

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE TOWN OF MILTON AND  
THE CITY OF MILTON**

THIS AGREEMENT is made by and between the Town of Milton (“the Town”), a Wisconsin Town located in Rock County, Wisconsin, and the City of Milton (“the City”), a Wisconsin City located in Rock County, Wisconsin.

RECITALS

A. The Town and the City have had discussions relative to the future growth of the City and the future annexation by the City of portions of the Town.

B. It is the desire of the parties that such future annexation occur in an orderly and cooperative manner, recognizing the governmental prerogatives of both parties.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Development Boundary and Review Limit.

Exhibit A to this Agreement consists of a map entitled “City of Milton Comprehensive Plan – Land Use Plan Map – Peripheral Area,” which includes an approximation of the City’s extraterritorial land division review authority. Said map also describes a boundary which the Town and the City have designated as the “Development Boundary and Review Limit,” (hereinafter the “Boundary”) for purposes of this Agreement. The parties recognize and agree that the areas contained within the Boundary are not necessarily areas in which the City has immediate development plans, but that the City does have an interest in limiting rural developments within said areas which might constitute barriers to future development during the term of this Agreement.

2. Agreements as to Actions within the Development Boundary and Review Limit.

For all areas contained within the Boundary, the Town and City agree as follows:

- (a) The City shall continue to exercise its extraterritorial land division review authority within such areas. The City shall allow development within such areas where the density of said development complies with the City’s Code of Ordinances and Comprehensive Land Use Plan.
- (b) The Town shall not oppose annexation to the City of property located in such areas.
- (c) The Town shall not approve any subdivision plats with densities greater than those permitted by the City’s Code of Ordinances within areas inside the Boundary, and shall not rezone any land for commercial or industrial uses within such areas unless permitted as part of a separate intergovernmental agreement or a cooperative boundary agreement between the Town and the City.

3. Actions Relating to Properties Outside the Boundary.

For areas within the Town and outside the Boundary, the Town and City agree as follows:

- (a) Properties within such areas may be annexed to the City, but only upon request of the property owner and approval by the City, in which event the Town shall not oppose any such annexation.
- (b) Any annexation under (a) above shall be deemed to automatically amend the Boundary to contain the property annexed.
- (c) The City waives its extraterritorial land division review authority with respect to such areas, provided that the residential density of any land division is within those allowable under the City's Code of Ordinances.
- (d) In the event any land owner seeks approval of an on-site sanitary permit for land within such areas, and in the further event that the County of Rock inquires of the City as to whether public sewer service is then available to such land, the City shall respond by stating that public sewer service is not currently available to the subject parcel.

4. Additional Planning, Cooperation, and Consultation Provisions.

The parties, in order to promote cooperation in future development activities, further agree as follows:

- (a) The Town shall provide written notification to the City of any proposed rezoning or land division request submitted for consideration by the Town's Planning & Zoning Committee for properties within the Boundary or immediately adjacent to the Boundary. Such notice shall be mailed at least 10 days prior to any meeting of said Planning & Zoning Committee at which the proposed rezoning or land division is to be discussed or considered.
- (b) The City shall provide advance written notification to the Town of any application for annexation or rezoning of properties within the Boundary and outside the City. Said notice shall be mailed at least 10 days prior to any meeting of the City's Plan Commission at which any such annexation or rezoning is to be discussed or considered.
- (c) The Town shall support the City's Comprehensive Transportation Plan as it relates to future changes in the alignment of the intersection of Sunset Drive, North John Paul Road and Serns Road, and the Town further agrees not to oppose any annexation petitions necessary to achieve any such road alignment which is consistent with the City's Comprehensive Transportation Plan. The Town's obligation to agree as set forth in this subparagraph is contingent upon the Town being relieved of any financial burden resulting from any new road alignment. Any and all expenses resulting from any such road alignment shall be the responsibility of the City.

- (d) In the event the City annexes any property located adjacent to County Highway M or State Highway 59, and in the further event that the portion of either of such highways adjacent to any such property is abandoned to the Town, the City shall accept the transfer from the Town of title to the right-of-way thus abandoned, and shall thereupon be responsible for the maintenance of any roadway maintained within such right-of-way.

5. Term.

The term of this Agreement shall commence upon approval by the governing bodies of both parties and the execution of this Agreement by the authorized representatives of both parties, and shall extend for 20 years from commencement of the term, unless extended or modified by mutual agreement of the parties. It is the intent and expectation of the parties that this Agreement does not come within the definition of a "written agreement determining all or a portion of the common boundary line between" municipalities as contemplated in Wis. Stat. § 66.0301(6) as created by 2007 Wisconsin Act 43. Accordingly, it is the mutual position of the parties that the term of this Agreement is not limited to 10 years under Wis. Stat. § 66.0301(6)(b) as created pursuant to said Act.

