

**COOPERATIVE PLAN
SECTION 66.0307**

**CITY OF FOND DU LAC AND
THE TOWNS OF BYRON, EMPIRE, FOND DU LAC, FRIENDSHIP, TAYCHEEDAH**

SEPTEMBER _____, 2016

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SECTION 1 - INTRODUCTION

Cooperative Plan The City of Fond du Lac ("City"), and the Towns of Byron ("Byron"), Empire ("Empire"), Fond du Lac ("TFDL"), Friendship ("Friendship") Empire ("Empire"), and Taycheedah ("Taycheedah") (referred to collectively as "the Towns") enter into this Cooperative Plan, hereinafter "Cooperative Plan" or "Plan", subject to the approval of the Wisconsin Department of Administration, under authority of Wis. Stats. Section 66.0307

WHEREAS, Wis. Stats. §66.0307 authorizes municipalities to determine the boundary lines between themselves upon approval of a Cooperative Plan by the Wisconsin Department of Administration; and

WHEREAS, the purpose of the Cooperative Plan is to set forth the procedures, terms and conditions by which the parties wish to achieve the following mutual goals pursuant to Wis. Stats. §66.0301 and §66.0307:

Orderly, planned growth for the City and the Towns and the provision of appropriate, cost-effective municipal services for such development;

Orderly boundaries between the City and the Towns, promoting cost-effective provision of services and more efficient operation of all units of government;

Continual City growth to provide the City with an ever-renewing and expanding tax base and a pool of citizen leadership;

Continual development for the Towns to replace tax base lost due to City growth, so that the Towns may also have an ever-renewing and expanding tax base and a pool of citizen leadership;

Promotion of diversity and balanced development in the City and the Towns;

Prevention of unplanned development leading to urban sprawl, and protection of the area's natural resources, including its lakes, streams, rivers, wetlands, and woodlands; and

Promotion of quality development in the City and the Towns; and

WHEREAS, this Cooperative Plan was developed following review of the City and the Towns adopted comprehensive plans that meet the content and requirements outlined under Wis. Stats. §66.1001

WHEREAS, the purpose of the Cooperative Plan, as described in Wis. Stats. §66.0307(3)(b), is to guide and accomplish a coordinated, adjusted and harmonious development of the territory covered by the Cooperative Plan that will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity and the general welfare, as well as the efficiency and economy in the process of development; and

WHEREAS, the Cooperative Plan is organized around the definition of options for future boundary changes that will occur during the planning period defined in the Cooperative Plan; and

WHEREAS, it is the intent of the Cooperative Plan to establish the boundaries between the Towns and the City in a configuration as the boundaries exist at the time of the effective date of this Cooperative Plan, with the exception of the attachments described in this Cooperative Plan. The parties both further acknowledge that this Cooperative Plan will be binding and enforceable contracts.

SECTION 2 – PARTICIPATING MUNICIPALITIES

This Cooperative Plan applies to the City of Fond du Lac, Town of Byron, Town of Empire, Town of Fond du Lac, Town of Friendship and Town of Taycheedah, Fond du Lac County, Wisconsin.

SECTION 3 – MUNICIPAL CONTACTS

Any notice, or other communication, required to be given to any Party shall be given to the following persons to and on behalf of such Party:

Town Clerk
Town of Byron
Byron Town Hall
N3097 State Road 175
Byron, WI

Town Clerk
Town of Empire
Empire Town Hall
W3675 Fourth Street Road
Fond du Lac, WI

Town Clerk
Town of Fond du Lac
Fond du Lac Town Hall
W5990 Pioneer Road
Fond du Lac, WI

Town Clerk
Town of Friendship
Friendship Town Hall
W6931 County Road N
Van Dyne, WI

Town Clerk

Town of Taycheedah
Taycheedah Town Hall
W4295 Kiekhaefer Parkway
Fond du Lac, WI

City Clerk
City of Fond du Lac
City/County Building
160 S. Macy Street
Fond du Lac, WI 54936-0150

The persons holding positions set forth above may change from time to time. Upon a change of position holder, this section shall be deemed amended to substitute the new position holder as the party to whose attention correspondence should be sent.

All notices required under this Cooperative Plan must be served, either personally or by certified mail, upon the parties' respective municipal clerks. Unless otherwise expressly provided in this Cooperative Plan, failure of any party to object to the activity described in the notice within 45 days of receipt of the notice will be deemed an approval by the relevant party. Any action taken by a party in violation of the relevant notice requirement is voidable unless, under the facts of the particular case, the public interest outweighs strict enforcement of the notice requirement.

SECTION 4 – CONSISTENCY WITH COMPREHENSIVE PLANS

The Growth Areas and Undesignated Areas subject to this plan are covered by adopted plans of the Towns and City. The proposed land use patterns for these Areas are well known and described in existing adopted plans. These plans and the future comprehensive plans of the Towns and City will guide new development and redevelopment which occurs within these Areas. The following provides a listing of the plans currently in place for the Growth Areas and Undesignated Areas.

