

BOUNDARY MEMORANDUM OF UNDERSTANDING
CITY OF NEENAH
&
TOWN OF MENASHA

This Boundary Memorandum of Understanding (“Boundary MOU”) entered into this _____ day of September, 2015 by and between the City of Neenah, a Wisconsin municipal corporation with offices at 211 Walnut Street, Neenah, WI 54956 (the “City”) and the Town of Menasha, a Wisconsin municipal corporation with offices at 2000 Municipal Drive, Neenah, WI 54956 (the “Town”).

W I T N E S S E T H

WHEREAS, the City and Town entered negotiations to establish a common boundary; and,

WHEREAS, the City and Town desire to enter into a general boundary agreement under Wis. Stat. §66.0301(6) and cooperative boundary agreement under Wis. Stat. §66.0307; and,

WHEREAS, a petition has been filed by Town residents in Winnebago County Circuit Court in case number 15-CV-452 (“Incorporation Case”), and supported by the Town, seeking to incorporate a portion of the Town as the Village of Fox Crossing (“Village”) pursuant to Wis. Stat. § 66.0201; and

WHEREAS, the City has filed as an interested party in the Incorporation Case and also filed Certified Resolution No. 2015-27 that objected to the proposed incorporation of the Village; and

WHEREAS, the City and Town subsequently met regarding the City’s objections and reached agreement on a common boundary that will provide for the most efficient provision of municipal services between the City and Village; and,

WHEREAS, the Wisconsin Incorporation Review Board (“Board”) has scheduled a hearing on the Incorporation Case for September 29, 2015 (“Incorporation Hearing”); and,

WHEREAS, the City and Town wish to formalize that agreement under the general boundary agreement, Wis. Stat. §66.0301(6) and cooperative boundary plan, Wis. Stat. §66.0307 but there is insufficient time to complete those processes prior to the Incorporation Hearing; and,

WHEREAS, the City and Town have agreed to submit this Boundary MOU to the Incorporation Review Board and request the Board incorporate this into the record of the Incorporation Case. To the fullest extent authorized by law, the Town and City jointly declare their intent that this Agreement, and any subsequent General and/or Cooperative Boundary Agreement pursuant to Wis. Stat. §§ 66.0301 and 66.0307 entered into by the Town and City shall be binding upon the newly incorporated Village, whether now or in the future;

NOW THEREFORE, in consideration of the above recitals, which are contractual, and the mutual promises contained herein, the parties agree to the following terms and conditions.

1. Common Boundary Planned. The City and Town agree that the northerly external boundary of the City limits which in part border the Town and which will also provide for the southerly external boundary of the Village limits, should it incorporate, shall be as described in Exhibit A, attached hereto and incorporated herein (“Border”). It is the intention of the parties hereto that the City shall not annex territory north of Border nor the Village annex territory south of the Border. This common Border shall be established only after the parties complete the boundary agreement process under Wis. Stat. §66.0301(6). It is expected that the Border shall constitute a common Border between the City and Village sometime during the term of this agreement.

2. Boundary General Agreement and Cooperative Plan. The Town and City agree to immediately begin the process to develop a general boundary agreement under Wis. Stat. §66.0301(6) and provided the General Boundary Agreement is not rejected by referendum under Wis. Stat. §66.0301(6)(e)2., the Town and City agree to continue the process to complete a Cooperative Boundary Agreement under Wis. Stat. §66.0307.

3. Purpose of Agreement. The purpose of this Boundary MOU is to express the parties’ intent to formalize their common boundary agreement and request the Incorporation Review Board incorporate this agreement, and any subsequent boundary agreement between the City and Town into their report regarding the proposed Village. The Town and City further request that the Circuit Court incorporate this agreement into its final order in the Incorporation Case regarding the incorporation of the Village so as to make the Boundary MOU binding on the Village should it complete the incorporation process. Notwithstanding the foregoing, it is not the intention of the parties to this agreement that any property adjacent to the Border change jurisdiction by this Boundary MOU. Instead, this Boundary MOU is intended to merely indicate the common boundary planned for the City and Village during the term of this Boundary MOU should the Village complete the incorporation process.

4. Cooperative Boundary Agreement. The parties shall commence the process immediately to create a Cooperative Boundary Agreement under Wis. Stat. §66.0307 with a deadline to complete by March 1, 2016.

5. Term. The initial term of this Boundary MOU shall continue until a Cooperative Boundary Agreement under Wis. Stat. §66.0307 is concluded between the City, Town and Village but in no event longer than Thirty (30) years after the latest approval date of this agreement by the Town and City. It is the intent of the parties that the final Cooperative Boundary Agreement shall have a term of Thirty (30) Years.

