS, the parties wish to initiate the Cooperative Plan process set forth in Wis. Stat. § 66.0307;

NOW THEREFORE BE IT RESOLVED, that the City does hereby declare its intention to participate in the preparation of a cooperative plan pursuant to the procedures set forth in Wis. Stat. § 66.0307 and upon completion, to hold a joint public hearing on the proposed cooperative plan as required by law; and

BE IT FURTHER RESOLVED, that after the public hearing described above the City shall duly consider the comments of the public and, if appropriate, revise the cooperative plan, and then present the final cooperative plan for action; and

BE IT FURTHER RESOLVED, that the City Clerk or the Department of Community Development are hereby directed to mail copies of this resolution within five days of the date of this resolution to those entities identified in § 66.0307 (4) (a) of the Wisconsin Statutes; and

BE IT FURTHER RESOLVED, that the appropriate City officials are authorized and directed to take all further action required by law to accomplish the intended purposes of these resolutions.

**EXHIBIT I**

**RECORD OF PUBLIC PARTICIPATION AND COMMENT**

**DRAFT**

**EXHIBIT J**

**INTERGOVERNMENTAL BOUNDARY AGREEMENT**

**DRAFT**

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

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

**ARTICLE I  
PURPOSE OF AGREEMENT**

1.1 Purpose. The purpose of this Agreement is to set forth the procedures, terms and conditions by which the parties wish to achieve the following mutual goals pursuant to Wis. Stat. §§ 66.1001, 66.0301 and 66.0307:

- (A) Orderly, planned growth for the City and the Town and the provision of appropriate, cost-effective municipal services for such development;
- (B) Orderly boundaries between the City and the Town, promoting cost-effective provision of services and more efficient operation of all units of government;
- (C) Continual City growth to provide the City with an ever-renewing and expanding tax base and a pool of citizen leadership;
- (D) Continual development for the Town to replace tax base lost to the City by reason of annexations or attachments so that the Town may also have an ever-renewing and expanding tax base and a pool of citizen leadership;
- (E) Prevention of unplanned development leading to sprawl, and the protection of the area's natural resources, including its lakes, streams, rivers, wetlands, woodlands and prime agricultural land; and
- (F) Promotion of quality development in the City and the Town.

**ARTICLE II  
AREA GROWTH DELINEATIONS**

2.1 Introduction. The parties intend to identify and accept three geographical delineations, as follows:

- (A) Black Wolf Protected Area. The Black Wolf Protected Area (sometimes referred to as "BPA") is an area from which the City agrees not to annex or attach territory during the term of this Agreement. The BPA is delineated in the attached map, which is identified as Exhibit 1 and which is incorporated by reference. Additional provisions relating to the BPA are identified in Section 2.2, below.

- (B) City Expansion Area. The City Expansion Area (sometimes referred to as "CEA") is an area that the parties expect to be developed for urban uses within the City during the term of this Agreement. The CEA is delineated in the attached map, which is identified as Exhibit 1 and which is incorporated by reference. Additional provisions relating to the CEA are identified in Section 2.3, below.

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

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

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

2.3

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

- (A) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create town or city islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, or support opposition to, annexation consistent with the terms of this Agreement.



(B) The parties acknowledge and agree that any area that, on the effective date of this Agreement or during the term of this Agreement, becomes a functional town island shall be annexed or attached to the City within sixty (60) months, except as otherwise provided in subsection 2.3(C), below. The Town shall cooperate with the City on the annexation or attachment of the relevant area. For the purposes of this Agreement, a 'functional town island' occurs when either man-made or natural barriers, employed in conjunction with City corporate boundaries, isolate a portion of the Town. In determining whether an area is sufficiently isolated so as to constitute a 'functional town island,' the parties shall consider: (i) the extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town, (ii) the extent to which natural borders and political boundaries of the City isolate the area from the balance of the Town, or (iii) the extent to which, for all practical purposes, the area is cut off from the remainder of the Town. Following annexation, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system performed by a Licensed Plumber.