The Towns and City have prepared the following plans to guide development:

- Town of Byron 2006 Comprehensive Plan
- Town of Empire 2007 Comprehensive Plan
- Town of Fond du Lac 2005 Comprehensive Plan
- Town of Friendship Comprehensive Plan 2008-2028
- Town of Taycheedah 2009 Comprehensive Plan
- City of Fond du Lac Comprehensive Plan 2010-2030

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

SECTION 5 - BOUNDARY COOPERATIVE PLAN RULES FOR POTENTIAL ANNEXATION AND/OR ATTACHMENT OF LAND IN THE TOWNS AND THE PROVISION OF MUNICIPAL SERVICES TO SUCH LANDS

5.1 Designation of City and Town Growth Areas. Attached and incorporated by reference and identified as Exhibit A is a map identifying the City and Town growth areas (hereinafter "Growth Areas"). The City Growth Areas consist primarily of currently undeveloped land that the parties acknowledge is to be developed within the City's municipal boundaries. The City Growth Areas are intended to be sufficient for well beyond 24 years of City growth. The territory within the City Growth Areas will be developed with sewers in conformance with the City's comprehensive plan. The City desires that owners of lands in the Towns not receive a windfall in the form of City improvements, but rather pay a fair share for improvements that benefit lands in the Town.

The Town Growth Areas include areas of existing development and adjacent areas that the parties acknowledge is to be developed within the Towns' municipal boundaries. The territory within the Town Growth Areas will generally be developed in conformance with the Towns' comprehensive plans. The Town Growth Areas depict areas expected to develop simultaneously with City Growth Areas. The Towns desire to protect the financial interests of the Towns and its citizens as the City grows by arranging favorable terms with respect to taxes and payment for improvements.

5.2 Boundaries Of Growth Areas. The parties agree that the Growth Areas identified for each party have been determined after considerable negotiation and, as so delineated, serve the best interests of each of the parties. Except as expressly set forth in this Cooperative Plan, no party will seek or allow, through any annexation, attachment or detachment process, any change in the delineated boundaries that would be contrary to the terms of this Cooperative Plan, unless the change is by mutual consent of the City and the affected Town which consent may be withheld at the sole discretion of the City and the affected Town. Each party retains the right to determine the sequence of sewerred or unsewerred development of each specific parcel of land within its Growth Areas. However, sewerred development shall occur in accordance with the provisions of Section 6.1(b), below.

5.3 Annexations from City Growth Areas

- (a) The City will annex territory from City Growth Areas whenever orderly, planned development reasonably dictates that the land should be developed within the City. Where developed land is presently contiguous to the City on several sides, the City will encourage annexation in order to eliminate problems associated with duplication of services, or difficulties in provision of services due to illogical municipal boundaries.
- (b) If the City annexes land located in City Growth Areas, it will reimburse the relevant Town for any road made by the Town within 10 years of the annexation date on a prorated basis related to the lifespan of the improvement. Each Town shall present reasonable proof of such expenditure. At the time of making improvements which a Town feels may qualify for this reimbursement, it is

encouraged, but not required, to notify the City prior to making the improvements. Ordinary repair and maintenance is not covered by this reimbursement policy. Only improvements constructed to standards agreed to by the City are eligible for this reimbursement.

- (c) The parties acknowledge the existence of various farming operations within portions of the City Growth Areas or within one-half mile of a City Growth Area. Notwithstanding any other provision in this Cooperative Plan, current farming operations will be allowed to continue, subject to compliance with State and County laws, ordinances and regulations.
- (d) Subject to 5.3 above and 8.2, the City agrees to limited residential development generally in conformity with the Towns' Comprehensive Plan in City Growth Areas prior to annexation into the City.

5.4 Annexations from Town Growth Areas

The City will not annex any land from Town Growth Areas without the affected Town's prior written consent, which consent may be withheld at the sole discretion of the Town. A written request for consent will be submitted to the Town upon receipt of an annexation petition. The Town will respond in writing to such a request within 45 days.

5.5 Attachments of Land to City. Attached and incorporated by reference and identified as Exhibit B is a map entitled "City Boundary Adjustments." The City Boundary Adjustments, or Attachment Areas, constitute boundary cleanup, town island creation and administrative housekeeping. The parties agree as follows with regard to the Attachments Areas described in Exhibit B.

- (a) The execution of this Cooperative Plan constitutes each party's authorization to participate in the preparation of a Cooperative Plan pursuant to Wis. Stats. §66.0307 and the Clerk of each party shall have authority to provide the notices required by Wis. Stats. §66.0307. Any failure to comply with this provision may be cured by adopting a resolution and giving notice as provided in Wis. Stats. §66.0307 not later than 45 days after the date of commencement of the term of this Cooperative Plan.
- (b) To the extent it is determined not to be contrary to the public interest after the hearings required by Wis. Stats. §66.0307, comments and review by the Wisconsin Department of Administration required by Wis. Stats. §66.0307 the Cooperative Plan shall incorporate the terms of this Cooperative Plan except as otherwise provide in this Cooperative Plan.
- (c) The Cooperative Plan shall permit attachment of the land described in Exhibit B by ordinance adopted by a simple majority of the City's Common Council in place of annexations.

