

**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 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 wells or through joint/community on-site sewage treatment and 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**

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 Rohloff 12/19/08  
Mark Rohloff Date  
City Manager

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

**APPROVED**  
[Signature]  
CITY ATTORNEY  
OSHKOSH, WISCONSIN

STATE OF WISCONSIN )  
                                  )ss  
WINNEBAGO COUNTY )

Personally came before me this 19<sup>th</sup> day of Dec., 2008, the above-named Mark Rohloff, 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.

[Signature]  
Notary Public, Winnebago County, Wisconsin  
My commission is ~~permanent~~/expires: 12-13-09

**TOWN OF BLACK WOLF**

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

By: [Signature] 3-9-09  
Frank Frassetto Date  
Chairperson

Attest [Signature] 1-15-09  
Ellen Chmielewski Date  
Town Clerk

STATE OF WISCONSIN )  
                                  )ss  
WINNEBAGO COUNTY )

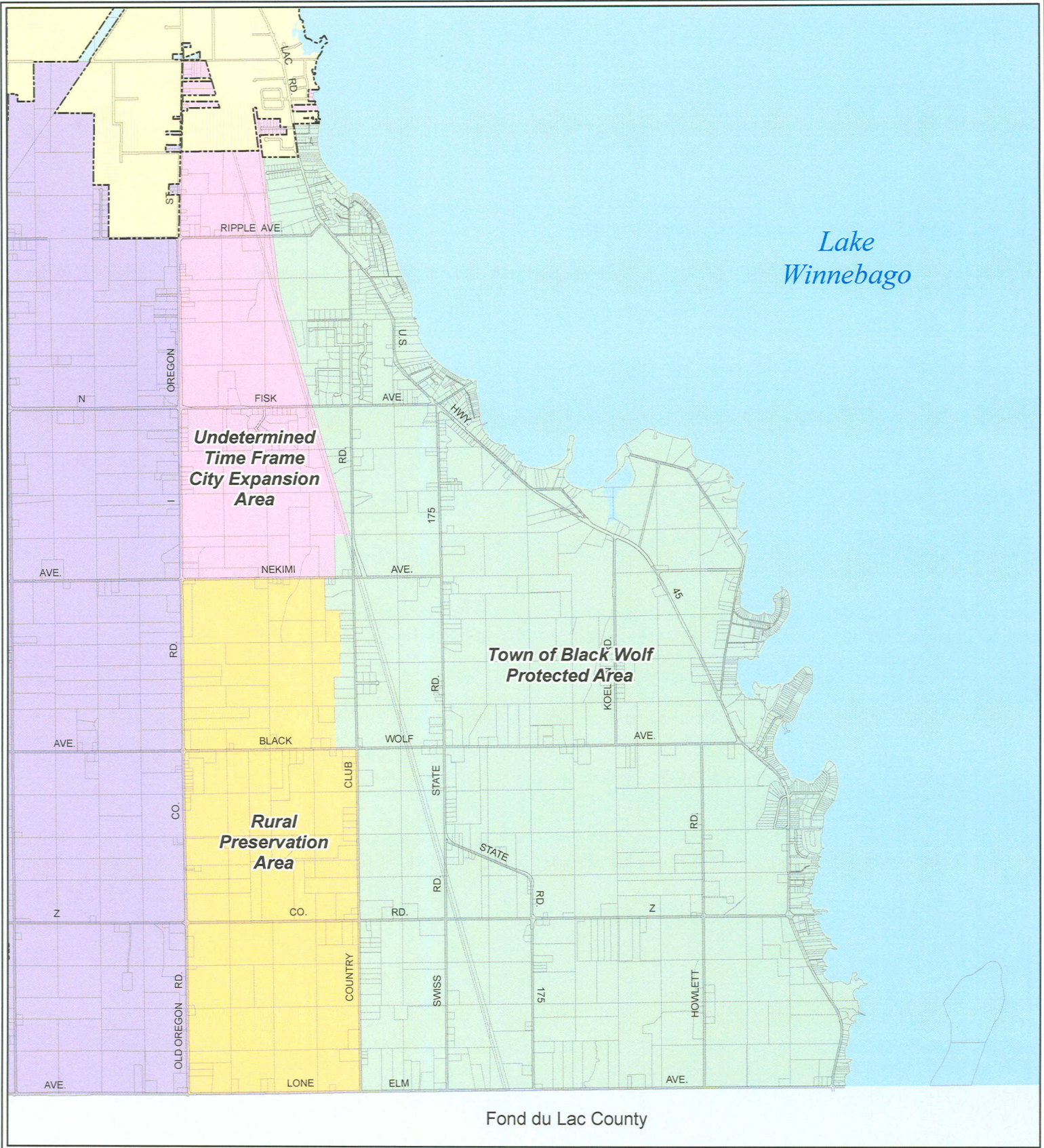
Personally came before me this 9<sup>th</sup> day of MARCH, 2009, the above-named Frank Frassetto, Town Chairman and Ellen Chmielewski, Town Clerk, to me known to be said officer(s) who executed the foregoing instrument and acknowledged that they executed the same as such officers by its authority, for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