(C) Once seventy (70%) percent or more of the land in a Town Section which has been designated as City Expansion Area has been annexed or attached to the City, the remaining land within the Town Section that has been designated as City Expansion Area shall attach to the City within seven (7) years; provided, however, that once 70% or more of the land within Town Section 1 has been annexed or attached to the City, the remaining land within this Section shall attach to the City within ten (10) years. Following annexation, properties shall be required to connect to the City's municipal sewer system within one (1) year, except that connection to the City municipal sewer system may be delayed for a period not to exceed sixty (60) months if the property owner provides a current evaluation of the existing private sanitary system performed by a Licensed Plumber.

(D) The Town shall consent to the construction of City utilities in Town rights of way and easements as necessary to serve annexed lands subject to the City's obligations (i) to maintain access to Town territory, and (ii) to restore the right of way or easement in accordance with commonly accepted practices.

(E) When a new road is proposed by the City to be built on land located in the CEA, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City must obtain the Town's prior written consent for new roads to be built on land located in the CEA, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.

(F) The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.

(G)

When requests are made for approval of any certified survey map, plat, or initiation of development activities that will result in the creation of any non-rural, non-agricultural use, where the certified survey map, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:

(i) An attachment agreement is executed with the City, which requires the property owner and successor owners to annex and/or attach the affected parcel(s) when the parcel(s) become contiguous with the City. The annexation and/or attachment agreement shall also provide provisions for necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area.

(ii) The property owner and/or developer prepares and submits to the City a master development plan for the Town Section within which the certified survey map, plat, or development activity is proposed, and a finding is made by the City that the certified survey map, plat, or development activity is consistent with the City's adopted Comprehensive Plan, or can be made consistent with the addition of appropriate conditions, including conditions relative to the installation of public improvements. The City may waive the master development plan requirement based on the size and scope of the proposal.

(iii) The certified survey map, plat, and development activity must be served by a publicly dedicated road built in accordance with the City's Subdivision Regulations, unless said requirement is waived and/or modified by the City.

(iv) The maximum lot size of residential parcels shall not exceed two (2) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building site(s), unless said requirement is waived and/or modified by the City.

(H) The Town will not rezone land located in the CEA without first obtaining the City's consent to the rezoning, which consent may not be withheld if the proposed rezoning is consistent with the terms of this Agreement and the provisions of the City's adopted Comprehensive Plan.

#### 2.4

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

(A) Lands may be annexed to the City only upon the unanimous consent of the owners of the lands, exclusive of any right-of-way that may be annexed. Such annexations need not be contiguous to the City and may create Town or City islands. Such annexations shall include the entire width of highway rights of way abutting the lands annexed. The Town shall not oppose, or support opposition to, annexation consistent with the terms of this Agreement.

(B) The parties acknowledge and agree that any area that, on the effective date of this Agreement or during the term of this Agreement, becomes a functional town island shall be annexed or attached to the City within sixty (60) months. The Town shall cooperate with the City on the annexation or attachment of the relevant area. For the purposes of this Agreement, a 'functional town island' occurs when either man-made or natural barriers, employed in conjunction with City corporate boundaries, isolate a portion of the Town. In determining whether an area is sufficiently isolated so as to constitute a 'functional town island,' the parties shall consider: (i) the extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town, (ii) the extent to which natural borders and political boundaries of the City isolate the area from the balance of the Town, or (iii) the extent to which, for all practical purposes, the area is cut off from the remainder of the Town.

(C) The Town shall consent to the construction of City utilities in Town rights of way and easements as necessary to serve annexed lands subject to the City's obligations (i) to maintain access to Town territory, and (ii) to restore the right of way or easement in accordance with commonly accepted practices.

(D) When a new road is proposed by the City to be built on land located in the RPA, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City must obtain the Town's prior written consent for new roads to be built on land located in the RPA, but such consent shall not be unreasonably withheld. The City must obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City, with such consent at the Town's legislative discretion.

(E) The Town will not interfere with or object to City applications to extend its sewer service area consistent with this Agreement.