6. Submittal to the Court and Board; Advancement of Mutual Interests. The City and Town agree to jointly submit this Boundary MOU to the Board and Court in the Incorporation Case requesting that it be incorporated into any final order authorizing the incorporation of the Village. 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 and the Wisconsin courts. In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of the relevant governmental agency or court. The preceding obligation to cooperate includes, without limitation, taking all actions necessary and proper to ensure that the Village will be legally bound to the terms of this Boundary MOU and any subsequent boundary agreement entered into pursuant to this Boundary MOU. The parties acknowledge that, among the actions that may have to be taken to ensure the enforceability of this Boundary MOU, it may be necessary to enter into a general boundary agreement pursuant to Wis. Stat. § 66.0301 or a cooperative plan pursuant to Wis. Stat. §

66.0307. The preceding statutory references are not intended to be complete. If legal action is necessary pursuant to Wis. Stat. § 66.0225, neither City, Town nor the Village will oppose the City's, or Town's standing to bring an action seeking the enforceability of this Agreement against the Village.

7. Withdrawal of City's Objection. On approval by the City and the Town of this MOU, the City agrees that it will pass a resolution,, a copy of which is attached as Exhibit B, to withdraw Certified Resolution No. 2015-27 and the City further withdraws its objection to the incorporation of the Village and agrees that the Town may file this approved MOU as a part of Winnebago County Case No. 15-CV-452 and as a part of the record at proceedings and hearings before the Wisconsin Department of Administration Incorporation Review Board.

8. Enforceability. The parties have entered into this Agreement under the authority of Wis. Stats. §§ 66.0201, 66.0225, 66.0301, 66.0307, and 66.1001. Its enforceability will not be affected by statutory amendments, changes in the form of town, village or city government, or changes in elected officials. The parties further agree that this Agreement is binding on their respective successors, agents and employees.

IN WITNESS WHEREOF, the parties hereto accept the terms of this Agreement as of the ____ day of September, 2015.

CITY OF NEENAH

TOWN OF MENASHA

By: _____
Mayor

By: _____
Town Board Chair

Attest: _____
City Clerk

Attest: _____
Town Clerk

EXHIBIT A

The common future boundary between the City, Town and Village is described as follows:

- East of Interstate 41: Follow the existing boundary between the City and Town to Little Lake Butte des Morts.
- West of Interstate 41: Commencing at the intersection of North Avenue and Interstate 41 thence westerly along the North Avenue to the westerly quarter section line of the southeast quarter of Section 20, Township 20 North, Range 17 East, Town of Menasha, Winnebago County, Wisconsin.
- Thence southerly along said quarter section line to its intersection with Oakridge Road.
- Thence westerly along the right of way of Oakridge Road to its intersection with Larsen Road.
- Thence westerly along the right of way of Larsen Road to its intersection with Clayton Avenue;
- Thence northerly along the right of way of Clayton Avenue to its intersection with Winchester Road/Co. Hwy II;
- Thence westerly along the right of way of Winchester Road/Co. Hwy II to a point three (3) miles from the nearest boundary point of the City of Neenah (i.e., the extraterritorial jurisdiction of the City of Neenah).

Attached as Exhibit A-1 is a map depicting the common border (shown as red line)..