In the event that, during the stated term of this Agreement, a Court shall declare that this Agreement is subject to the 10 year term limitation set forth above under Wis. Stat. § 66.0301(6)(b), then the parties agree that, at the end of each year of the term of this Agreement, this Agreement shall be deemed to have been extended for an additional 10 years beyond the end of any such year. Further, effective at the end of the first year of the term of this Agreement, and at the end of each successive year, unless either party gives notice to the other party before the end of each such year of its desire not to extend the term of this Agreement for another 10 years, then the term of this Agreement shall be deemed to have been extended for another 10 years, beginning on the first day of the year following the year during which notice was not given, provided that the term of this Agreement shall not be deemed to extend beyond 20 years from the initial effective date of this Agreement except as otherwise agreed by the parties in writing.

6. Challenge to Agreement.

Neither party shall initiate, voluntarily join as a plaintiff, or assist in any way in the bringing or prosecution of an action challenging the validity or enforceability of this Agreement or any of its provisions, including an action seeking a declaration that this Agreement is subject to the 10 year term limitation described in paragraph 5 above, and, if either party initiates, voluntarily joins as a plaintiff, or assists in any such action, the party who has not thus violated the terms of this Agreement shall be absolved of any and all duties under this Agreement, but the party who has thus violated the terms of this Agreement shall not be absolved of any such duties.

7. Binding Effect.

This Agreement shall bind, and accrue to the benefit of, all successors of the parties, whether one or more. For example, if a part of the Town should be incorporated, both the incorporated and unincorporated entities shall be considered to be parties bound by the terms of this Agreement. Except as to the rights of owners of land in the Town and except as otherwise expressly set forth herein, this Agreement is for the exclusive benefit of the parties 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.

8. Recording.

A notice of this Agreement may be recorded with the Rock County Register of Deeds by either party.

9. Dispute Resolution.

- (a) The parties acknowledge that this Agreement was created to prevent or minimize resort to litigation over the issues dealt with herein. In that spirit, the parties to agree to make good faith efforts to apply and cooperate with alternative dispute resolution methods, voluntary or Court-encouraged, when disagreements arise, and to encourage property owners and electors who may assert standing to litigate with respect to the Agreement or its implementation to do so as well.
- (b) Before engaging in any litigation in relation to this Agreement, the parties shall engage in a mediation process as follows:
  - (1) Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
  - (2) Either representative thus designated may ask for the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within five days of the request, a qualified mediator will be appointed by the chairperson of the Alternative Dispute Resolution Section of the State Bar of Wisconsin or, if the chairperson fails to appoint a mediator, by the American Arbitration Association.
  - (3) The mediation session shall take place within 30 days of the appointment of the respective representatives designed by the parties, or the designation of a mediator, whichever occurs last.
  - (4) The mediator thus named shall not have the authority to impose a settlement upon the parties, but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. Such mediation sessions shall be private and limited to the designated representatives of the parties and the mediator except as may be necessary to comply with the Wisconsin Open Meetings law. The expenses of the mediator, if any, shall be borne equally by the parties.

10. Remedies

- (a) Either party may seek specific performance of this Agreement in addition to any other remedies available at law or in equity.
- (b) The breaching party shall pay the other party's attorneys fees and expenses reasonably incurred in seeking remedies for the breach.

- (c) If the breach involves development or annexation or a challenge to an annexation, all taxes, assessments, and other revenues realized by the breaching party from the subject property during the remaining term of this Agreement shall be paid to the other party.

11. Entire Agreement.

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior discussions, drafts, agreements, and writings are specifically superseded by this Agreement. This Agreement represents the mutual intent of the parties, and the fact that one or more of its provisions was drafted by one party or the other shall not be construed to the benefit or detriment of either party.

12. Authority.

Each party represents that it has the authority to enter into this Agreement and that all necessary procedures have been followed to authorize this Agreement. Copies of the resolutions of the City's Common Council and the Town's Board authorizing this Agreement are attached to this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to do so.

Dated: October 6<sup>th</sup>, 2009.

CITY OF MILTON

By: Thomas H. Chesmore  
Thomas H. Chesmore, Mayor

By: Todd Schmidt  
Todd Schmidt, City Administrator

By: Nancy Zastrow  
Nancy Zastrow, City Clerk / Treasurer

Dated: 10-12, 2009.

TOWN OF MILTON

By: Bryan Meyer  
Bryan Meyer, Town Chair

By: Sandra J. Kunkel  
Sandra J. Kunkel, Town Clerk