(F) When requests are made for approval of any certified survey map, plat, or the initiation of development activities that will result in the creation of any non-rural, non-agricultural use, where the certified survey map, plat, or development activity does not include an annexation or attachment to the City, the following standards shall apply:

(i) A maximum of twenty-eight (28) non-rural, non-agricultural residential dwellings are permitted within each Town Section, provided, however, that not fewer than ten (10) additional non-rural, non-agricultural residential dwellings will be permitted in each Town Section regardless of the number of non-rural, non-agricultural residential dwellings in existence on the date of this Agreement.

(ii) To promote greater flexibility in lot design and to conserve the natural environment and features the use of conservation-based subdivisions shall be permitted. The use of conservation-based subdivisions and minimum lot size requirements may be waived under the following criteria:

a. The average density of the development does not exceed the number of non-rural, non-agricultural dwellings permitted within the Town Section under (i) above.

b. Each lot meets the requirements for on-site sewage treatment and private water wells, whether through private on-site sewage treatment and private water joint/community private water wells.

c. The proposed lot layout for the overall parcel locates structures on building sites that have the least impact on environmentally sensitive areas and are less well suited for farming and agricultural uses.

d. The conservation area be placed in a conservation easement for the term of this Agreement.

e. The proposed lot layout for the overall development provides for future efficient re-subdividing for urban densities and the cost effective and orderly extension of public streets and utilities. All lots will be required to illustrate on the plat or CSM how each lot in the subdivision can be re-subdivided and all lots will be required to illustrate on the plat or CSM building envelopes that will be protected from future development that would impair the ability to re-subdivide or to provide public services.

(iii) Except as otherwise provided for conservation subdivisions, the minimum lot size of residential parcels shall be five (5) acres, and they must be designed in such a manner that future land divisions may be possible relative to creating additional residential building site(s), unless said requirement is waived and/or modified by the City.

(iv) Commercial and light industrial development may be permitted, subject to the review and approval of development proposals by the City, a finding that any such proposed development is and/or will be deemed compatible with the City's and the Town's Comprehensive Plans, and an attachment agreement is executed with the City which requires the property owner and successor owners to annex and/or attach the affected parcel(s) within sixty (60) months of the date when the parcel(s) become contiguous with the City. The annexation and/or attachment agreement shall also provide provisions for necessary easements, which the City determines, may be required for the future extension of utilities to the relevant parcel(s) and development area. If the City's and the Town's respective Comprehensive Plans are inconsistent with regard to the proposed development, the parties agree to meet for the purpose of attempting to reconcile the inconsistencies, either through amendments to the Comprehensive Plans or by other mutually agreed upon means.

### ARTICLE III

#### COOPERATION WITH GOVERNMENTAL AGENCIES

3.1 Advancement of Mutual Interests. The parties acknowledge that in order to effectively implement this Agreement, it may be necessary to obtain the cooperation and approval of other governmental agencies, including, but not limited to, East Central Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources, the Wisconsin Department of Transportation, the Wisconsin Department of Administration and Winnebago County. In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of the relevant agency. To the extent practicable, the parties will, where necessary, submit a single, joint request or other appropriate document requesting the approval.

#### ARTICLE IV DISPUTE RESOLUTION

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

- (A) If the dispute cannot be resolved by the personnel directly involved, the parties will conduct the following mediation process before invoking formal arbitration:
- (i) Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
  - (ii) Either representative may request the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within five days of the request for a mediator, a qualified mediator will be appointed by the Chairperson of the Alternative Dispute Resolution Committee of the State Bar of Wisconsin, or if the Chairperson fails to appoint a mediator, by the American Arbitration Association.
  - (iii) The mediation session shall take place within 30 days of the appointment of the respective representatives designated by the parties, or the designation of a mediator, whichever occurs last.
  - (iv) In the event that a mediator is used, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least 10 days prior to the first scheduled mediation session. The parties will also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement such information.

(v) The mediator does not have authority to impose a settlement upon the parties but will attempt to help the parties reach a satisfactory resolution of their dispute. To the extent authorized by law, the mediation session(s) are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding, views expressed or suggestions made by the other party with respect to a possible settlement of the dispute, or admissions made by the other party in the course of the mediation proceedings.