- (d) The Cooperative Plan shall also permit attachment of territory by ordinance adopted by a simple majority of the City's Common Council in place of annexation upon the written request or Cooperative Plan of the owner or owners of the parcel attached and noticed to the affected Town.
 - (i) The Towns and the City shall fully cooperate to complete the preparation of the Cooperative Plan and shall submit it to the State of Wisconsin Department of Administration for final approval as soon as reasonably possible after the effective date of this Cooperative Plan.
- (f) Once approved, the Cooperative Plan shall govern without respect to subsequent changes in statutory law.

5.6 Attachment Conditions. The following conditions shall apply to the attachments required by Section 5.3, above:

- (a) The City agrees that, subsequent to the attachments described in Section 5.3, above, the City will provide the affected property owner(s) and town(s) with all necessary and proper approvals for ingress and egress over and through the attachment area. The City will also cooperate with the affected property owner(s) and town(s) to allow the development on the real estate adjacent to the attachment area. The City's cooperation will include, without limitation, supporting easements over the attachment area, but only if the easement area is subject to the City's jurisdiction. The City will waive all fees under its control. The parties acknowledge that, unless otherwise specifically stated in this Cooperative Plan, the attachments required by this Cooperative Plan will not delay, condition, or prohibit the development of real estate adjacent to the attachment area.
- (b) To the extent not expressly prohibited by law or otherwise waived in writing by the relevant town, the prohibition against the involuntary annexation or attachment of town islands by the City consisting of privately-owned real estate continues for the duration of this Cooperative Plan. Annexation or attachment of existing town islands may occur only with the unanimous consent of the affected property owner(s). This paragraph is limited in application to only those town islands that exist at the time of execution of this Cooperative Plan.
- (c) The requirements of Wis. Stats. §66.0235 apply to the attachment of properties to the City, including, without limitation, sanitary sewer infrastructure and prior investments by the relevant Town or Town Sanitary District toward Shared Regional Facilities as more particularly defined in the 2000 Master Sewer Cooperative Plan referenced in Section 6.1(a), below.

5.7 Cooperation with Annexations or Attachments. The Towns will not challenge any annexation or attachment that is in accordance with the terms of this Cooperative Plan. The Towns agree not to judicially oppose any annexations or attachments that are consistent with the terms of the Cooperative Plan. The Towns also agree not to financially support anyone who opposes or

contests any such annexation or attachment. The City further agrees to meet with Town officials prior to or shortly after the filing of any annexation or attachment petition to discuss matters of mutual concern. If any Town is impleaded in any annexation or attachment lawsuit by a party other than the City, the Town will immediately stipulate that it does not oppose the contested annexation or attachment. The Town will also cooperate with the City on the dismissal of the Town as a party to the relevant lawsuit. The Towns agree that the City may exercise powers pursuant to Wis. Stats. §236.10(4) for the approval of all subdivision plats and land divisions (certified survey maps) within the annexation territory if the Towns breach this subsection. The City's authority under the preceding will include, without limitation, the right to require full compliance by all proposed subdivision plats and land divisions with all City land subdivision regulation ordinance requirements then in effect.

SECTION 6 – UTILITIES AND ROADS

6.1 City Growth Areas

- (a) The Towns will refuse to permit sanitary sewer hookups or extensions in City Growth Areas prior to annexation or City permission.
- (b) The parties acknowledge that there exists a separate Cooperative Plan entitled “2000 Wastewater Cooperative Plan Between City of Fond du Lac, Wisconsin and Outlying Sewer Group” (“Master Sewer Cooperative Plan”). The parties further acknowledge that the Master Sewer Cooperative Plan defines the terms and conditions for the provision of sanitary sewers within the City and the Towns. Unless specifically stated to the contrary in this Cooperative Plan, the terms and conditions of the Master Sewer Cooperative Plan and any subsequent sewer Cooperative Plans will control the provision of sanitary sewer service within the City and the Towns.
- (c) The Towns will utilize any planning and construction standards proposed by the City for new or reconstructed roads, utilities and other public facilities in these areas, which are based upon the ultimate development capacity of said areas. The preceding does not apply to the maintenance or repair of existing roads.

6.2 Town Growth Areas

- (a) The City will permit, without requiring annexation or attachment, extension of sanitary sewer services within the Town Growth Areas as provided in the Master Sewer Cooperative Plan and any subsequent Master Sewer Cooperative Plans and cooperate fully with extension of sanitary sewer services by the Towns or their sanitary districts, provided that the design and operations plans are consistent with the provisions of the Master Sewer Cooperative Plan, any subsequent Master Sewer Cooperative Plan, this Cooperative Plan and the relevant Town’s comprehensive plan.

