

INTERGOVERNMENTAL COOPERATION
AGREEMENT
BETWEEN THE CITY OF MIDDLETON
AND THE TOWN OF WESTPORT

This is an Intergovernmental Cooperation Agreement made and entered into as of the 17 day of November, 1998, by and between the City of Middleton, a municipal corporation located in Dane County, Wisconsin, ("City") and the Town of Westport, a municipal corporation located in Dane County, Wisconsin, ("Town").

Return to:
Thomas G. Wilson
P.O. Box 1784
Madison, WI 53701-1784

RECITALS

Parcel Identification No.

WHEREAS, sec. 66.30, Stats., authorizes towns and cities to contract for the joint exercise of any power or duty required or authorized by statute; and

WHEREAS, sec. 62.23(7a), Stats., grants extraterritorial zoning authority to cities, to be exercised in cooperation with towns, pursuant to the requirements of sec. 62.23(7a), Stats.; and

WHEREAS, sec. 66.028, Stats., authorizes two municipalities to share revenues and to undertake other municipal actions in furtherance of joint projects; and

WHEREAS, the City has extraterritorial zoning jurisdiction over the territory in the Town described in Exhibit A and shown on Map 1 (the "Property"); and

WHEREAS, the Property is subject to substantial development pressure, and the City and the Town have determined that they should work together to address zoning and other planning issues relating to the Property; and

WHEREAS, the City and the Town have determined that as a first step in working together on planning issues relating to the Property, the City should exercise its extraterritorial zoning jurisdiction over the Property, the City and Town should create a Joint Committee to prepare a comprehensive zoning plan for the Property, and the City

should temporarily abstain from annexing any part of the Property during the time the Joint Committee is preparing a comprehensive zoning plan for the Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, and of the above recitals, the receipt and sufficiency of which is mutually acknowledged, it is stipulated and agreed as follows:

1. Extraterritorial Zoning.

Pursuant to sec. 62.23(7a)(a) and (b), Stats., within thirty (30) days from the date of this Agreement, the City shall adopt a resolution to exercise extraterritorial zoning over the Property, and shall enact an interim zoning ordinance to preserve existing zoning in the Property. Pursuant to sec. 62.23(7a)(c), Stats., the City and the Town shall create a Joint Committee to prepare a comprehensive zoning plan for the Property following the procedures specified in sec. 62.23(7a), Stats. The City and the Town shall make their respective appointments to the Joint Committee within thirty (30) days after the adoption of a resolution to exercise extraterritorial zoning over the Property.

2. Temporary Abstention From Annexation of Territory.

During the temporary time period in which the Joint Committee is preparing a comprehensive zoning plan for the Property, and until the City enacts such comprehensive zoning plan, the City shall not annex any part of the Property without first obtaining both input and consent from the Town as described herein. To be certain that petitions for annexation of land in the Property are given a full and fair hearing and to provide for expeditious review of such petitions, either the petitioner or the City may request a joint meeting of the City Council and the Town Board for review and consideration of such petitions. The joint meeting shall be scheduled at a time agreed to by the Mayor and Town Chair within thirty (30) days of the request for a joint meeting. If both a majority of the members of the Town Board and a majority of the members of the City Council approve the petition for annexation, the Property may be annexed.

3. Revenue Sharing Following Annexation.

If any portion of the Property is annexed to the City in violation of section 2 of this Agreement, the City agrees in accordance with the provisions of sec. 66.028, Stats., to share with the Town the revenues derived from taxes from the annexed territory, and to pay to the Town an amount equivalent to the tax revenue lost to the Town as a result of such annexation each year for a period of twenty (20) years from the date the annexation ordinance is effective. This paragraph is effective and only applies to annexations that occur during the time period during which the Joint Committee is

preparing a comprehensive zoning plan for the Property, and until the City enacts such comprehensive zoning plan. Such time period shall be no longer than two (2) years after the enactment of the interim zoning ordinance required by section 1 of this Agreement, unless extended for no longer than one (1) year, pursuant to sec. 62.23(7a)(b), Stats. In the event of an annexation in violation of section 2 of this Agreement, the term of this revenue sharing provision shall be twenty (20) years from the date the annexation ordinance is effective.

(a) This revenue sharing agreement shall become effective on the date the City adopts an annexation ordinance in violation of section 2 of this Agreement, and shall terminate twenty (20) years thereafter.

(b) The revenue to be shared under this section shall be calculated based on the assessed value of all land and improvements in the annexed territory as of January 1 of each year after the annexation took place. The assessed value of such lands shall be multiplied by the mill rate established by the Town for that year to calculate the amount due to the Town under this formula.

