

**INTERGOVERNMENTAL COOPERATIVE PLAN BETWEEN
THE TOWN OF CLAYTON AND TOWN OF WINNECONNE**

The Town of Clayton, a Wisconsin town located in Winnebago County, Wisconsin (“Clayton”) and the Town of Winneconne, a Wisconsin town located in Winnebago County, Wisconsin (“Winneconne”) hereby enter into this Intergovernmental Cooperative Plan (the “Plan”) under the authority of Wis. Stat. § 66.0307. Clayton and Winneconne shall hereafter be referred to collectively as the “Parties”.

Recitals

- A. Clayton posted a Notice of Intent to Circulate a Petition for Incorporation on June 16, 2018, filed its incorporation petition in December 2018, and intends to incorporate as a village under Wis. Stat. § 66.0203 as soon as permitted to do so. Upon incorporation, the “Village of Larsen” will exist with the boundaries as identified in the attached Exhibit A, or such other boundaries as approved pursuant to Wis. Stat. § 66.0203.
- B. The Parties have met several times to discuss the potential incorporation of Clayton and any possible concerns that may stem from Clayton’s incorporation.
- C. As a result of those meetings, the Parties have determined that it is in their collective best interests to enter into this Plan.
- D. The Parties have further determined that the arrangements described in this Plan will serve the purposes described in Wis. Stat. § 66.0307(3)(b) by building and accomplishing coordinated, adjusted, and harmonious development of the territory covered by the Plan in a manner that best promotes the public health, safety, morals, order, convenience, prosperity, and general welfare, as well as achieving efficiency and economy in the performance of governmental functions.
- E. Wis. Stat. § 66.0307(2)(a) through (d) require that cooperative plans be organized around “options” for future boundary changes. These options specify how boundary changes will occur under the cooperative plan. This Plan is organized around the option described in Wis. Stat. § 66.0307(2)(d), which allows a cooperative plan to provide that specified boundary lines may not be changed during the planning period. Specifically, upon incorporation of the Village of Larsen, the Village will not annex or attach any property located in Winneconne, except as permitted herein, for the remainder of the term of this Plan.
- F. The Parties enter into this Plan for the purpose of establishing permanent boundaries, assuring orderly development and limiting extraterritorial zoning, land division, and official mapping controls within the boundaries of the Town of Winneconne once the Village of Larsen is incorporated.

NOW, THEREFORE, in consideration of the above recitals, which are contractual, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties agree as follows:

Section 1: Participating Municipalities.

The Parties, whose respective boundaries as of the effective date of this Plan are shown in the “Cooperative Plan Area” map attached as Exhibit B, enter into this Plan under the authority of Wis. Stat. § 66.0307.

Section 2: Contact Persons.

The following persons and their successors are authorized to speak for their respective municipalities regarding this Plan.

- **Town of Clayton**
Town Chairperson
Russ Geise
920-427-4126
rgeise@centurytel.net

- **Town of Winneconne**
Town Chairperson
Thomas Snider
920-810-0692

Section 3: Territory Subject to Plan.

This Plan will cover the “Cooperative Plan Area” as identified in Exhibit B.

Section 4: Purpose.

The Plan is intended to achieve the general purpose described in Wis. Stat. § 66.0307(3)(b), which is to guide and accomplish a coordinated, adjusted, and harmonious development of the territory covered by the Plan consistent with each existing participating municipality’s comprehensive plan. The Parties have further identified the following specific purposes of this Plan:

- a. Annexation waiver – Upon the incorporation of Clayton, the new “Village of Larsen” will not annex or attach any property of the Town of Winneconne during the term of the Plan without the prior written consent of the Town of Winneconne Board.

- b. Extraterritorial Jurisdiction - Upon the incorporation of Clayton, the new “Village of Larsen” agrees to waive certain portions of its extraterritorial jurisdiction within the Cooperative Plan Area. Extraterritorial jurisdiction is discussed in more detail in Section 6 below.

- c. Support for Incorporation – The Town of Winneconne agrees to support Clayton’s incorporation, and agrees to waive any right to commence or maintain any action to contest or challenge the validity or enforceability of the incorporation.

Section 5: Consistency with Comprehensive Plans.