(vi) The expenses of a mediator, if any, shall be borne equally by the parties.

(B) If unresolved after (a) above, the parties will submit the dispute to binding arbitration by an arbitrator of recognized qualifications. If the parties cannot agree on an arbitrator they will request a 5-person panel list from the Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration, or his successor. Each party will have two strikes from the 5-person panel. The parties may agree to an alternative method for the selection of the single arbitrator.

(C) The City and the Town will be responsible for the fees of their own arbitrator and will equally divide the fees of the third arbitrator, as well as the costs of court reporters, if any. The City and the Town will be responsible for their own attorneys' fees and expert fees.

(D) The arbitration panel shall not be bound by rules of evidence or the substantive, internal laws of Wisconsin. The award of the panel is final and binding, and shall be enforceable at law. The arbitration provisions of Chapter 788 of the Wisconsin Statutes shall apply to the arbitration proceedings, unless the parties agree on different arbitration procedures.

(E) The parties agree that arbitration proceedings must be instituted within one year after the claimed breach occurred, and that the failure to institute arbitration proceedings within such periods shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

- 5.1 Amendments. This Agreement may be amended, from time to time, by mutual consent of all parties hereto. Any party wishing to propose such an amendment will give written notice to all other parties. The notice will identify the proposed amendment and the reasons supporting such amendment. Within 30 days after receipt of the notice, the parties will meet to discuss and, if necessary, negotiate the proposed amendment. If, after 90 days, the parties are unable to agree upon and approve the proposed amendment, it shall be automatically deemed to have been withdrawn and shall not thereafter be proposed for a period of 2 years after the date of the initial notice, unless a majority of the parties jointly re-submit it for consideration.
- 5.2 Notices. All notices required under this Agreement must be served, either personally or by certified mail, upon the parties' respective municipal clerks. A copy of the notices shall also be mailed via regular U.S. mail to the Town Chairperson and City Mayor. Any action taken by a party in violation of the relevant notice requirements is voidable unless, under the facts of the particular case, the public interest outweighs strict enforcement of the notice requirement.
- 5.3 Enforceability. The parties have entered into this Agreement under the authority of Wis. Stats. §§ 66.1001, 66.0301 and 66.0307. Its enforceability will not be affected by statutory amendments, changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Agreement be construed so as to be binding on their respective successors, agents and employees.
- 5.4 Complete Agreement. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement and it shall supersede all prior agreements or municipal policies to the contrary. No agreements, promises, or representations made during or in connection with the negotiations for or approval of this Agreement shall be binding or effective unless they are included herein. This Agreement may be filed with the Register of Deeds of Winnebago County. This Agreement may be used in litigation and may be introduced into evidence by either party without objection in any action to enforce the terms of this Agreement.
- 5.5 No Waiver. The failure of any party to require strict performance with any provision of this Agreement will not constitute a waiver of the provision or of any of the parties' rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be signed by the party waiving the right. If an obligation of a party is being waived or released, the writing must be signed by all affected parties. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any party. Waivers and releases will affect only the specific right or obligation waived or released and will not affect the rights or obligations of any other party that did not sign the waiver or release.

