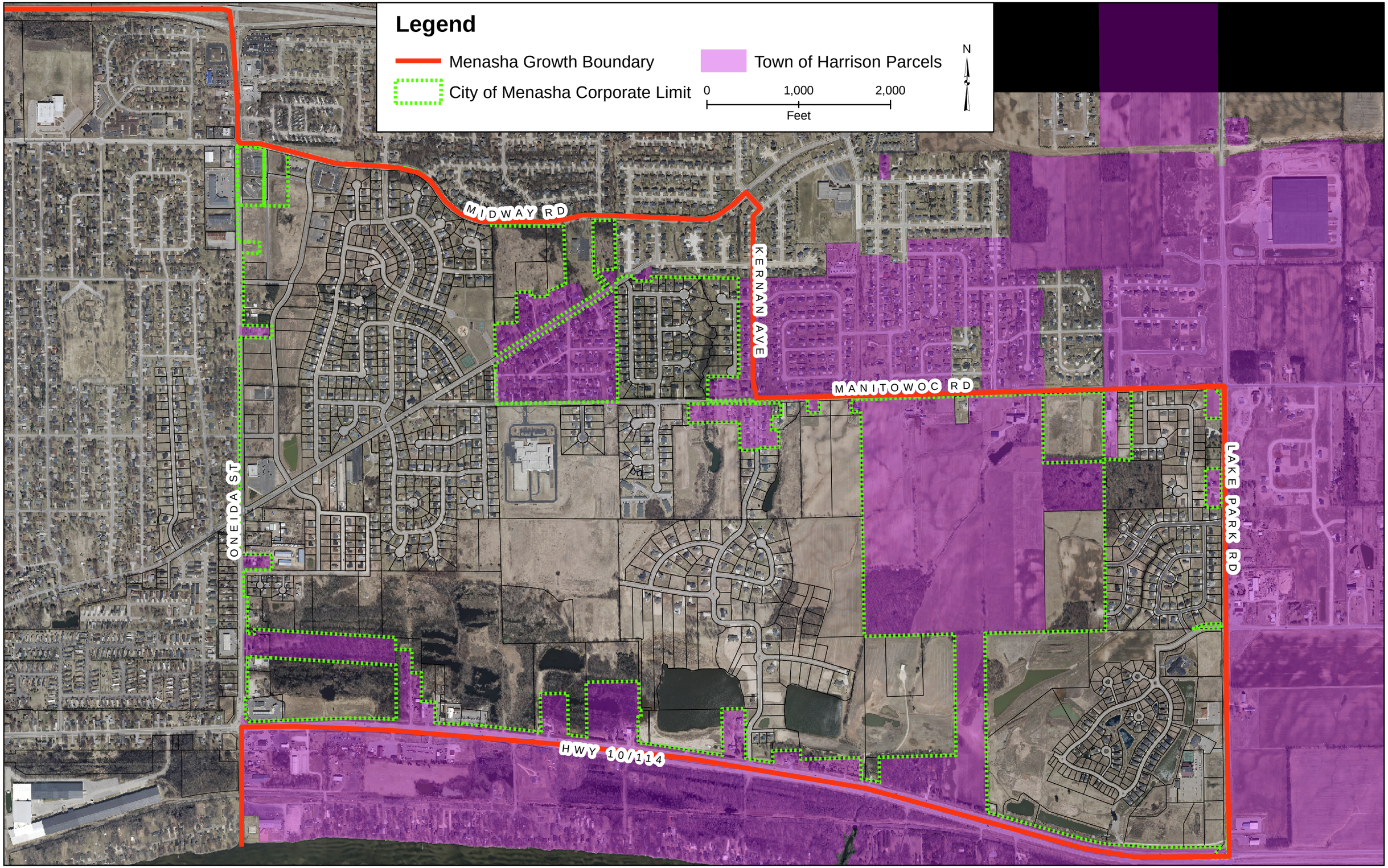

Legend
Menasha Growth Boundary
City of Menasha Corporate Limit
Town of Harrison Parcels
0
1,000
2,000
Feet
N
MIDWAY RD
KERNAN AVE
MANITOWOC RD
LAKE PARK RD
ONEIDA ST
HWY 10/114

Greg

# INTERMUNICIPAL AGREEMENT

## 1. Preamble

The Town of Harrison (Town), the City of Menasha (City), and the Waverly Sanitary District (Waverly) pursuant to ss. 66.027. 66.30 and 66.028 Wis. Stats., desire to enter into an Intermunicipal Agreement in order to:

A. Establish fixed boundaries;
B. Facilitate orderly development of the Town and the City;
C. Eliminate current and minimize future litigation;
D. Provide for cost effective governmental services to citizens of the Town and City;
E. Maximize capacity of current infrastructure for sewer and water service;
F. Promote harmony between the municipalities.