Currently, Clayton maintains a Comprehensive Plan developed under Wis. Stat. § 66.1001 entitled “*Town of Clayton Comprehensive Plan 2016-2036.*” Currently, Winneconne maintains a Comprehensive Plan developed under Wis. Stat. § 66.1001 entitled “*Town of Winneconne Comprehensive Plan 2017-2034.*”

This Plan is consistent with the Town of Clayton’s Comprehensive Plan in several aspects:

- Town of Clayton’s Comprehensive Plan states that “[b]order agreements will be sought with neighboring villages and cities.”
- The Comprehensive Plan also says that opportunities for further intergovernmental agreements and cooperation includes “[b]oundary agreements with nearby incorporated communities to stabilize the present town boundaries from annexations.”
- Town of Clayton’s Comprehensive Plan encourages the Town to “always monitor the pros and cons of incorporation as a strategy to maintain the current boundaries of the town and to provide urban services, along with the strategies of boundary agreements or cooperative agreements to provide urban services. “

Additionally, this Plan is also consistent with the Town of Winneconne’s Comprehensive Plan in several aspects:

- A goal of the Town of Winneconne’s Comprehensive Plan is to “strive to communicate and work with surrounding political entities, seeking ways to conduct joint planning and service agreements.”
- The Town of Winneconne’s Comprehensive Plan also has an objective that it will discuss “boundary issues as needed, on matters of mutual interests regarding long-term borders and/or boundary agreements” with the Village of Winneconne and other municipalities.
- The Town of Winneconne’s Comprehensive Plan says the Town should “investigate other implementation methods or techniques that would preserve productive farmland. Such methods may include.... possible boundary and/or inter-governmental agreements with surrounding communities.”

This Plan is consistent and compatible with existing plans, ordinances, codes, and statutes. The Plan was developed in recognition of the multiple jurisdictions with an interest in the Cooperative Plan Area. This Plan will allow the Parties to move forward in planning for the delivery of services to their respective areas so that there will not be competition between the Parties, property owners, and developers.

Section 6: Extraterritorial Jurisdiction Authority.

The Parties acknowledge that Clayton will have the ability to exercise statutory extraterritorial zoning, planning and land division review authority once it incorporates into the Village of Larsen pursuant to Wis. Stats. § 62.23(2), § 62.23(7a), § 236.10(1)(b) and § 236.02(5). Once incorporated,

the Village of Larsen may exercise its extraterritorial jurisdiction throughout the Cooperative Plan Area subject to the following limitations.

- a. The Village of Larsen agrees to waive its extraterritorial platting and land division review authority throughout the Cooperative Plan Area.
- b. The Village of Larsen agrees to waive its extraterritorial zoning authority under Wis. Stat. § 62.23(7a) throughout the Cooperative Plan Area. However, the Village reserves the right to exercise its extraterritorial planning authority under Wis. Stat. § 62.23(2), but only insofar as it relates to public utilities, roadway issues, and other issues that are mutually agreed upon by the parties.
- c. The Parties shall record with the Winnebago County Register of Deeds resolutions providing for the waivers of the Village of Larsen's extraterritorial jurisdiction powers described in this Plan as soon as practicable upon the incorporation of the Village of Larsen.
- d. The Village of Larsen shall not rescind this waiver for the duration of the Plan term without first obtaining the written approval of the Parties.

Section 7: Annexations.

Once incorporated, the Village of Larsen will not annex or attach any territory from the Cooperative Plan Area without the prior written consent of the Town of Winneconne Town Board, which consent may be withheld or conditioned at the sole discretion of Winneconne. A written request for consent will be submitted to Winneconne upon receipt of an annexation petition. Winneconne will respond in writing to such a request within 45 days. Winneconne's failure to approve a request within such 45-day period shall constitute a denial.

Section 8: Compactness.

Because Section 7 establishes a general prohibition on annexations or attachments of territory from Winneconne, its boundaries will remain the same or substantially the same as they currently are. That is, this plan maintains the existing boundary between the party municipalities except for any annexations expressly authorized by the Town of Winchester under Section 7, above. Similarly, the general prohibition on annexations and attachments will limit additional growth of the Village of Larsen during the term of this Plan. The compactness of the Village of Larsen will also be examined as part of its incorporation process.

Section 9: Services.

Except as otherwise specifically provided herein, each of the parties will be responsible for providing municipal services within its boundaries. That is, this Plan contemplates no shared services other than those specifically described herein or otherwise approved by the parties through other intergovernmental agreements.

Section 10: Dispute Resolution.