- (b) The Towns will plan sewer service growth areas in conformance with their comprehensive plans and the 2000 Wastewater Agreement with the City of Fond du Lac and the outlying sewer group and any subsequent Agreements.

6.3 City/Town Road Boundaries. Where a road is proposed in an annexation to serve as a boundary between the City and a particular Town, the governments will discuss the exact location of the boundary in order to avoid jurisdictional confusion over the governmental services to be provided within or by way of that segment of highway. The particular Town will cooperate with the City on the City's reconstruction of the road to urban standards, including sidewalks, streetlights, curb and gutter, asphalt or concrete, according to the City's capital improvement program. The City must obtain the Town's consent before the Town is financially obligated to pay for any portion of the reconstruction of the relevant road.

SECTION 7 – DEVELOPMENT IN GROWTH AREAS

7.1 City Growth Areas

- (a) The Towns will cooperate to maintain currently undeveloped lands in an undeveloped state, in order to preserve them for future City development. It is acknowledged that City development of such lands may be gradual, extending over several decades.
- (b) The Towns will discourage premature development by imposing and maintaining zoning classifications that do not permit, or that discourage, such development and by informing their assessors of the nature of this Cooperative Plan so that assessments consistent with preserving land until needed by the City are promoted to the extent allowed by assessment laws.
- (c) The Towns will approve changes in zoning classifications only after consultation with, and the Cooperative Plan of, the City. Consultation by the Towns, and the Cooperative Plan or disapproval of the City, shall be in writing. Failure of the City to respond within 45 days of notice will be deemed an approval. Failure of a Town to abide by the City action of disapproval will void the subject amendment. The City and Town will consider the City's future land use and zoning plans when it considers these zoning classification change requests. The Towns agree to continue to enforce the limited development allowed under agricultural preservation zoning.
- (d) To the extent authorized by law, the Towns will refuse to approve certified survey maps or platted subdivisions unless the City consents to the land divisions. Failure of the City to respond within 45 days of notice will be deemed an approval. Failure of a Town to abide by the City action of disapproval will void the subject amendment. As part of the City's review process, the City will consider whether the proposed division will block further development or create a defacto subdivision that doesn't comply with City standards.

- (e) The Towns will require that the limited development permitted under this Cooperative Plan in City Growth Areas meet the City lot standards and will have the required right of way dedication per City standards to allow for future improvements.

7.2 Town Growth Areas

- (a) The City will not unreasonably withhold approvals necessary under applicable State, County and local laws, regulations, or ordinances to all divisions of land, sewer extensions, or other development-related matters, provided such development occurs in accordance with this Cooperative Plan and all other applicable statutes, ordinances, and regulations. City objections must be stated in writing and with specificity.
- (b) The Towns will implement development within their respective Town Growth Areas generally consistent with each Town's Comprehensive Plan.
- (c) The Towns will provide notice to the City prior to new commercial or industrial development (including billboards), abutting or within 300 feet of Federal or State highways. The City will comment on the development plans to assure highway accessibility, aesthetics, and appropriate building design, site landscaping as well as paved surfaces for drives and parking.

7.3 Extraterritorial Jurisdiction. The parties acknowledge that the City has been exercising its statutory extraterritorial land division review authority throughout the various Towns pursuant to Wis. Stats. §62.23(7a)

- (a) The City may continue to exercise its extraterritorial jurisdiction throughout the City Growth Areas, subject to the provisions of this Cooperative Plan.
- (b) The City waives its extraterritorial land division review authority, and other extraterritorial jurisdiction powers throughout the Town Growth Areas.
- (c) The City also waives its extraterritorial land division review authority, and other extraterritorial jurisdiction powers throughout the Undesignated Territory described in Article IV, provided the Towns actively participate in the Intergovernmental Advisory Committee, set forth below in Article V. Active participation means attendance at meetings, generally complying with their respective comprehensive plans, sharing of information regarding development within the undesignated areas and meaningful discussions as to such developments as they relate to this Cooperative Plan and the need for possible amendment.
- (d) The City and the Towns shall record with the Fond du Lac County Register of Deeds resolutions providing for the waiver of the City's extraterritorial jurisdiction powers described in this Cooperative Plan.
- (e) The City shall not rescind the waiver for the duration of this Cooperative Plan. The parties acknowledge and agree that the various review and approval requirements

contained in this Cooperative Plan replace the City's extraterritorial review and approval powers authorized by Wis. Stats. §62.23(7a) and Chapter 236 of the Wisconsin Statutes.