The Town and the City desire to enter into an agreement pursuant to s. 66.023 Wis. Stats. to formalize boundaries between the municipalities. This agreement is intended to be an interim agreement until such time as the s. 66.023 agreement is enacted.

## 2. Boundaries

The eastern boundary line shall be fixed to run from the intersection of Manitowoc and Lake Park Road southerly to the intersection of Lake Park Road and STH114 - US10. The southern boundary line shall run from the intersection of Lake Park Road and STH114 - US10 westerly to the intersection of Oneida Street and STH114 - US10. The western boundary line shall run along Oneida Street from the intersection of Oneida Street and STH114 - US10 to the intersection of Midway Road and Oneida Street.. The northern boundary shall run from the intersection of Midway Road and Oneida Street easterly along Midway Road to Kernan Avenue, then south along Kernan Avenue to Manitowoc Road, then easterly along Manitowoc Road to Lake Park Road.

The Town territory within the boundary described shall be designated as an area within which the City may annex without Town objection. This area shall be designated the City growth area.

The territory east of Lake Park Road shall be designated the Town growth area. The City shall not accept any petition for annexation for any territory east of Lake Park Road.

A map will be prepared as Exhibit "A" and incorporated into this Agreement.

3. **Residents Within the City Growth Area**

Property owned by a Town resident who also resides on such property within the City growth area may be included in an annexation petition accepted by the City except as is limited below. The City agrees that it will not include in any annexation petition any part of property which was actively being farmed as of April 1, 1999 (except for property owned by Gordon Van De Hey which is being purchased by the City) unless such property owner resident signs the petition for annexation. It is understood that any and all property owned by a resident active farmer as of April 1, 1999 shall not be included in any annexation petition. These are the farms owned and operated by Jeffrey Wisnet, James Bodway, and John Bartlein. Should any of these farms no longer be actively farmed by the resident owner, the City may include any of that land in any annexation petition. For purposes of this paragraph, a property is not actively farmed if no crops are harvested for two consecutive growing seasons on the tillable land, or the property owner has certified to the City and the Town a valid agricultural reason for the land to remain unplanted for longer than two consecutive growing seasons. The City may also include in an annexation petition land at the intersection of Oneida Street and US10 - STH114 currently being developed as a gas station. The City will honor any permits or plats which have been issued or approved prior to April 1, 1999.

The Town will not contest nor finance any objection to any annexation petition filed consistent with this agreement. No property owner is obligated to sign an annexation petition unless that land is being developed.

The City may annex without objection from the Town, any occupied property within the City growth area, except occupied property as of April 1, 1999 in what is known as the Stacker plat, the Green Acres Pond plat (Ribble), the Cottonwood Creek plat, and the Cottonwood Creek II plat, the Hoffman Estates plat and the farms referred to above. No such annexation may occur except at such time as the current owner sells the property to other than an immediate family member. For purposes of this agreement, immediate family means husband, wife, son, daughter, stepson or stepdaughter. The City may annex any property within the City growth area whose owner signs a petition for annexation.

Any resident owner may replace or remodel his/her existing residence pursuant to Town regulations. No new additional residences may be constructed without the consent of the City.

With respect to the Stacker plat, Hoffman Estates plat, Cottonwood Creek plat, and the Cottonwood Creek II plat, the City shall not accept any annexation petitions unless they are unanimous consent annexation petitions.

Attached as Exhibit "B" and made part of this agreement by reference is the perimeter boundaries and/or descriptions of the Stacker plat, Hoffman Estates plat, Cottonwood Creek plat, Cottonwood Creek II plat and the Green Acres Pond Plat.

