INTERGOVERNMENTAL COOPERATIVE PLAN BETWEEN THE TOWN OF CLAYTON AND THE TOWN OF WINCHESTER

The Town of Clayton, a Wisconsin town located in Winnebago County, Wisconsin ("Clayton") and the Town of Winchester, a Wisconsin town located in Winnebago County, Wisconsin ("Winchester") hereby enter into this Intergovernmental Cooperative Plan (the "Plan") under the authority of Wis. Stat. § 66.0307 and Wis. Stat. § 66.0301. Clayton and Winchester 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", or other such name as the village arising from the aforementioned petition adopts, 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 Winchester, 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 Winchester 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 Winchester**
  Town Chairperson
  Matthew J. Olson
  920-836-1769

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 Winchester during the term of the Plan without the prior written consent of the Town of Winchester 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 Winchester 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.

d. Joint Sanitary District – The parties intend for the existing Larsen-Winchester Sanitary District – whose current boundaries are shown in the attached Exhibit C – to be owned and operated by the Village of Larsen immediately upon the effective date of this Plan.

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, Winchester maintains a Comprehensive Plan developed under Wis. Stat. § 66.1001 that was originally adopted in 2006 and amended in 2016.

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 Winchester's Comprehensive Plan in several aspects:

- The Town of Winchester's Comprehensive Plan has a stated purpose for intergovernmental cooperation that says that "[t]he purpose of the intergovernmental cooperation chapter of the comprehensive plan is to describe current intergovernmental agreements, explore opportunities for future collaboration, and identify potential areas of conflict between the Town and its governmental neighbors."

- The Town of Winchester's Comprehensive Plan has an explicitly stated intergovernmental vision that "The Town of Winchester will continue to work with it municipal neighbors, Winnebago County, and the State of Wisconsin to pursue opportunities for cooperation and collaboration that lead to improved services and reduced costs for its residents, land owners, and business owners."

- The Town of Winchester's Comprehensive Plan states that a benefit of intergovernmental cooperation is "[i]ntergovernmental cooperation between and among cities, villages, towns, and counties often produces less expensive and more efficient governmental services."

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 Town of Winchester.

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 Winchester Town Board, which consent may be withheld or conditioned at the sole discretion of Winchester. A written request for consent will be submitted to Winchester upon receipt of an annexation petition. Winchester will respond in writing to such a request within 45 days. Winchester's failure to approve a request within such 45-day period shall constitute a denial.

Section 8: Larsen-Winchester Sanitary District.

The Parties agree that immediately upon the effective date of this Plan, all assets and liabilities of the Larsen-Winchester Sanitary District will be transferred to and assumed by Clayton. The parties further agree that at such time, the responsibility for continuing the operation of the District shall be vested in Clayton. The parties agree to take such further action and execute such further documents as necessary to accomplish the transfer. Clayton will defend, indemnify, and hold harmless the Town of Winchester against all claims, losses, and damages arising from the operation and management of the Larsen-Winchester Sanitary District following the transfer.

Clayton agrees that upon the transfer of the Larsen-Winchester Sanitary District, it will continue providing services to properties served by the District within the Town of Winchester as of the

date of transfer and will also extend services to any property located in the Town of Winchester that is also located within the Larsen-Winchester Sewer Service Area, or its successor, as it is amended from time-to-time, without conditioning services on annexation; provided, however, that the Clayton has adequate capacity to provide such services or other such conditions as are reasonable and customary for the provision of such services.

It may be necessary from time-to-time for Clayton to invoke special assessment proceedings and to levy special assessments upon property located within the Town of Winchester for the design, installation, repair, replacement, or extension of infrastructure located within the Town of Winchester. The Town of Winchester agrees to take all action necessary for the Clayton to levy and carry out those special assessments within the Town of Winchester.

The parties agree that upon transfer of the Larsen-Winchester Sanitary District, Town of Winchester users who receive services from Clayton will be subject to the same connection charges, service charges, volume charges, and other rates and charges as those in effect within the Clayton. The parties acknowledge that the Clayton's rates and charges may change from time-to-time and that any changes will also apply to Town of Winchester users who receive services from Clayton. Clayton will not discriminate between Town of Winchester users and Town of Clayton users in the creation and implementation of its rates, charges, and special assessments.

The parties further agree that upon the effective date of this Plan, the Larsen-Winchester Sanitary District Commission will become a five-member commission with members to be determined by Clayton. The Parties agree that by adopting this Agreement they are resolving to implement a five-member commission. The parties agree to take such further action and execute such further documents as necessary to implement a five-member commission. The Town of Winchester agrees that they will not appoint any person to the Commission who has not been approved or nominated by the Town of Clayton.