- 5.6 Term of Agreement. The initial term of this Agreement shall be 40 years from the date of the last signature. No breach or violation of any of the terms of this Agreement shall operate to void or terminate this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined, or otherwise remedied by exercise of any lawful, contractual enforcement remedies then available to be utilized by the aggrieved party to enforce the terms of this Agreement. Despite the preceding, this Agreement shall automatically terminate when the parties mutually agree that the purposes recited in Section 1.1, above, are no longer relevant.
- 5.7 Performance Standard. This Agreement requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Agreement imposed on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a party, the consent or approval shall not be unreasonably withheld.
- 5.8 No Third Party Beneficiary. This Agreement is intended to be solely between the signatories set forth on the following pages. Nothing in this Agreement grants any third party beneficiary rights to any non-party that may be enforced by any non-party to this Agreement.
- 5.9 Construction. This Agreement shall be liberally construed to accomplish its intended purposes. The parties acknowledge that the language contained in this Agreement is the product of numerous individuals representing the various interests. Therefore, ambiguities shall not be construed against the drafter of this document. This Agreement should be construed to give a reasonable meaning to each of its provisions, and a construction that would render any of its provisions meaningless, inexplicable, or mere surplusage is to be avoided.
- 5.10 Non-Severability. The parties acknowledge that the provisions of this Agreement are interconnected. Therefore, if any provision of this Agreement is held invalid, illegal or unenforceable, the entire Agreement will be void if the parties are unable to replace the invalid provision through the process described below.

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

CITY OF OSHKOSH

EXHIBIT 1

The undersigned officers of the City of Oshkosh have executed this Agreement pursuant to a duly adopted Resolution (Res. #08-467) of the Common Council dated December 9, 2008.

By: Mark Kohloff 12/11/08 Date  
Mark Kohloff City Manager

Attest: Pamela R. Ubrig Date  
Pamela R. Ubrig City Clerk

APPROVED

STATE OF WISCONSIN )  
                                  )ss  
WINNEBAGO COUNTY )

Mark Kohloff  
CITY CLERK  
OSHKOSH, WISCONSIN

Personally came before me this 19th day of Dec, 2008, the above-named Mark Kohloff, City Manager and Pamela R. Ubrig, City Clerk, to me known to be said officer(s) who executed the foregoing instrument and acknowledged that they executed the same as such officers by its authority, for the purpose therein contained.

Shirley J. Jensen  
Notary Public, Winnebago County, Wisconsin  
My commission is permanent/expires: 12-13-09

MAP DELINEATING BLACK WOLF PROTECTED AREA,  
CITY EXPANSION AREA AND  
RURAL PRESERVATION AREA

TOWN OF BLACK WOLF

The undersigned officers of the Town of Black Wolf have executed this Agreement pursuant to a duly adopted Resolution (Res. # 2-2-08) of the Town Board dated SEPT. 15, 2008.