SECTION 8 – TOWN ISLANDS

8.2 Future Functional Town Islands.

- (a) Town islands that are created during this Cooperative Plan as a result of development within City Growth Areas that have frontage access to roads and utilities may be attached upon request/determination of the City Community Development Director. The timeline for such attachments is 24 years or whenever the island has frontage on city utilities, whichever occurs later.
- (b) For purposes of this Cooperative Plan, a functional town island occurs when either man-made or natural barriers, employed in conjunction with City Corporate boundaries, isolate a portion of a Town. In determining whether an area is sufficiently isolated so as to constitute a function town island, the parties shall consider:
 - (i) The extent to which lakes, rivers and political boundaries isolate the area from the balance of the Town,
 - (ii) The extent to which natural barriers, manmade barriers and political boundaries of the City isolate the area from the balance of the Town, or
 - (iii) The extent to which, for all practical purposes, the area is cut off from the remainder of the Town.
- (c) The parties agree to attempt to avoid creating town islands as they review and approve future developments.

SECTION 9 - UNDESIGNATED TERRITORY

9.1 General Provisions Applicable to Undesignated Territory. Territory that is not identified as City Growth Areas, Town Growth Areas, or Attachment Areas shall remain undesignated territory ("Undesignated Territory"). This Undesignated Territory is subject to future annexations (but not attachments), subject to the terms and conditions set forth in Sections 9.2 thru 9.5, below. The terms and conditions of Sections 9.2 thru 9.5, below, supersede any statutory provisions applicable to annexations, whether these statutory provisions are in existence upon the effective date of this Cooperative Plan or subsequently adopted. Future annexations from the Undesignated Territory must strictly comply with the provisions of Sections 9.2 through 9.5, below. Except as expressly stated otherwise in this Cooperative Plan, there are no restrictions on development within the Undesignated Territory. The Towns shall generally follow their Land Use or Comprehensive Plan in approving proposed zoning changes, conditional use permits and land divisions. The City shall not object under Section 18 to land

divisions or rezonings adopted by the Towns which are generally consistent with the Towns' Comprehensive Plans.

9.2 Annexations of Undesignated Territory. The City agrees that annexations of land are subject to the following provisions, which constitute contractual preconditions to annexation:

- (a) The area to be annexed is already a functional town island that is substantially surrounded by existing City boundaries; or
- (b) The proposed annexation involves a development that would produce a significant number of new jobs or tax base in the greater Fond du Lac community in the immediate future following the proposed annexation. The employment base of both the City and the Towns that are signatory to this Cooperative Plan shall be used to determine whether the proposed annexation involves a development that would produce a significant number of new jobs or tax base in the greater Fond du Lac community in the immediate future following the proposed annexation; or
- (c) The proposed development requires municipal services that cannot be provided by the relevant Town including, without limitation, municipal sewer and water, roads and related urban services.

9.3 Further Annexation Restrictions. In addition to the restrictions described in Section 9.2, above, the City agrees to the following additional contractual preconditions:

- (a) The annexation petition must be unanimous and the annexation territory must encompass only the minimum acreage necessary and/or economically feasible for the relevant project; and
- (b) The City will reimburse the relevant Town or Sanitary District for infrastructure investments pursuant to the adjustment provisions of Wis. Stat. §66.0235 and any contractual requirements under the 2000 Wastewater Cooperative Plan and any subsequent Cooperative Plans; and
- (c) The City shall make annual payments to the relevant Town, for up to 5 years, in an amount equal to the property taxes that the relevant Town would have received had the property remained in the Town at the pre-annexation undeveloped asset valuation.
- (d) Town will help communicate the deferred assessment process under state law to affected town residents and let them know their options.

9.4 Conservation/Preservation/Environmentally Sensitive Area Language. C/P/ESA areas within a landscape that encompass especially valuable natural resource features should be protected from development. Under this Cooperative Plan, the Town of Empire and City will work together to preserve the Niagara Escarpment. Preservation of the Niagara Escarpment may be obtained through a variety of land use tools including, but not limited to buffer areas, overlay

districts, conservation subdivisions and conservation easements. The method of preserving the Niagara Escarpment shall be determined by the Town.

9.5 Limitation on Development. The Town of Fond du Lac agrees to defer commercial or industrial development along town line road Highway 151 lane to the City of Fond du Lac as shown in Exhibit C.

SECTION 10 – INTERGOVERNMENTAL COOPERATIVE PLAN ADVISORY COMMITTEE

10.1 Creation of the Intergovernmental Agreement Advisory Committee. The City and Towns shall establish a committee with twelve (12) members, to be known as the Intergovernmental Agreement Advisory Committee. The Committee shall include two (2) representatives from each community. Members of the Advisory Committee shall serve at the pleasure of their respective appointing authorities.

Land uses in the Towns and the City, have, historically, often resulted from decisions and actions of other entities, public and private. As a result, the Towns and the City have often reacted to forces driving land use decisions rather than anticipating and influencing those forces. Further, the Towns and the City have met only infrequently. The Advisory Committee allows the Towns and the City to jointly plan for development within the areas subject to this Cooperative Plan. The Advisory Committee provides a mutually beneficial framework for joint discussion and planning; and that will lead to a reduction in adversarial tension and promote intergovernmental cooperation, planning and problem solving, for more efficient delivery of municipal services. Land use planning provides predictability and certainty to property owners. It serves as a guideline for the future use of property and future actions by elected officials and governing bodies. Planning enhances the ability of property owners to make decisions about investment, use and maintenance of their land.

