

**INTERMUNICIPAL AGREEMENT BETWEEN  
THE TOWN OF CLAYTON AND THE VILLAGE OF FOX CROSSING**

This Agreement entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the Town of Clayton, hereinafter referred to as "Clayton", a municipal corporation organized and existing under the laws of the State of Wisconsin, and the Village of Fox Crossing, hereinafter referred to as the "Village", a municipal corporation organized and existing under the laws of the State of Wisconsin.

**WHEREAS**, Clayton has filed an action with the Circuit Court for Winnebago County (Case No. 17-CV-1027 ) challenging the Village's annexation of lands commonly known as the "Prince Annexation" pursuant to Wis. Stat. § 66.0203(3)(a); and

**WHEREAS**, Clayton has filed a petition with the Circuit Court for Winnebago County (Case No. 18 CV 990) for incorporation of a portion of the Town as a Village pursuant to Wis. Stat. § 66.0203(3)(a); and

**WHEREAS**, the Village has intervened in Case Number 18 CV 990 regarding the validity of Clayton's incorporation petition; and

**WHEREAS**, Wis. Stat. § 66.0225 (2) allows parties to any action, proceeding or appeal in court for the purpose of testing the validity or invalidity of any annexation, incorporation, consolidation or detachment, to enter into a written stipulation, compromising and settling any such litigation and determining the common boundary line between the municipalities; and

**WHEREAS**, Wis. Stat. § 66.0225 (3) allows parties to any action, proceeding or appeal in court for the purpose of testing the validity or invalidity of any annexation, incorporation, consolidation or detachment to enter into an agreement under s. 66.0301 (6) or s. 66.0307 as part of a stipulation to settle the boundary action; and

**WHEREAS**, the Parties desire to work together to arrive at a mutually agreeable resolution to outstanding issues related to the annexation and incorporation disputes and thereby avoid the delay, expense, and uncertainty resulting from protracted litigation; and

**WHEREAS**, the Parties have entered into negotiations related to provision of utility services by the Village to Clayton, and the Parties have agreed to terms for provision of sanitary sewer and municipal water service under terms set forth in the "Agreement for the Conveyance of Wastewater between the Town of Clayton, Town of Clayton Sanitary District No. 1 and The Village of Fox Crossing" attached hereto as Exhibit A and the "Agreement for the Provision of

Water Service between the Town of Clayton and the Village of Fox Crossing” attached hereto as Exhibit B.

**NOW, THEREFORE**, in consideration of the mutual promises herein stated, relief from the uncertainty and expense of litigation, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. SETTLEMENT OF LITIGATION.**

Pursuant to Wis. Stat. § 66.0225, the parties shall execute and submit a stipulated settlement to the Court for resolution of the above-referenced lawsuits (with the exception of the contested incorporation matter – the parties may continue to maintain their current respective positions or any other position in said matter) by the entry of a judgment incorporating by reference the terms of this Agreement.

**II. CONSIDERATION.**

A. As and for consideration for utility service and boundary settlement, Clayton shall pay the Village the sum of Eleven Million Five Hundred Thousand Dollars (\$11,500,000) (the “Comprehensive Imbursement”).

B. The Comprehensive Imbursement shall be allocated as follows:

- |    |                                      |              |
|----|--------------------------------------|--------------|
| 1. | Payment for Sanitary Sewer Capacity: | \$5,750,000. |
| 2. | Payment for Water Utility Capacity:  | \$5,750,000. |

C. The Comprehensive Imbursement shall be paid in two (2) installments. The first installment in the sum of Six Million Five Hundred Thousand (\$6,500,000) Dollars shall be paid within ninety-five (95) days of the date of execution of this Agreement. The second installment in the sum of Five Million (\$5,000,000) Dollars plus interest accruing at a rate of three (3%) percent per year shall be paid within two (2) years of the date of execution of this Agreement. There shall be no prepayment penalty.

D. As and for consideration for the Town’s agreement to dismiss an action Winnebago County Case No. 17-CV-1027 challenging the Village’s annexation of lands, the Village shall purchase the Town owned lands located within the annexed territory free and clear of encumbrances. The purchase price shall be the sum paid by the Town to acquire the subject

land, in the sum of Seven Hundred Sixteen Thousand (\$716,000.00) Dollars<sup>1</sup>, which shall be paid within ninety-five (95) days of the date of execution of this Agreement.

### **III. ANNEXATIONS AND ATTACHMENTS.**

- A. Except for the lands referenced in subsection III B below, the Village shall not accept or grant any annexation of lands within Clayton depicted within a red border on Exhibit C (the “Boundary Adjustment Area”) for a period of ten (10) years following the date of the Court’s approval of the Stipulation provided for in Section I of this Agreement, without the written approval of Clayton.
- B. The Village may accept annexation petition(s) for annexation of lands within Clayton depicted within an orange border on Exhibit C (the “Annexable Area”) at any time. Clayton shall not object to the annexation of these lands at any time in any manner. If Clayton incorporates, Clayton shall agree to detach the land depicted within an orange border on Exhibit C upon request by said land owner pursuant to Wis. Stat. §66.0227. Neither Clayton nor the Town of Clayton Sanitary District No. 1 shall provide sewer or water service to the land depicted within an orange border in Exhibit C without written approval of the Village; the Town of Clayton Sanitary District No. 1 shall be a signatory to this agreement as evidence of its consent and agreement to this provision.