(c) The City's payments to the Town shall be made within thirty (30) days of the first of January of each year beginning with the first year after such annexation.

4. Additional Joint Planning Agreement Contemplated.

The parties intend to use this Agreement as a starting point for the joint planning of issues in addition to extraterritorial zoning, such as issues relating to boundaries, land use and municipal services. The parties intend for the Joint Committee to work on such planning issues, and to make recommendations to the City and the Town regarding such planning issues.

5. No Third Party Beneficiary.

This Agreement is intended to be solely between the Town and the City. Nothing in this Agreement accords any third party any legal or equitable rights whatsoever which may be enforced by any non-party to this Agreement.

6. Administration of Agreement.

This Agreement shall be administered on behalf of the City by the Mayor or the Mayor's designee, and on behalf of the Town by the Town Board Chair or the Town Board Chair's designee. The appointment of a designee must be in writing and the other

party to this Agreement must be notified of the appointment. The administration of this Agreement shall include the implementation of policies and procedures which will effectuate the purposes and spirit of this Agreement.

7. Enforcement.

This Agreement is intended to provide each party with the right and standing to challenge by court action (including action by *certiorari* or otherwise to declare a governmental act invalid) any act of the other party that violates this Agreement. This Agreement is intended to provide each party with the right and standing to seek any available legal or equitable remedy to enforce or seek damages for the breach of this Agreement. In any action concerning an alleged violation of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses of litigation, including reasonable attorneys' fees.

8. Term.

The term of this Agreement, except the revenue sharing provisions in section 3, shall be the time period during which the Joint Committee is preparing a comprehensive zoning plan for the Property, and until the City enacts such comprehensive zoning plan. The term shall be no longer than two (2) years after the enactment of an interim zoning ordinance, unless extended for no longer than one (1) year, pursuant to sec. 62.23(7a)(b), Stats. The term of the revenue sharing provisions in section 3 shall become effective on the date the City adopts an annexation ordinance in violation of section 2 of this Agreement, and shall terminate twenty (20) years thereafter. No breach or violation of any of the terms of this Agreement by either party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined or otherwise remedied by the exercise of any lawful contractual enforcement remedies then available to be used by the aggrieved party to enforce the terms of this Agreement.

9. Amendment.

This Agreement may be amended or terminated at any time by written agreement by the governing bodies of both parties.

10. Complete Agreement.

This Agreement represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.

11. Enforceability.

The parties have entered into this Agreement under the authority granted by sections 66.30, 62.23(7a) and 66.028 of the Wisconsin Statutes. Its enforceability will not be affected by changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Agreement shall be construed so as to be binding on their respective successors, agents and employees.

12. No Waiver.

The failure of any party to require strict performance with any provision of this Agreement will not constitute a waiver of the provision or of any of the parties' rights under this Agreement. Rights and obligations under this Agreement 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.

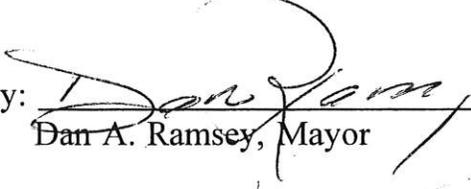
13. Performance Standard.

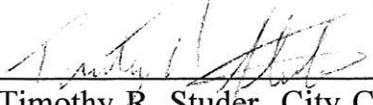
This Agreement requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing.

14. **Severability.**

The various terms, provisions and covenants herein contained, including specifically, but not limited to, section 3, shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

CITY OF MIDDLETON,
DANE COUNTY, WISCONSIN

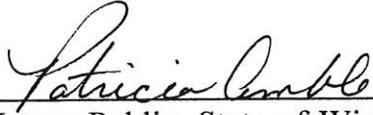
By: 
Dan A. Ramsey, Mayor

Attest: 
Timothy R. Studer, City Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 23 day of November, 1998, the above named Dan A. Ramsey, Mayor of the City of Middleton and Timothy R. Studer, City Clerk of the City of Middleton, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same on behalf of the City.