- (a) Meeting Times.
 - (i) The Advisory Committee shall meet annually or as otherwise needed as identified by the Committee. Meetings can be called by any party if there is a question regarding activities in the Undesignated Areas. The first meeting of the Advisory Committee will be held 45 days from the complete execution of this Cooperative Plan. Meetings must be held to discuss any development that exceeds that permitted under the existing zoning or requests to consider annexation by the City under Section 5.2 (eg. Agricultural land preservation, sparse development to residential subdivision).
- (b) Responsibilities. The Committee shall have the following responsibilities:
 - (i) To facilitate the implementation of the Intergovernmental Cooperative Plan during the duration of the term of the Cooperative Plan.

- (ii) To undertake reasonable efforts to foster, maintain and enhance communication and cooperation between the Towns and the City in regards to land use planning and development.
- (iii) To identify when there is a need to amend the Cooperative Plan and initiate the formal process of amending the Cooperative Plan.
 1. The need to amend the Cooperative Plan may include, but is not limited to: a change in the economy which generates additional development demand beyond those planned for under this Cooperative Plan; changes in the Outlying Sewer Group (OSG) sanitary district boundaries that result in the need to align sanitary districts with growth areas.
 2. Amendments to the Towns' comprehensive plans may result in a need to amend this Cooperative Plan.
- (iv) To monitor and prevent the creation of town islands that would likely exist at the expiration of this Cooperative Plan. Further, to refer any such potential islands for consideration of amendment of this Cooperative Plan.

SECTION 11 – SEVERABILITY

If any section, paragraphs, or portion of this Cooperative Plan is deemed by any court having lawful jurisdiction of the subject matter of the Cooperative Plan to be void, voidable or invalid for any reason, the relevant court is hereby authorized to substitute alternative provisions in order to implement the parties' intent. If the relevant court declines to substitute alternative language, the parties shall resort to the dispute resolution provisions of Section 18 for the purpose of substituting non-offending language. Resort to the dispute resolution provisions of Section 18 include both mediation and, if mediation is unsuccessful, arbitration.

SECTION 12 – REFERENCES

Any references in this Cooperative Plan to any particular agency, organization, or official shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by statute or ordinance. Any references in this Cooperative Plan to any particular statute or ordinance will be interpreted as applying to such statute or ordinance as recreated, renumbered, or amended from time to time.

SECTION 13 - COMPLETE COOPERATIVE PLAN

This Cooperative Plan is the complete Cooperative Plan of the parties with respect to the matters covered by this Cooperative Plan and it shall supersede all prior Cooperative Plans or municipal policies to the contrary. No Cooperative Plans, promises, or representations made during or in

connection with the negotiations for or approval of this Cooperative Plan shall be binding or effective unless they are included herein. This Cooperative Plan may be filed with the Register of Deeds of Fond du Lac County. This Cooperative Plan may be used in litigation and may be introduced into evidence by either party without objection in any action to enforce the terms of this Cooperative Plan.

Other Cooperative Plans. Except as specifically provided herein, this Cooperative Plan does not supersede prior or other contracts, Cooperative Plans, Court Decisions, or Arbitration Awards between the parties. All other intergovernmental Cooperative Plans among the parties, or any combination of the parties remain in full force and effect, including without limitation, the Master Sewer Cooperative Plan. Nothing in this Cooperative Plan is intended to expand the rights of the parties under the Master Sewer Cooperative Plan. All rights are reserved.

SECTION 14 – AUTHORIZATION

This Cooperative Plan shall not take effect until approval by the City and Towns’ governing bodies. This Cooperative Plan shall not take effect until approved by the City and the Towns’ governing bodies as well as the Wisconsin Department of Administration pursuant to Wis. Stat. §66.0307.

SECTION 15- IMPLEMENTATION

The City and Towns shall take such actions as may be necessary or desirable to implement and effectuate the provisions and the intent of this Cooperative Plan.

SECTION 16 – TERM OF COOPERATIVE PLAN

The parties acknowledge that the Master Sewer Cooperative Plan is subject to review and continuation in 2020. The parties further acknowledge that the likely term of the renewed Master Sewer Cooperative Plan will be 20 years from 2020 through 2040 (“Renewal Term”). Therefore, the term of this Cooperative Plan shall be the earlier of either (a) 30 years, or (b) the Renewal Term of the Master Sewer Cooperative Plan. No breach or violation of any of the terms of this Cooperative Plan shall operate to void or terminate this Cooperative Plan, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined, or otherwise remedied by exercise of any lawful, contractual enforcement remedies then available to be utilized by the aggrieved party to enforce the terms of the Cooperative Plan.

SECTION 17 – BINDING EFFECT

This Cooperative Plan shall inure to the benefit of and be binding upon the City and Towns hereto, as well as their respective heirs, successors and assigns. Its enforceability will not be affected by changes in the forms of the City or Town government, or changes in elected officials.