4. **Unimproved Property Within the City Growth Area**

To the extent allowed by law, the Town will not allow the development of any land within the City growth area except single and two family dwellings may be constructed on lots of record as of April 1, 1999. Development shall include the issuance of any building permit, rezoning consideration, vacation request or any other action requiring the approval of the Town of Harrison Planning Commission or Town Board. The Town shall notify the City of applications to construct or develop single family or two-family homes on lots of record as of April 1, 1999.

The Waverly Sanitary District shall not allow any connections to sanitary sewer or water service within the City growth area except for single and two family development on lots of record as of April 1, 1999. Should any property owner wish to develop or build in any manner which is not consistent with this provision, the Town shall advise that that property owner should file a petition with the City to annex the property.

The City agrees to indemnify and hold the Town and Waverly Sanitary District harmless in the event a Court of record imposes damages as a result of the obligations imposed by this section 4.

5. **Town Growth Area**

The City shall not accept for annexation any property within the Town growth area without the approval of the Harrison Town Board. The parties agree that this paragraph may be used as the sole basis for a Court determination regarding the invalidity of any annexation by the City within the Town's growth area. The City shall not exercise any extraterritorial zoning or extraterritorial plat review over any property within the Town' s growth area.

6. **Sanitary Sewer Planning Area**

All development in the Sanitary Sewer Planning Area as established by East Central Regional Planning Commission shall require hook-up to public sanitary sewer systems connected to the Neenah-Menasha Sewerage System. No on-site waste disposal systems shall be allowed or approved, except as replacements for existing on-site waste disposal systems which have been designated as a failing system by the Calumet County Sanitarian. The Town and the City shall cooperate to expand the Sanitary Sewer Service Area so as to accommodate the intent of this Agreement. Such cooperation shall include a direct request for an initial expansion of the Sewer Service Area so as to provide an opportunity for immediate growth as well as a change in policy which would allow for automatic expansion of the sewer service area upon achieving a predetermined level of growth in the Sewer Service Area.

Neither the Town nor the Waverly Sanitary District may petition East Central Regional Planning Commission to include within the Sanitary Sewer Service Area any property within the City growth area without annexation to the City or the consent of the City.

Neither the Town nor Waverly Sanitary District may extend the Waverly Sanitary District within the City growth area.

A Memorandum of Understanding relating to expansion of the Neenah/Menasha Sewer Service Area and extension of sewer and water facilities is attached as Exhibit "C" and made part of this agreement by reference.

7. **Engineering Study of Sanitary Sewer System**

An engineering study has been prepared by Omni Engineering which establishes a plan for the installation of sanitary sewer service to areas within the City and Town growth areas. The City and the Town agree that option A, attached as Exhibit A, will be the basis for this service expansion with the parties sharing in the actual costs of construction according to the percentages of territory to be served by this expansion. The parties further agree that this expansion will take place during the 2000 construction season and that arrangements will be made in the respective budgets of the Town and the City to pay for this expansion. Upon completion of the system, the system will be turned over to the Waverly Sanitary District for operation.

The Waverly Sanitary District shall be responsible to bid the project design and construction. Upon receiving invoices, the City and Town will pay such invoices to Waverly based upon monthly-billed documentation. The share of the total project will be

as determined by the Omni study. The City and Town shall have the right to review bidding documents and contract document before award and construction.

8. **Large Sewer Users**

The Town or the City shall provide notice to the other when considering for approval any plans, building permit requests, CSM's or plats filed for any large user of the sewer system. A large user will be any user whose discharge is greater than 5000 gallons/day. Any capacity used by a large user shall be allocated to the capacity of the municipality in which the user is located.

9. **Waverly Sanitary District**

The Town and the City agree that any infrastructure necessary for water or sanitary service shall be installed at the expense of the benefiting municipality and shall then be turned over to the Waverly Sanitary District for operation and maintenance. Neither the Town nor the City shall make any attempt to dissolve and take over the Waverly Sanitary District without the consent of the Waverly Sanitary District and each other. Any

extensions to the sanitary or water service system shall follow Waverly Sanitary District procedures.

If necessary due to capacity issues with the current force main/gravity sewer connections to Sanitary District No. 4, the City of Menasha agrees to allow a future forced main connection from joint lift station to its 15" sanitary sewer in STH 114 west of Melissa street provided adequate capacity exists in such sewer. Waverly Sanitary District must exercise its current option to use excess capacity pursuant to its agreement with Sanitary District No. 4.