Section 9: Compactness.

Because Section 7 establishes a general prohibition on annexations or attachments of territory from Winchester, 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 into the Town of Winchester during the term of this Plan. The compactness of the Village of Larsen will also be examined as part of its incorporation process.

Section 10: 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 11: 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 12: 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 13: 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 14: Effective Date and Planning Period.

This Plan shall take effect upon its approval by the Wisconsin Department of Administration, regardless of whether the Town of Clayton has incorporated at the time. The planning period shall be 50 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 50-year planning period is necessary in order to implement the prohibition on annexations, the waiver of Larsen's extraterritorial jurisdiction for the period agreed upon by the parties, and is also consideration for the transfer of the Larsen-Winchester Sanitary District in accordance with Section 8, above. Upon expiration of the 50-year period, this Plan shall be automatically renewed for two additional 25-year periods unless either party gives prior written notice to the other at least one year prior, but not more than two years prior, to the expiration of the current term that it intends not to renew this Plan. 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 15: 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 forms 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. This Plan shall be binding on both the Town of Clayton as well as 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 August, 2020.

TOWN OF WINCHESTER

By: _____
Matthew J. Olson, Town Chairperson

Attest: _____
Holly Stevens, Town Clerk

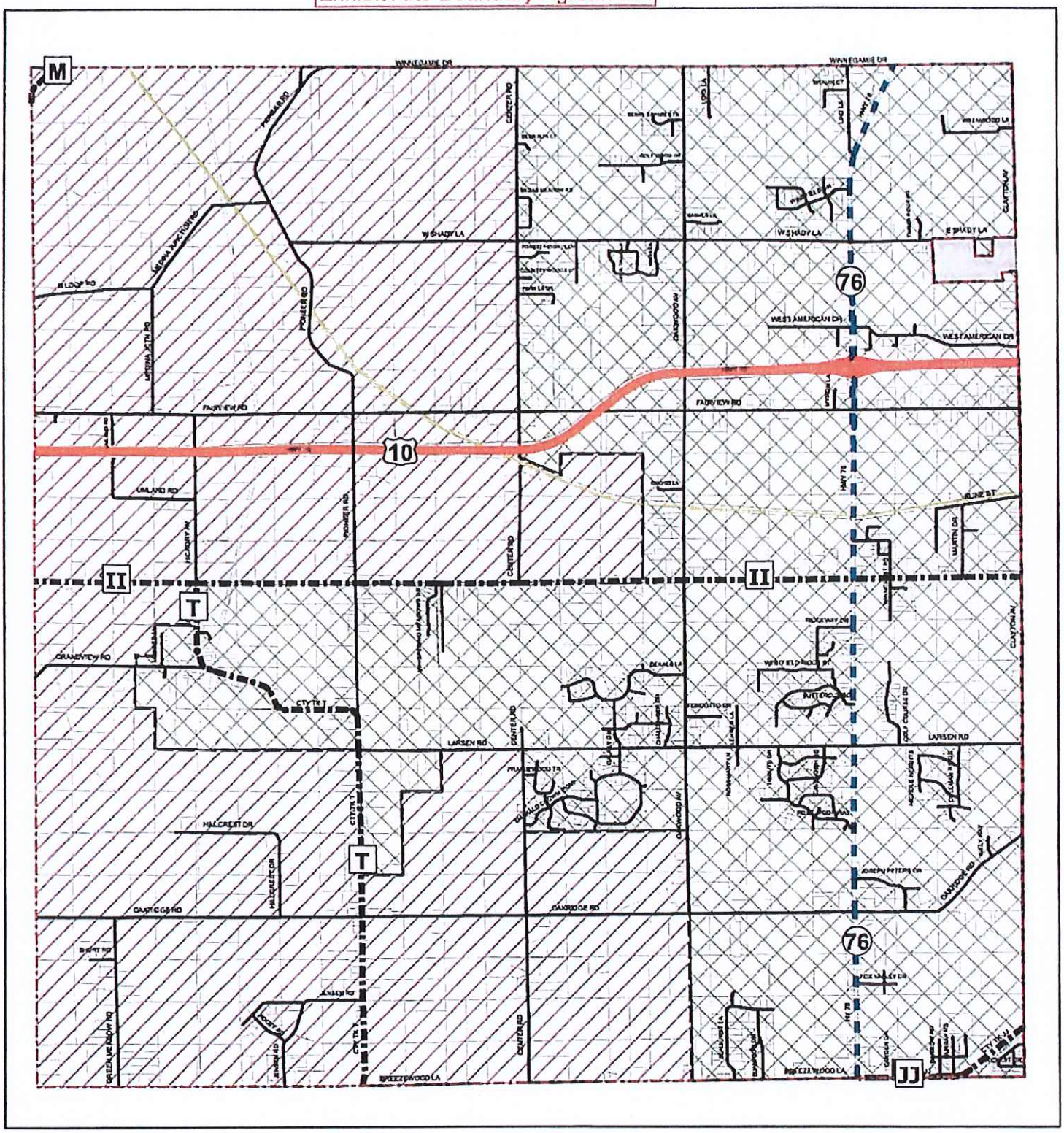
Dated this 19th day of August, 2020.