SECTION 18 – DISPUTE RESOLUTION

All disputes over the interpretation or application of this Cooperative Plan shall be resolved according to the following dispute resolution procedures:

- (a) If the dispute cannot be resolved by the parties directly involved, the parties will conduct 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 chosen from the Roster of Dispute Resolution Providers maintained by the Wisconsin Boundary Review Division of the Wisconsin Department of Administration. If the parties cannot agree upon a mediator, they will request an initial panel of five (5) persons, who are all listed on the Roster. Each party will have two (2) strikes from the initial panel. The parties may agree to an alternative method for the selection of the single mediator.
 - (iii) The mediation session shall take place within 30 days of the appointment of the respective representatives designated by the parties, or the designation of a mediator, whichever occurs last.
 - (iv) In the event that a mediator is used, each party will 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 either party 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. 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 will 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 the mediation proceedings.
 - (vi) The expenses of a mediator, if any, shall be borne equally by the parties.
- (b) If unresolved after (a) above, the parties will submit the dispute to binding arbitration by an arbitrator of recognized qualifications. If the parties cannot agree on an arbitrator they will request a 5-person panel list from the Wisconsin Boundary Review Division of the Wisconsin Department of Administration from the Roster of Dispute Resolution Providers, which said Roster may be updated from time to time. Each party will have two strikes from the 5-person panel.

The parties may agree to an alternative method for the selection of the single arbitrator.

- (c) The City and the Towns will be responsible for the fees of their own arbitrator and will equally divide the fees of the third arbitrator, as well as the costs of court reporters, if any. The City and the Towns will be responsible for their own attorneys' and expert fees.
- (d) The arbitration panel will not be bound by rules of evidence or the substantive, internal laws of Wisconsin. The award of the panel is final and binding, and will be enforceable at law. The arbitration provisions of Chapter 788 of the Wisconsin Statutes will apply to the arbitration proceedings, unless the parties agree on different arbitration procedures.
- (e) The parties agree that arbitration proceedings must be instituted within two years after the claimed breach occurred if reasonably discoverable or from date of discovery, if not reasonably discoverable, and that the failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims.

SECTION 19 – COOPERATION WITH GOVERNMENTAL AGENCIES

19.1 Advancement of Mutual Interests. The parties acknowledge that in order to effectively implement this Cooperative Plan, it may be necessary to obtain the cooperation and approval of other governmental agencies, including but not limited to, the East Central Wisconsin Regional Planning Commission, the Wisconsin Department of Natural Resources and the Wisconsin Department of Transportation. In all matters necessary to implement this Cooperative Plan, the parties agree to seek the cooperation and approval of all relevant agencies. To the extent practicable, the parties will, where necessary to obtain such required approval, submit a single, joint request or other appropriate document requesting the approval.

19.2 Examples of Joint Requests. Examples of joint requests that may require the cooperation of the parties include, but are not limited to, the following:

- (a) Approvals to size and cost sharing of future sanitary sewer extensions to accommodate anticipated growth over a period of 50 years, rather than the usual 20-year planning.
- (b) Approvals to size and cost sharing of future wastewater treatment plant capacity improvements to accommodate anticipated growth over a period in excess of usual planning periods, or to plan for staged capacity increases to accommodate anticipated growth several decades in advance.
- (c) Approvals for access to Federal, State or County roadways.
- (d) Storm water management, soil erosion control, wetlands and woodlands management.

- (e) Approvals required by East Central Regional Planning Commission, including, without limitation, amendments to sewer service area boundaries and land exchanges between Growth Areas.

SECTION 20 – MISCELLANEOUS PROVISIONS

20.1 Amendments. This Cooperative Plan may be amended, from time to time, by mutual consent of all parties hereto. Any party wishing to propose such an amendment will give written notice to all other parties. The notice will identify the proposed amendment and the reasons supporting such amendment. Within 30 days after receipt of the notice, the parties will meet to discuss and, if necessary, negotiate the proposed amendment. If, after 90 days, the parties are unable to agree upon and approve the proposed amendment, it shall be automatically deemed to have been withdrawn and shall not thereafter be proposed for a period of 1 year after the date of the initial notice, unless a majority of the parties jointly re-submit it for consideration. The preceding does not apply to an amendment that affects only a particular Town or the City.

20.2 Enforceability. The parties have entered into this Cooperative Plan under the authority of Sections 60.23(1), 66.0307, and 66.0301 of the Wisconsin Statutes, or as subsequently amended. Its enforceability will not be affected by statutory amendments, changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Cooperative Plan be construed so as to be binding on their respective successors, agents and employees.

20.3 No Waiver. The failure of any party to require strict performance with any provision of this Cooperative Plan will not constitute a waiver of the provision or of any of the parties' rights under this Cooperative Plan. Rights and obligations under this Cooperative Plan may only be waived or modified in writing. A writing waiving a right must be signed by the party waiving the right. If an obligation of a party is being waived or released, the writing must be signed by all affected parties. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any party. Waivers and releases will affect only the specific right or obligation waived or released and will not affect the rights or obligations of any other party that did not sign the waiver or release.