### **IV. EXTRATERRITORIAL JURISDICTION**

There shall be a ten (10) year moratorium on the Village’s exercise of extraterritorial zoning authority and extraterritorial plat approval authority within the Town of Clayton. During this moratorium period, all rezonings and land divisions within the Town shall be deemed approved by the Village. This moratorium shall not be considered a waiver under Wis. stat. §236.10 (5). Rather, this moratorium shall prohibit the Village from denying extraterritorial subdivision or rezoning applications within the Town under the remaining sections of Wis. stat. §236.10 for the designated term of this Agreement. Notwithstanding the moratorium, all rezoning and land division applications shall be submitted to the Village for comment at least twenty (20) days before the Town takes formal action on any rezoning or land division application.

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<sup>1</sup> Purchase price based upon Town’s cost of acquisition - \$25,000/acre x 28.64 acres.

**V. ENFORCEMENT OF AGREEMENT.**

- A. This Agreement shall be for ten (10) years and shall be enforceable through the Circuit Court for Winnebago County. However, nothing herein shall limit the parties, through mutual agreement to consent to any issue being resolved by written agreement of the affected parties or through mediation or arbitration subject to the final approval of the circuit court.
- B. This Agreement shall apply equally to the Town of Clayton and to any successor incorporated municipality created to govern the territory of Clayton. References to Clayton in this Agreement shall be deemed to include its successor entity.

**VI. PAYMENT OF ATTORNEY FEES.**

Clayton agrees to pay the Village's actual attorney's fees paid by the Village to the Godfrey & Kahn Law Firm and the Herrling Clark Law Firm expended for the purpose of objecting to and settlement of the practical implementation of that certain "Stipulation and Final Order Between the District and the Department in Case No. 17-CV-0381 Consent Order" entered into between the Town of Clayton Sanitary District No. 1 and the Department of Natural Resources within the context of a Decision by the Department of Natural Resources affecting what is referred to internally as "Project No. S-2018-0760" in the sum of \$215,858.26. Clayton will also pay any additional attorney's fees of the Village actually paid by the Village to the Godfrey & Kahn Law Firm and the Herrling Clark Law Firm related to the subject matter hereof provided bills for said attorney's fees are received by the Village on or before March 1, 2020 and provided the grand total of all reimbursable attorney's fees may not exceed \$220,000.00. Payment shall be made within 95 days from the date of this Agreement.

**VII. SEVERABLE PROVISIONS.**

If any clause, provision, or section of this Agreement is declared to be invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions of this Agreement provided all essential terms and purposes of the agreement remain substantially valid.

**VIII. ANCILIARY AGREEMENTS.**

The validity of this agreement is contingent upon the parties' contemporaneous signing, delivery of, and continuing validity of various ancillary agreements; namely the "Agreement for the Conveyance of Wastewater between the Town of Clayton, Town of Clayton Sanitary District No. 1 and The Village of Fox Crossing" attached hereto as Exhibit A and the "Agreement for the Provision of Water Service between the Town of Clayton and the Village of Fox Crossing" attached hereto as Exhibit B and that certain "Fox West Sewerage Commission Joinder Agreement" entered into by and between the Town of Clayton, Town of Clayton Sanitary District No. 1 and third-party Fox West Sewerage Commission on even date herewith.

DATED THIS 27 DAY OF January, 2020

**VILLAGE OF FOX CROSSING**

By: Dale A. Youngquist  
Dale A. Youngquist, President

Attest:

By: Karen Backman  
Karen Backman, Village Clerk

DATED THIS 15<sup>TH</sup> DAY OF JANUARY, 2020

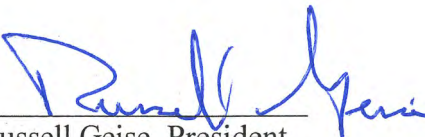
**TOWN OF CLAYTON**

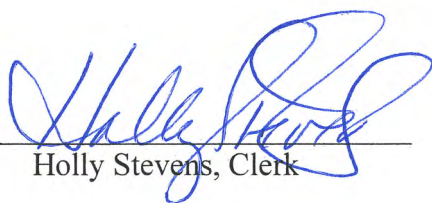
By: Russell Geise  
Russell Geise, Chair

Attest: Holly Stevens  
Holly Stevens, Town Clerk

DATED THIS 15<sup>TH</sup> DAY OF JANUARY, 2020

TOWN OF CLAYTON  
SANITARY DISTRICT  
NO. 1

By:   
Russell Geise, President

Attest:   
Holly Stevens, Clerk

**EXHIBIT A**

**Agreement for the Conveyance of Wastewater between the Town of Clayton, Town of Clayton Sanitary District No. 1 and The Village of Fox Crossing**

**EXHIBIT B**

**Agreement for the Provision of Water Service between the Town of Clayton and the  
Village of Fox Crossing**



# EXHIBIT C

Boundary Adjustment Area (in red) and Annexable Area (in orange)