Notary Public, State of Wisconsin
My commission expires: 4-11-99

Approved as to form:

Bruce K. Kaufmann
Bruce K. Kaufmann, City Attorney

TOWN OF WESTPORT,
DANE COUNTY, WISCONSIN

By: John A. Van Dinter
John A. Van Dinter, Chair

Attest: Sharon L. Anderson
Sharon L. Anderson, Town Clerk

STATE OF WISCONSIN

COUNTY OF DANE

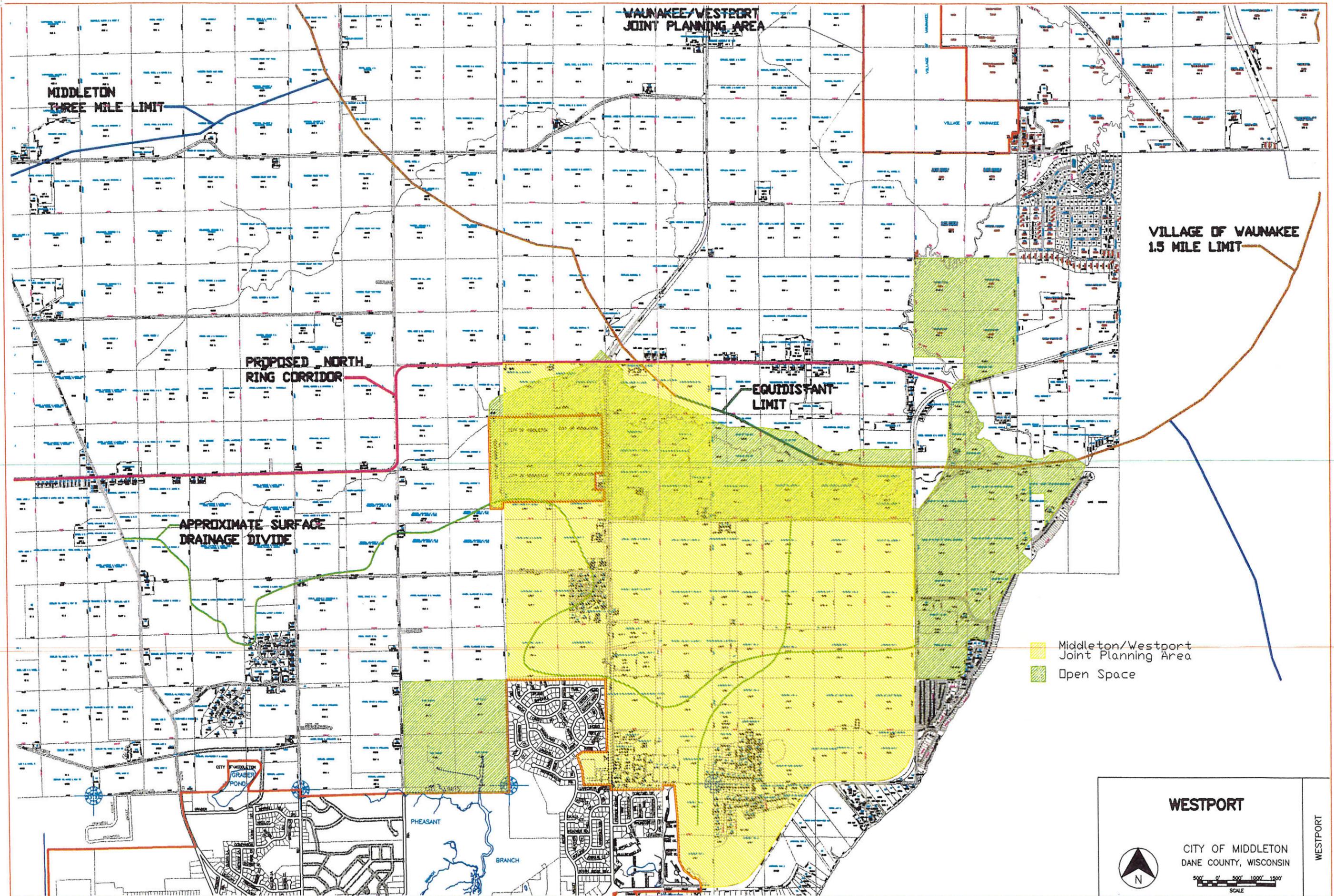
Personally came before me this 6th day of November, 1998, the above named John A. Van Dinter, Chair of the Town of Westport and Sharon L. Anderson, Town Clerk of the Town of Westport, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same on behalf of the Town.

Thomas G. Wilson
Notary Public, State of Wisconsin
My commission ~~expires~~ is permanent

Approved as to form:

Thomas G. Wilson
Thomas G. Wilson, Town Attorney

Drafted by:
Thomas G. Wilson
Stafford, Rosenbaum, Rieser & Hansen
3 South Pinckney Street, Suite 1000
P.O. Box 1784
Madison, Wisconsin 53701-1784
608/256-0226



WESTPORT

CITY OF MIDDLETON
 DANE COUNTY, WISCONSIN
 500' 0' 500' 1000' 1500'
 SCALE

WESTPORT

MAP 1