TOWN OF CLAYTON

By: _____
Russ Geise, Town Chairperson

Attest: _____
Holly Stevens, Town Clerk

Exhibit A to Boundary Agreement



Map Features

- Parcel Line
- Railroad Centerline
- Local Road
- County Road
- State Highway

Municipal Areas

- Town of Clayton
- Village of Clayton
- Village of Fox Crossing

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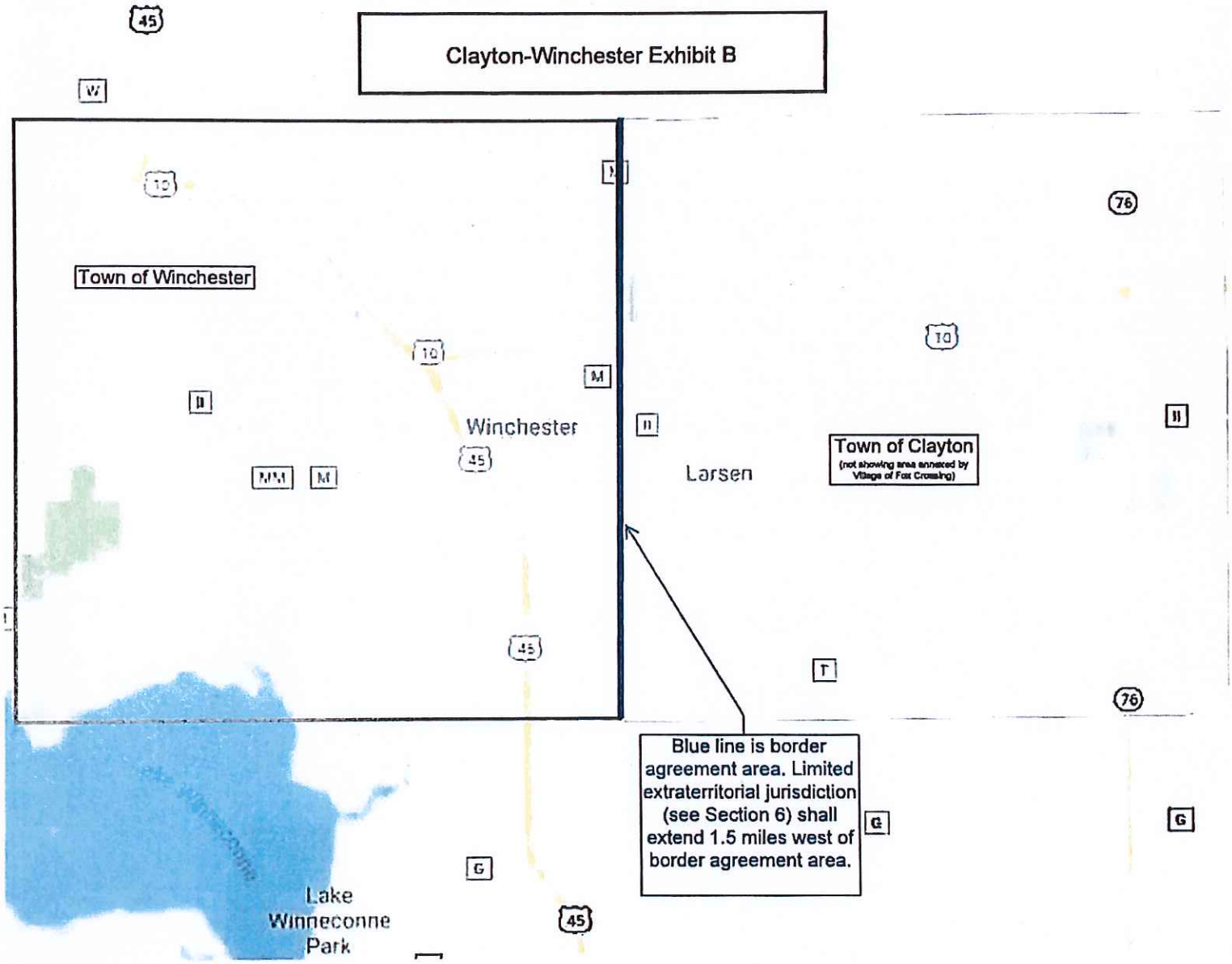
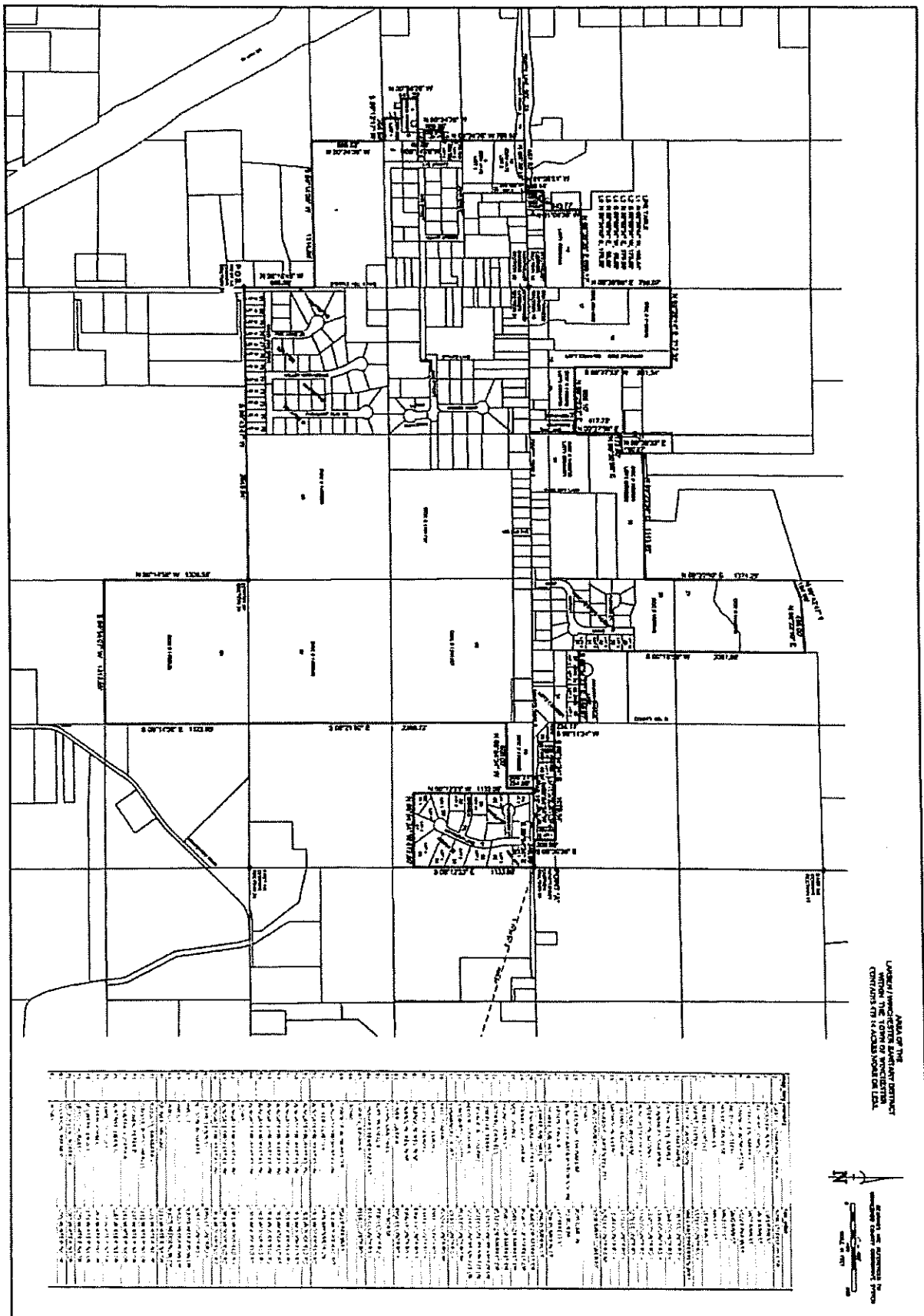
Clayton-Winchester Exhibit B