[Signature]  
Notary Public, Winnebago County, Wisconsin  
My commission is permanent/expires: 09-30-09

**EXHIBIT 1**

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





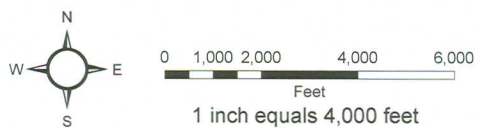
Fond du Lac County

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

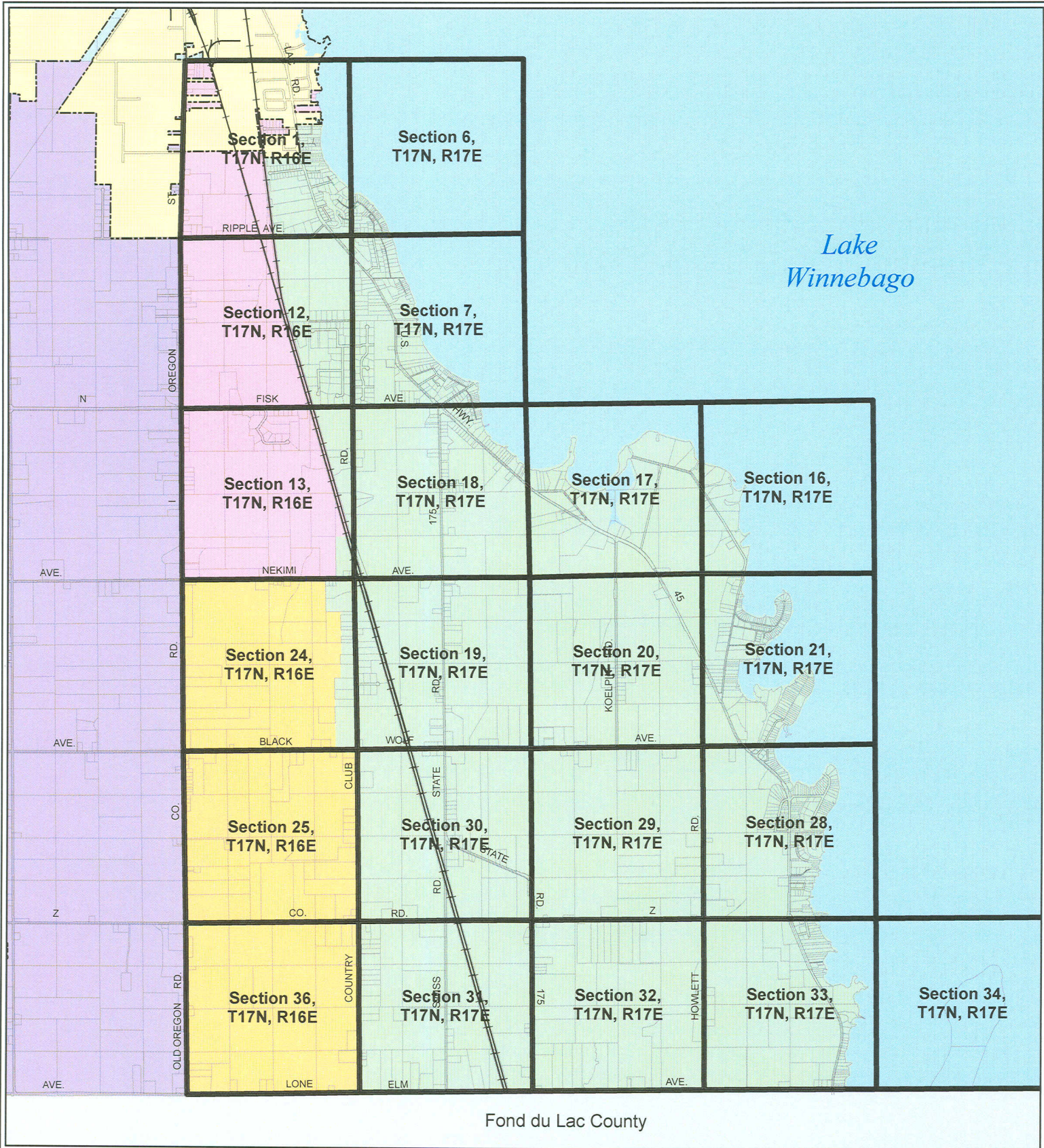
# EXHIBIT 1

Town Protected, City Expansion & Rural Preservation Areas

City of Oshkosh / Town of Black Wolf  
Boundary Agreement







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

# EXHIBIT 2

## Town of Black Wolf Sections



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