The Town shall obtain the consent of the Waverly Sanitary District to this Agreement.

## 10. Town Incorporation

The City shall not contest any attempt by the Town to incorporate so long as all the territory of the incorporation effort is outside the City's growth area. The Town agrees that it will stipulate that any incorporation filed contrary to this paragraph does not meet the criteria of sec. 66.016 Wis. Stats.

## 11. Joint Planning

The parties agree to work in good faith on issues of joint planning. In addition, the parties shall, in the future, work together to provide the necessary public services to the

residents of both municipalities. A joint planning committee comprised of three City members and three Town members shall be established to make recommendations to the City's Planning Commission and Common Council and to the Town Board on issues of joint planning. Any disputes will be settled by mediation by an agreed upon third party.

## 12. Curtin Annexation

Upon execution of this agreement, the Town will dismiss its claims in the lawsuit challenging the Curtin annexation, **Town of Harrison and Carlton A. Wieckert v. City of Menasha, 97 CV 100.** The Town shall also not finance any continuation of this lawsuit by Carlton A. Wieckert or any other third party.

## 13. Amendments

This agreement may be amended from time to time by mutual agreement. No amendments shall be valid until such time as the amendments are authorized by the governing bodies of the City of Menasha and the Town of Harrison and executed in writing. The Town and the City agree that each shall entertain any requests for amendments by the other and make a decision as to the amendment within 90 days of the receipt of the notice of the request for the amendment.

## 14. Notices

All notices required by this agreement must be served personally, or by certified mail upon the respective municipal clerks. All petitions for annexation shall be forwarded from the party receiving it to the other party as soon as possible.

## 16. Miscellaneous

a. It is contemplated that the municipalities will rely on ss. 66.30, 66.027 and 66.028 Wis. Stats., as statutory authority for this Boundary Agreement. The agreement shall be binding upon future Town Boards and City Councils and shall remain in effect until the enactment of a s. 66.023 Wis. Stats. agreement. Should such s. 66.023 agreement not be enacted, this agreement shall be extended until September 1, 2029. This Agreement may be extended by the approval of the City Common Council and the Town Board at any time. It is the intent of the parties that no statutory amendments, changes in the forms of government of the Town or the City nor changes in the elected officials shall affect the enforceability of the agreement.

b. This Agreement is intended to be solely between the Town, the City and the Waverly Sanitary District. Nothing in this Agreement accords any third party any legal or equitable right, whatsoever which may be enforced by any non-party to this Agreement. Waverly Sanitary District shall approve of this agreement.

c. If any portion of this Agreement is deemed to be invalid or unconstitutional, it shall not invalidate the balance of the Agreement not affected by that determination.

d. The Agreement imposes a duty of good faith and fair dealing on all parties.

e. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement. No agreements, promises, nor representations made by either party during the negotiations for or approval of this agreement shall be binding or effective unless included. The negotiating parties agree that each of them shall recommend this agreement to the City Council, the Town Board, and Waverly Sanitary Board for approval. The negotiating parties agree further that each of them shall support and promote this agreement to any other entity, public or private that is affected by, or needs to approve any issue necessary to carry out the intent of this agreement.

f. Either party without objection in any action to enforce the terms of this Agreement may enter this Agreement into evidence.

g. The failure of any party to require strict compliance with any provision of this Agreement shall not constitute a waiver of the provisions of the Agreement nor any of the parties' rights under this Agreement. Rights and obligations under this agreement may only be waived or modified in writing signed by the party waiving that right or

obligation. Waiver or modification of one term will not constitute a waiver of any other term.

h. The City will construct its share of Carpenter Street during the 1999 construction season unless cost prohibitive. In that event, it will be constructed during the 2000 construction season.

i. This Agreement shall be liberally construed to accomplish its intent. The parties agree that each has been involved in the drafting of this Agreement so that no ambiguity shall be held against either party simply as drafter.

j. The parties agree that any unresolved dispute will be submitted to a mediator prior to either party instituting any legal action concerning this agreement.

Dated this 28th day of Oct, 1999.