By: Frank Frassetto 3-9-09 Date  
Frank Frassetto Chairperson

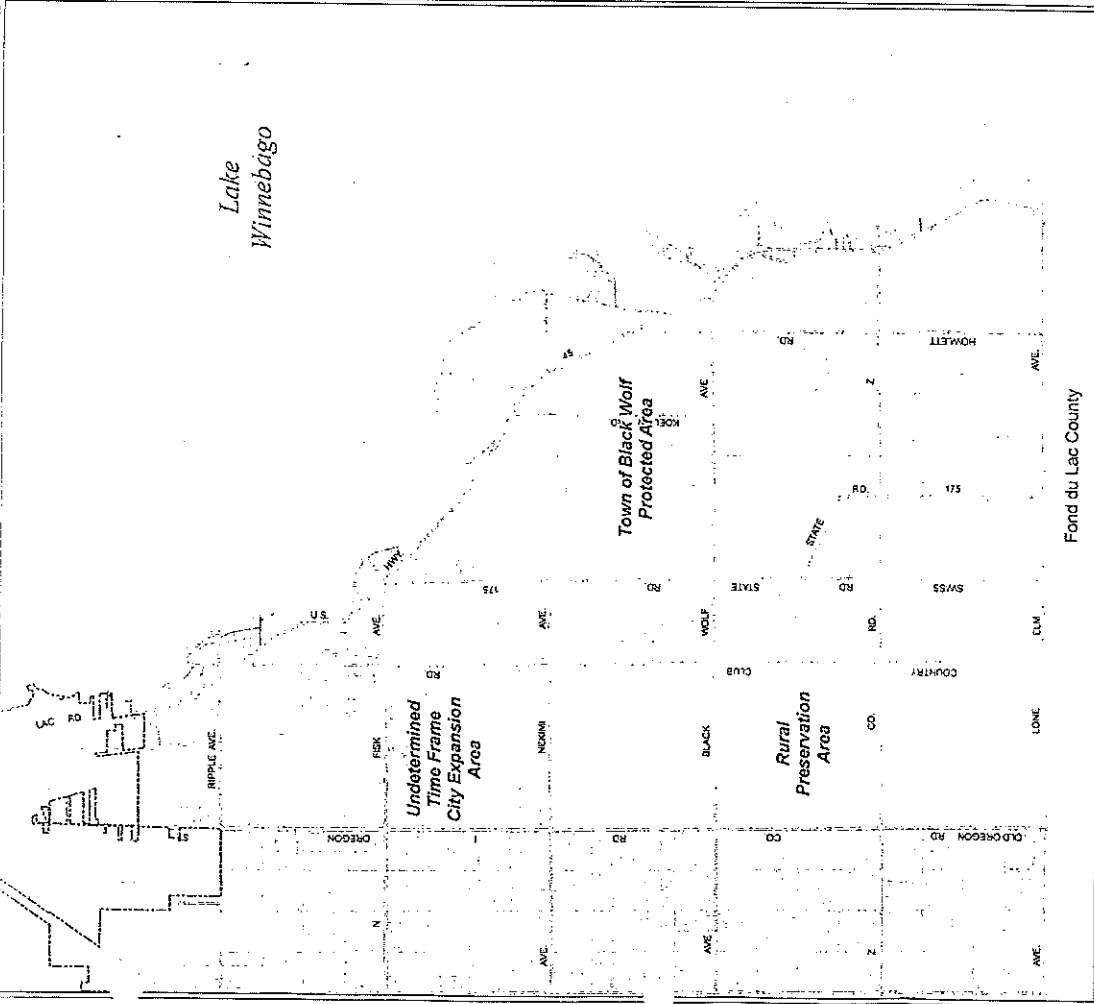
Attest: Ellen Chmielewski 1-15-09 Date  
Ellen Chmielewski Town Clerk

STATE OF WISCONSIN )  
                                  )ss  
WINNEBAGO COUNTY )

Personally came before me this 9th day of MARCH, 2009, the above-named Frank Frassetto, Town Chairman and Ellen Chmielewski, Town Clerk, to me known to be said officer(s) who executed the foregoing instrument and acknowledged that they executed the same as such officers by its authority, for the purpose therein contained.

Robert J. Hand  
Notary Public, Winnebago County, Wisconsin  
My commission is permanent/expires: 04/30/09