EXHIBIT A-1

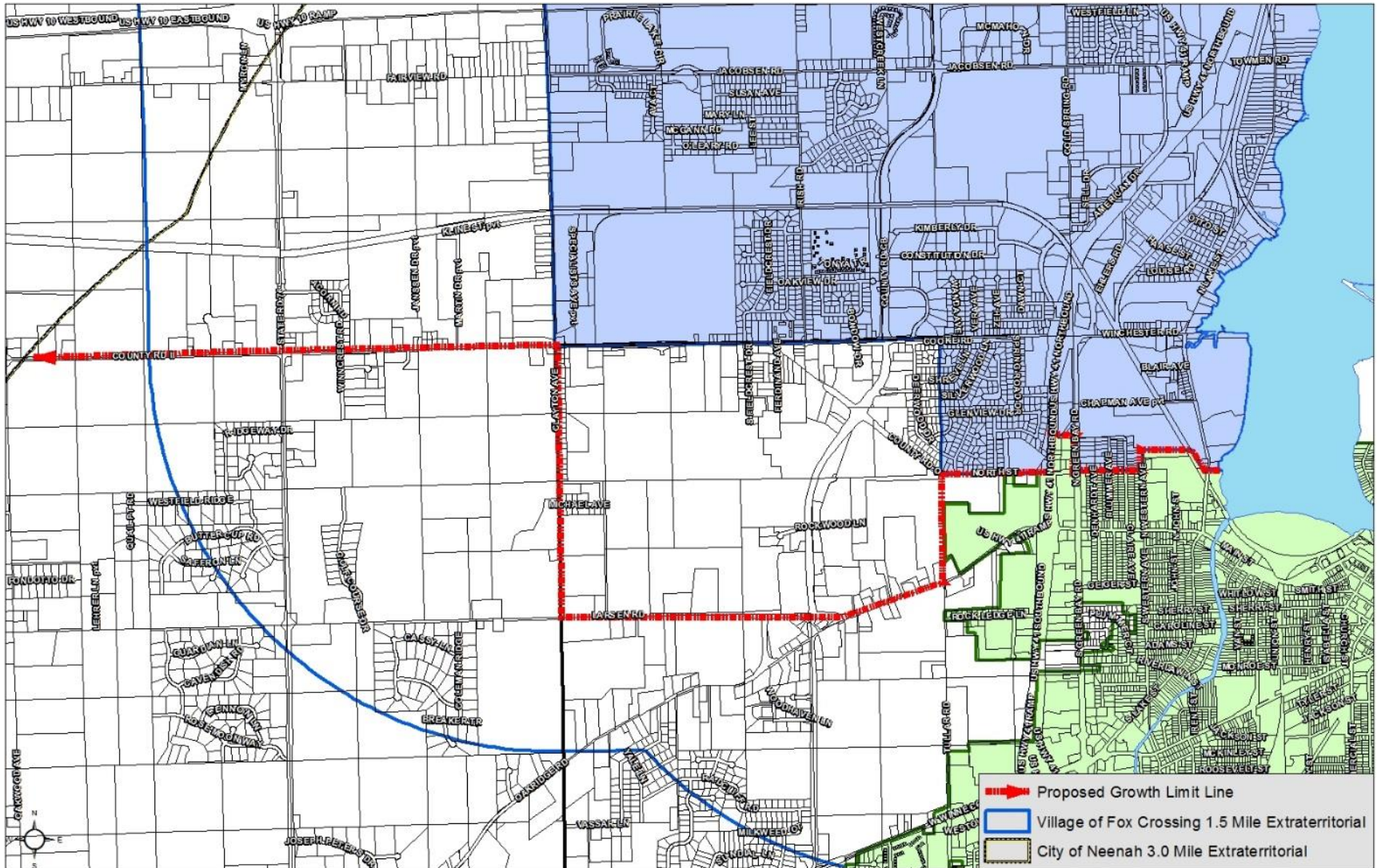


EXHIBIT B

RESOLUTION NO. 2015-37

A RESOLUTION RESCINDING RESOLUTION NO. 2015-27 RELATING TO THE INCORPORATION OF A PORTION OF THE TOWN OF MENASHA

WHEREAS, in response to a petition filed in Winnebago County Circuit Court, Case No. 15-CV-452, to incorporate a portion of the Town of Menasha as the Village of Fox Crossing, the City of Neenah adopted Res. No. 2015-27 opposing the petition and offering to annex the proposed territory of the Village; and,

WHEREAS, the City and Town met and negotiated a memorandum of understanding ("MOU") under which the agreed to a mutual boundary between the City and Village, should it incorporate; and,

WHEREAS, based on the mutual boundary, the City finds that the provision of municipal services will be equitably spread between the City and proposed Village while still allowing for adequate long term growth of the City; and,

WHEREAS, the City and Town have agreed that the terms of the MOU should apply and bind the future Village after it incorporates and that to the fullest extent authorized by law, the Town and City jointly declared in the MOU their intent that the MOU, and any subsequent General and/or Cooperative Boundary Agreement pursuant to Wis. Stat. §§ 66.0301 and 66.0307 entered into by the Town and City shall be binding upon the newly incorporated Village, whether now or in the future

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF NEENAH, WISCONSIN this 23rd day of September, 2015, that the City of Neenah hereby rescinds Resolution No. 2015-27.

BE IT FURTHER RESOLVED that the City hereby withdraws its objection to the incorporation of the Village of Fox Crossing.

BE IT FURTHER RESOLVED that the MOU be filed with the Winnebago County Circuit Court as part of the Incorporation case,, 15-CV-452 as well as with the Wisconsin Department of Administration Incorporation Review Board, with the request that the terms of the MOU be incorporated into any order issued by the Board or Court.

Recommended by:

CITY OF NEENAH, WISCONSIN

Moved: _____

Dean R. Kaufert, Mayor

Passed: _____

Patricia A. Sturn, City Clerk