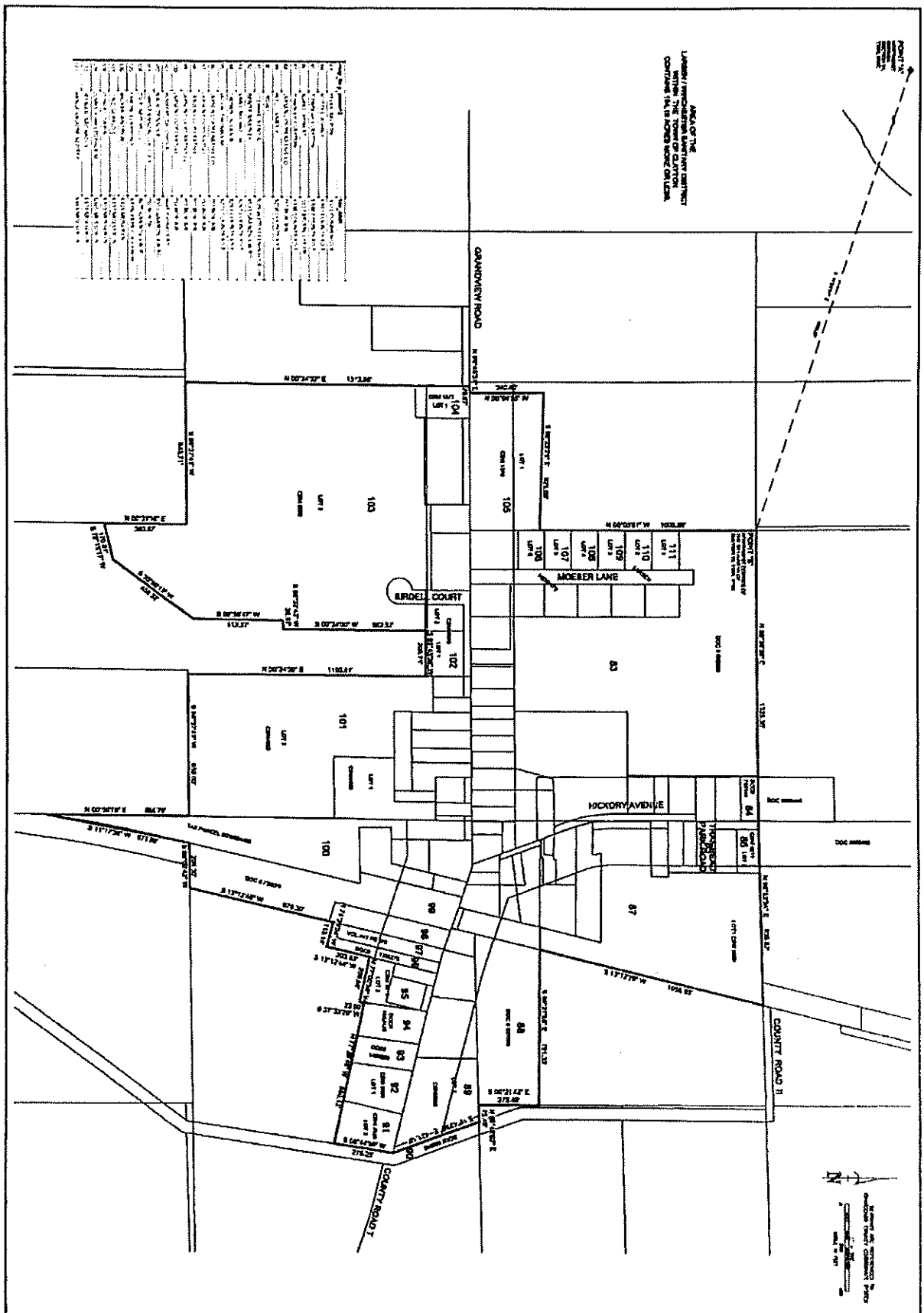


CLAYTON-WINCHESTER EXHIBIT C

LARSEN-WINCHESTER SANITARY DISTRICT
WINCHESTER BOUNDARY

WINNEBAGO COUNTY, WISCONSIN

Martenson & Eisele, Inc.



LARSEN-WINCHESTER SANITARY DISTRICT

CLAYTON BOUNDARY

WINNEBAGO COUNTY, WISCONSIN

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