Lake Winnebago



**EXHIBIT 1**  
 Town Protected, City Expansion & Rural Preservation Areas

City of Oshkosh / Town of Black Wolf  
 Boundary Agreement

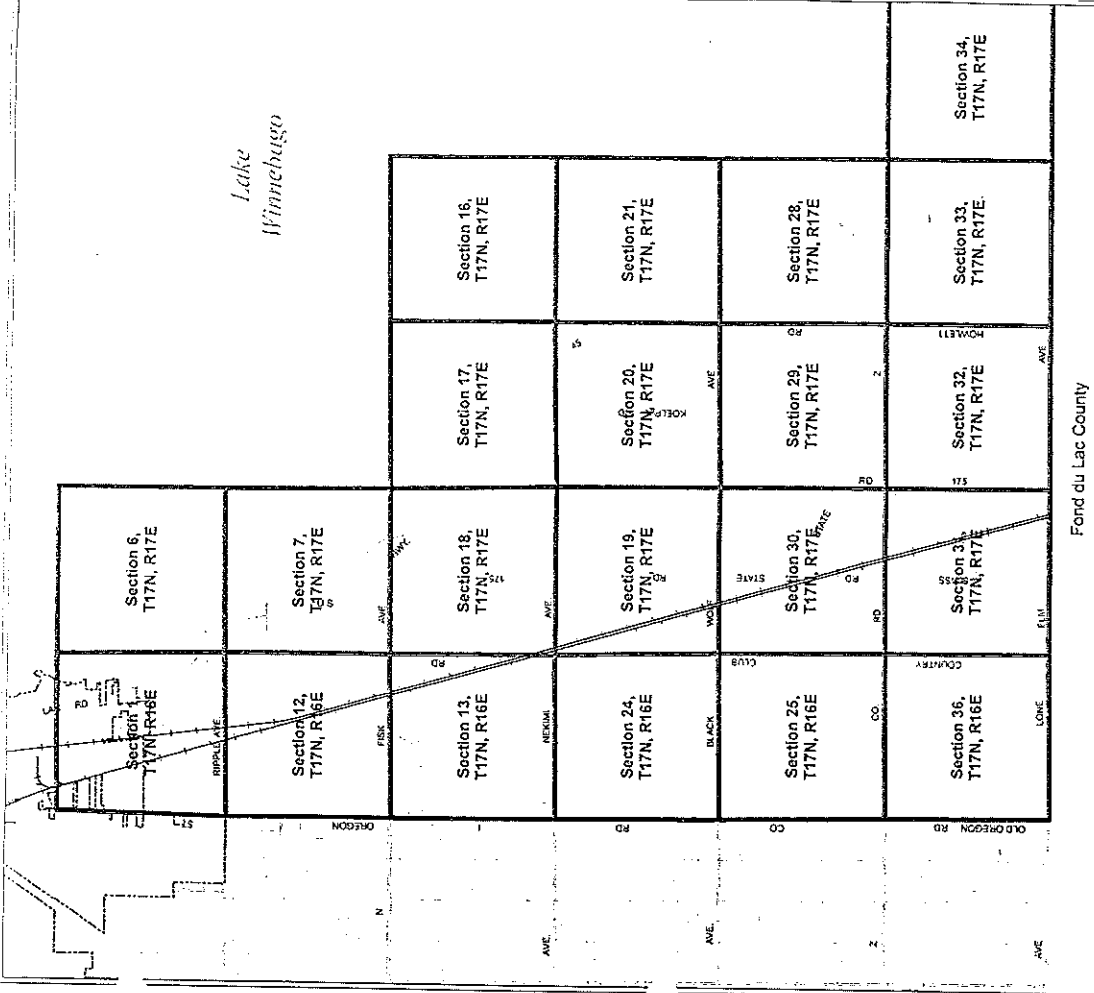
November, 2008

Fond du Lac County

- City of Oshkosh
- Rural Preservation Area
- Town of Black Wolf Protected Area
- Undetermined City Expansion Area
- Town of Nelimi
- Town of Algoma
- Fond du Lac County

Scale: 0 1,000 2,000 4,000 6,000 Feet  
 1 inch equals 4,000 feet  
 Sources: City of Oshkosh GIS, Winnebago County WINGS Project

Lake Winnebago



**EXHIBIT 2**  
 Town of Black Wolf Sections

City of Oshkosh / Town of Black Wolf  
 Boundary Agreement

November, 2008

Fond du Lac County

- City of Oshkosh
- Rural Preservation Area
- Town of Black Wolf Protected Area
- Undetermined City Expansion Area
- Town of Nelimi
- Town of Algoma
- Fond du Lac County

Scale: 0 1,000 2,000 4,000 6,000 Feet  
 1 inch equals 4,000 feet  
 Sources: City of Oshkosh GIS, Winnebago County WINGS Project