**CITY OF MENASHA:**

Joseph F. Laux, Mayor

Joan Smogoleski, City Clerk

**Approved as to form:**

Jeffrey S. Brandt

**TOWN OF HARRISON:**

Allison Blackmer, Chairman

Leann Buboltz, Adm. Coord.
Deputy Clerk

**Approved as to form:**

~~John D. Claypool~~

**WAVERLY SANITARY DISTRICT:**

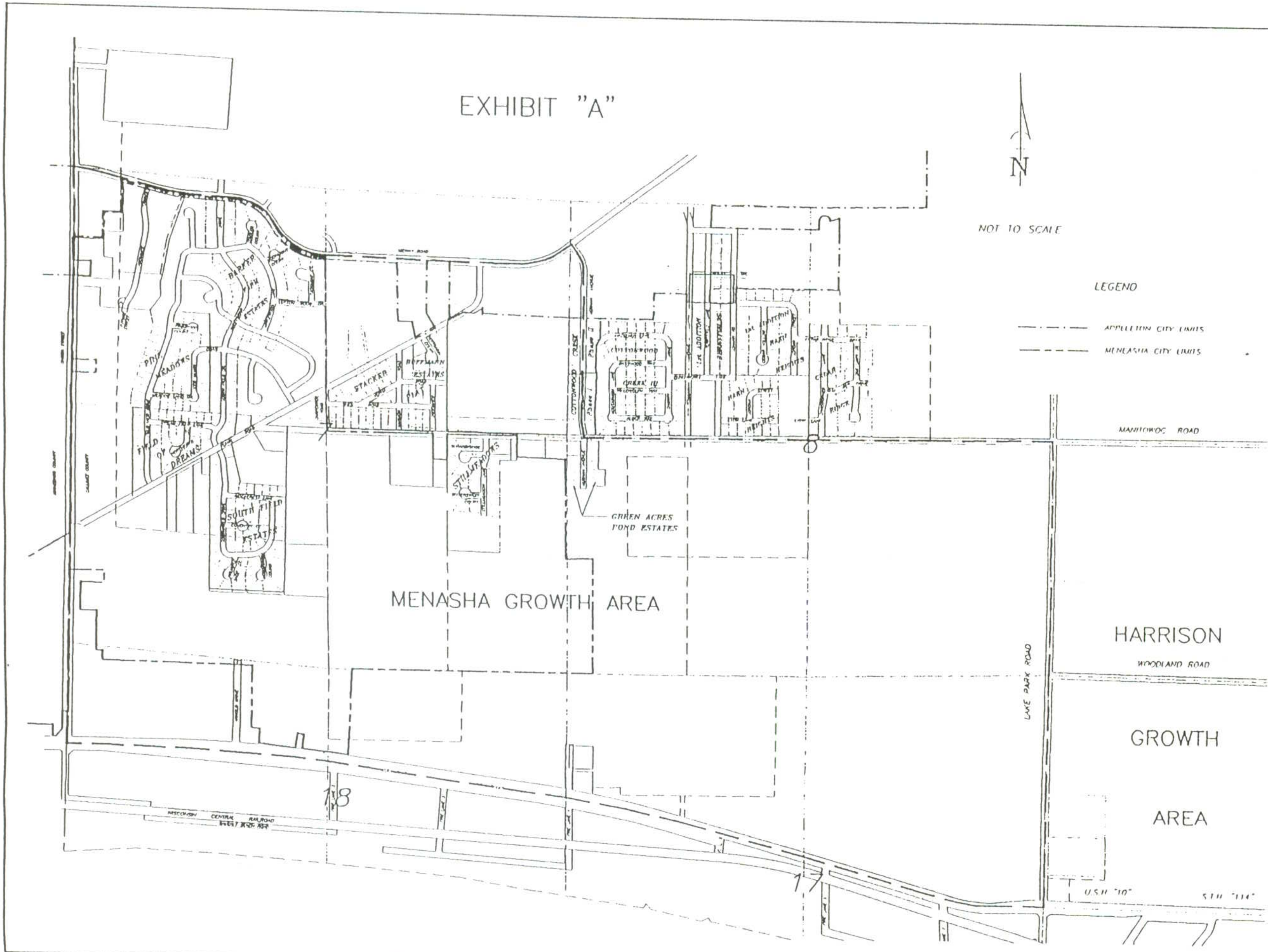
Donald Doule, Chairman

Cathy Girdley, District Clerk

**Approved as to form:**

Charles J. Hartzheim

# EXHIBIT "A"



N
NOT TO SCALE
LEGEND
APPLETON CITY LIMITS
MENASHA CITY LIMITS
MENASHA GROWTH AREA
HARRISON GROWTH AREA
GREEN ACRES POND ESTATES
COTTONWOOD CREEK
STACKER
HOFFMANN ESTATES
PINE MEADOWS
FIELD OF DREAMS
SOUTH FIELD ESTATES
MANITOWOC ROAD
LAKE PARK ROAD
WOODLAND ROAD
WISCONSIN CENTRAL RAILROAD
U.S.H. "10"
S.T.H. "114"
18
17

EXHIBIT B

Stacker Plat
SW ¼, NE ¼, Section 7, T20N, R18E, Town of Harrison

Green Acres Pond plat
Part of the West ½ of the NW ¼, Section 8, T20N, R18E, Town of Harrison, Calumet County, Wisconsin

Hoffman Estates
Lot 2 of Certified Survey Map 1728 being Part of Lot5 of Block 2 of Stacker Plat, located in the Southwest ¼ of the Northeast1/4 of Section 7, Township 20 North, Range 18 East, Town of Harrison, Calumet County, WI

Cottonwood Creek
All of C.S.M. 1624 and part of the Southwest ¼ of the Northwest ¼ of Section 8, Township 20 North, Range 18 East, Town of Harrison, Calumet County, Wisconsin

Cottonwood Creek II
Part of the Southwest ¼ of the Northwest ¼ of Section 8, Township 20 North, Range 18 East, Town of Harrison, Calumet County, Wisconsin

## EXHIBIT "C"
## Memorandum of Understanding

This memorandum is entered into between the City of Menasha, Town of Harrison, Waverly Sanitary District and the East Central Wisconsin Regional Planning Commission's Regional Development Committee (RDC). This agreement is subject to the approval of the Wisconsin Department of Natural Resources on the the original swap amendment.