20.4 Performance Standard. This Cooperative Plan requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Cooperative 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 will not be unreasonably withheld.

20.5 No Third Party Beneficiary. This Cooperative Plan is intended to be solely between the signatories set forth on the following pages. Nothing in this Cooperative Plan grants any third party beneficiary rights to any non-party that may be enforced by any non-party to this Cooperative Plan.

20.6 Construction. This Cooperative Plan shall be liberally construed to accomplish its intended purposes. The parties acknowledge that the language contained in this Cooperative Plan is the product of numerous individuals representing the various interests. Therefore, ambiguities shall not be construed against the drafter of this document. If any term, section or other portion of this

Cooperative Plan is reviewed by a court or other judicial or quasi-judicial entity, such entity shall treat this Cooperative Plan as having been jointly drafted by both the City and the Towns. This Cooperative Plan should be construed to give a reasonable meaning to each of its provisions, and a construction that would render any of its provisions meaningless, inexplicable, or mere surplusage is to be avoided.

20.7 Recordation. This entire Cooperative Plan shall be recorded by the parties with the Fond du Lac Register of Deeds. The costs of recording shall be shared equally by each of the signatories to this Cooperative Plan.

20.8 Counterparts. This Cooperative Plan may be signed in counterparts which, when taken together, shall be effective as if all signatures appeared on the same original. Facsimile and digital signatures constitute the same as an original.

SECTION 21 – EXHIBITS

SECTION 22 – ADOPTION

IN WITNESS WHEREOF, the City and Towns certify that this Cooperative Plan, including all exhibits, has been duly approved by their respective governing bodies in accordance with State and local laws, rules and regulations, and each has caused their duly authorized officers to execute this Cooperative Plan on the dates written before their respective signatures.

CITY OF FOND DU LAC

The undersigned officers of the City of Fond du Lac have executed this Cooperative Plan pursuant to a duly adopted resolution of the City Council dated _____.

By: _____
City Manager

Date: _____

By: _____
City Clerk

Date: _____

REF

[This area left blank intentionally.]

TOWN OF BYRON

The undersigned officers of the Town of Byron have executed this Cooperative Plan pursuant to a duly adopted resolution of the Town Board dated _____.

By: _____
Chairman

Date: _____

By: _____
Clerk

Date: _____

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TOWN OF FOND DU LAC

The undersigned officers of the Town of Empire have executed this Cooperative Plan pursuant to a duly adopted resolution of the Town Board dated _____.

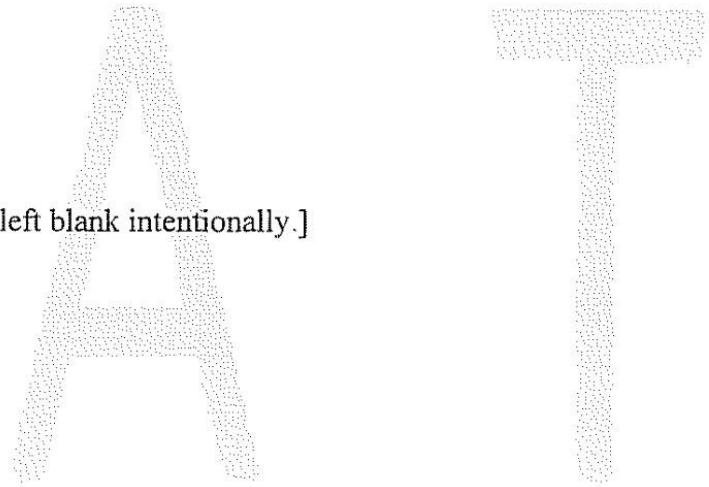
By: _____
Chairman

Date: _____

By: _____
Clerk

Date: _____

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TOWN OF EMPIRE

The undersigned officers of the Town of Fond du Lac have executed this Cooperative Plan pursuant to a duly adopted resolution of the Town Board dated _____.

By: _____
Chairman

Date: _____

By: _____
Clerk

Date: _____

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TOWN OF TAYCHEEDAH

The undersigned officers of the Town of Friendship have executed this Cooperative Plan pursuant to a duly adopted resolution of the Town Board dated _____.

By: _____
Chairman

Date: _____

By: _____
Clerk

Date: _____

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TOWN OF FRIENDSHIP

The undersigned officers of the Town of Taycheedah have executed this Cooperative Plan pursuant to a duly adopted resolution of the Town Board dated _____.

By: _____
Chairman

Date: _____

By: _____
Clerk

Date: _____

RAAT

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EXHIBIT "A"

Map Identifying City and Town Growth Areas

See attached

REF

EXHIBIT "B"

Map Identifying City Boundary Adjustments

See attached

DATA

EXHIBIT "C"

Map Identifying Town of Fond du Lac deferred commercial or industrial development along town line road Highway 151 lane to the City of Fond du Lac.

See attached

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