**EXHIBIT K**

**IMMEDIATE ATTACHMENTS**

**(TO BE DETERMINED)**

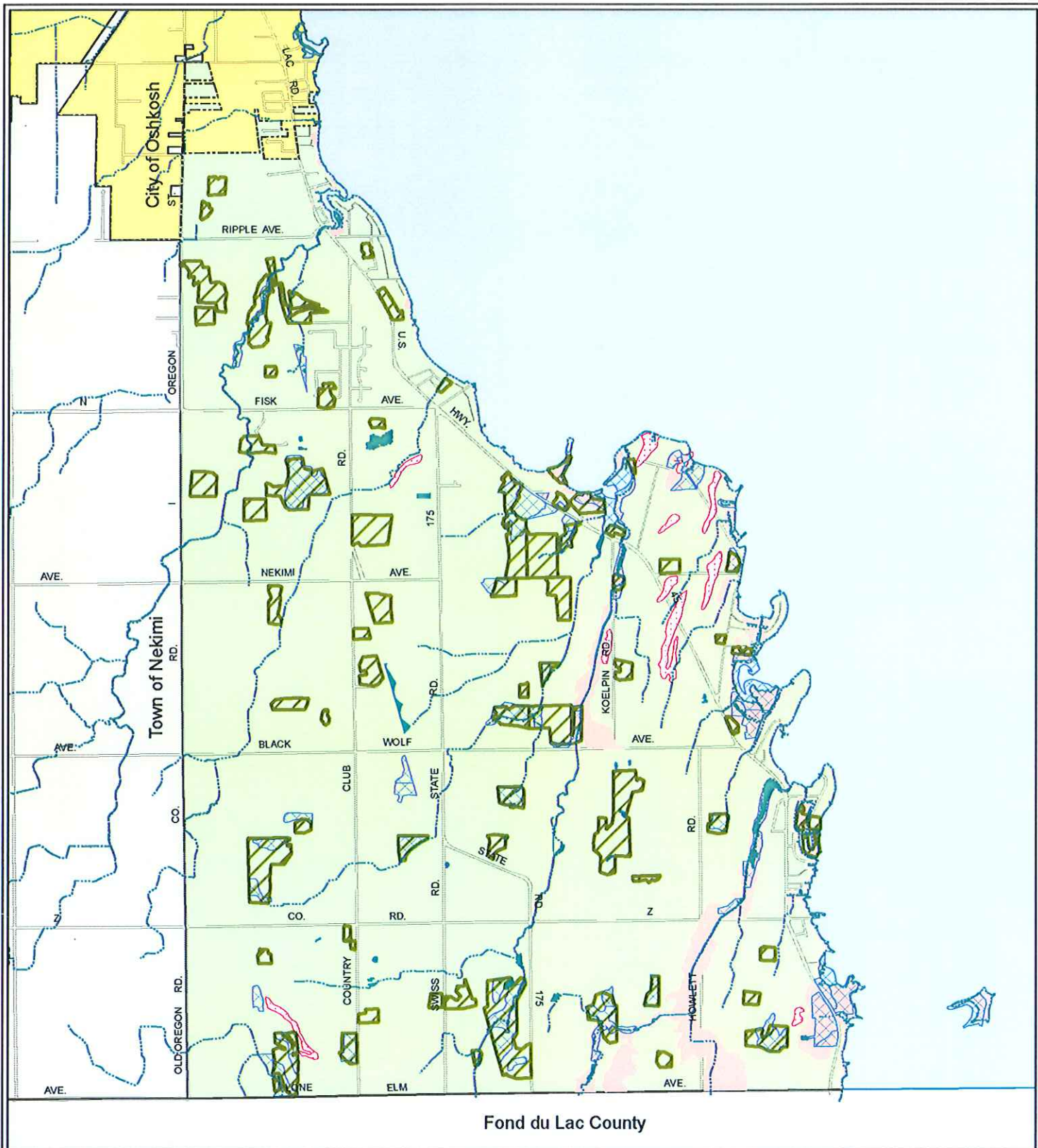
**DRAFT**

**EXHIBIT L**

**ENVIRONMENTALLY SENSITIVE LANDS**

**DRAFT**



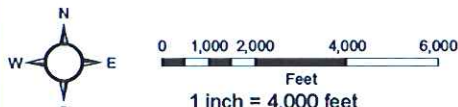


Fond du Lac County

- Approximate Floodplain
- Slopes >6%
- Open Water, Navigable Stream
- Wetlands
- Woodland Areas

# EXHIBIT J

## Environmentally Sensitive Lands\* City of Oshkosh / Town of Black Wolf Cooperative Plan



\*Sensitive Areas include wetlands, open water, navigable streams, floodplains and steep slopes. Natural areas, parks and open spaces and stormwater drainage corridors are not present or depicted on the map.