**WHEREAS** the City of Menasha, Town of Harrison, and Waverly Sanitary District have cooperated in the design of major sanitary sewer system improvements to service development in the vicinity of Lake Park Road and STH 10/114, and;

**WHEREAS** major investments will be required to extend the backbone sanitary sewer system to service the projected growth areas and;

**WHEREAS** the East Central Wisconsin Regional Planning Commission is the designated sewer service area planning agency for the subject area, and;

**WHEREAS** the Regional Development Committee takes actions and makes advisory recommendations to the WDNR on sewer service area amendments, and;

**WHEREAS** the amount of developable acreage currently within this portion of the Neenah/Menasha Sewer Service Area boundary would not be capable of supporting the costs of the necessary system improvements;

**NOW, THEREFORE BE IT RESOLVED** that the East Central Wisconsin Regional Planning Commission's Regional Development Committee will support and recommend to the WDNR approval of a future request from the Waverly Sanitary District to add an additional 105.8 total acres of land, of which 91.2 acres are vacant, to the Neenah/Menasha Sewer Service Area, shown as Area #4 per the attached map;

**BE IT FURTHER RESOLVED** that the addition of Area #4 acres will be subject to Area #2 being developed to a point which meets or exceeds 50% of its total land area.

**BE IT FURTHER RESOLVED** that the addition of Area #4 will still be subject to WDNR review and certification once advisory recommendations are acted upon by the Regional Development Committee.

**BE IT FURTHER RESOLVED** that this agreement will expire on January 1, 2002 or once the East Central Wisconsin Regional Planning Commission initiates a 5-year update of the Neenah/Menasha Sewer Service Area Plan.

**BE IT FURTHER RESOLVED** that the City of Menasha and the Town of Harrison will support such an amendment;

Joseph F. Lang, Mayor-City of Menasha — Date: 10-28-99

Allison Blackmer, Chairperson – Town of Harrison — Date: 10-28-99

Donald Doule, President – Waverly Sanitary District — Date: 10-29-99

Donald DeGroot, Chair – ECWRPC Regional Development Committee — Date: _____

Harlan Kiesow, Director – East Central Wisconsin RPC — Date: _____