All disputes over the interpretation, application or enforceability 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 consider 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 Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration, or his successor.
 - iii. The mediation session shall take place within 30 days of the appointment of the respective representative 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 the Parties 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 mediation proceedings.
 - vi. The expenses of a mediator, if any, shall be borne equally by the Parties.
- b. If unresolved after (a) above, either Party may seek a judicial determination of the matter by the filing of an action in the Circuit Court of Winnebago County, State of Wisconsin according statute.

Section 11: Consistency with State, Federal, and Local Laws.

This Plan is consistent with current state and federal law, shoreland zoning ordinances, municipal regulations, and administrative rules that apply to the Parties. This Plan will be interpreted consistent with applicable law, and it acknowledges that other sources of law may supersede the Plan. The intent of the Plan is to avoid conflict with any applicable law.

Section 12: Severability

The provisions of this Plan are severable. In the event that any provision is held to be invalid or unconstitutional, or if the application of any provision to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or application of the Plan, which can be given lawful effect without the invalid or unconstitutional provisions or application.

Section 13: Effective Date and Planning Period.

This Plan shall take effect upon its approval by the Department of Administration and the incorporation of the Village of Larsen. The planning period shall be 20 years for all provisions, unless the Parties, or their successors in interest, agree otherwise by written instrument consistent with applicable law at the time of its execution. The 20-year planning period is necessary in order to implement the prohibition on annexations and the waiver of Larsen's extraterritorial jurisdiction for the period agreed upon by the parties. The parties expressly agree that the provisions of this Plan related to the parties' post-incorporation relationship apply both to the currently-pending incorporation petition as well as to any subsequent incorporation that occurs during the term of this Plan.

Section 14: Miscellaneous.

- a. No Third-Party Beneficiary. This Plan is intended to be solely between the Parties. There are no intended third-party beneficiaries of this Plan. Nothing in this Plan shall be interpreted as giving to any person or entity not a party to this Plan any legal or equitable right whatsoever.
- b. Administration. This Plan shall be administered on behalf of each party by that party's Town Chairperson or designee.
- c. Further Acts. The Parties agree to take any further actions and execute such further documents as are necessary to accomplish the actions contemplated by this Plan.
- d. Third-Party Actions. In the event of a court action by a third party challenging the validity or enforceability of this Plan, the Parties shall cooperate to vigorously defend this Plan. If only one party is named in the relevant action, the other party will seek to intervene and the named party will support such intervention. No settlement of any action is permitted without the approval of the governing bodies of both Parties.
- e. References. Any reference to a particular agency, organization, municipality or official shall be interpreted as applying to any successor agency, organization, municipality or

official to which the contemplated functions are transferred. Except as expressly stated otherwise, any reference in this Plan to a particular ordinance or statute shall be interpreted as applying to such statute or ordinance as recreated or amended from time to time.

- f. Authority. Each party represents that it has the authority to enter into this Plan and that all necessary procedures have been followed to authorize this Plan. Each person signing this Plan represents and warrants that he or she is duly authorized to do so.
- g. Amendment. The procedure for amending this Plan shall be that as set forth in Wis. Stat. § 66.0307(8).
- h. Continued Enforceability. The enforceability of this Plan is not affected by statutory amendments, changes in the firms of governments of the Parties, or changes in the elected officials of the Parties. This Plan shall be construed to be binding upon the Parties' respective successors, agents and employees, including any successor Village incorporated from Town of Clayton territory.
- i. Performance Standard. This Plan requires the Parties to act or to refrain from acting on a number of matters. The Parties acknowledge that this Plan imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a party, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.
- j. Counterparts. This Plan may be signed in one or more counterparts, each of which, taken together, shall be deemed the same document. Furthermore, facsimile and digital pdf signatures constitute the same as an original signature.

IN WITNESS THEREOF, the Parties certify that this Plan has been duly approved by their respective governing bodies in accordance with all applicable state and local laws, regulations and ordinances, and that each party has caused their duly authorized officers to execute this Plan.

Dated this 17TH day of SEPTEMBER, 2020.

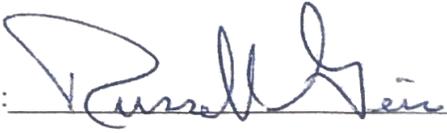
TOWN OF WINNECONNE

By: Thomas R. Judy
Town Chairperson

Attest: Yvonne Zobel
Town Clerk

Dated this 19th day of AUGUST, 2020.

TOWN OF CLAYTON

By: 

Town Chairperson

Attest: 
Town Clerk

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Exhibit 3

