

~~DEC 29 2004~~

STATE EX REL., TOWN OF PORT WASHINGTON,

JEFFREY S. SCHMIDT
CLERK OF COURTS

Plaintiff,

**STIPULATION & ORDER FOR
DISMISSAL**

v.

Case No. 04 CV 338-B2
Case Code. 30703

CITY OF PORT WASHINGTON,

Defendant.

STIPULATION

The Town of Port Washington and the City of Port Washington, by their respective counsel, hereby stipulate and agree that the above-captioned action may be dismissed, on its merits and without costs, in accordance with the provisions of §66.0225, Wis. Stats.

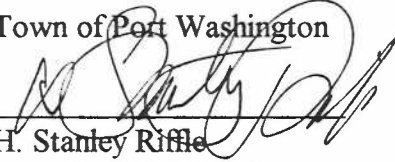
Pursuant to this stipulation and as authorized by §66.0225, Wis. Stats., the parties hereby enter into the attached Settlement Agreement to Provide for Orderly Land Development, Boundary Agreements and Shared Services, including exhibits thereto, between the Town of Port Washington and City of Port Washington (Exhibit A) and incorporate it within this stipulation as if set forth herein.

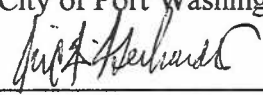
Dated this 15 day of December, 2004.

Dated this 23rd day of December, 2004.

Town of Port Washington

City of Port Washington


H. Stanley Riffe
State Bar # 1012704


Eric E. Eberhardt
State Bar # 1003917

RECORDED
OZAUKEE COUNTY
CLERK OF CIRCUIT COURT
2004 DEC 27 PM 1:00

ORDER

Based on the foregoing stipulation entered into by the parties in this matter,

IT IS HEREBY ORDERED that the annexation ordinance #2004-3 at issue in this matter passed by the City of Port Washington Common Council on April 20, 2004, is hereby affirmed; and,

IT IS FURTHER ORDERED that the attached Settlement Agreement to Provide for Orderly Land Development, Boundary Agreements and Shared Services, including exhibits thereto, between the Town of Port Washington and City of Port Washington (Exhibit A) is hereby incorporated into the order of the court as if fully set forth herein and that the terms and conditions of the Agreement are in full force and effect from the date of this order as authorized under §66.0225, Wis. Stats., and;

IT IS FURTHER ORDERED that this action is dismissed with prejudice and without costs to either party.

Dated this 29 day of December, 2004

BY THE COURT:

/s/ Tom R. Wolfgram

Tom R. Wolfgram
Circuit Court Judge, Branch 2

DEC 9 2004

**SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PORT WASHINGTON
AND THE TOWN OF PORT WASHINGTON
OZAUKEE COUNTY, WISCONSIN,
TO PROVIDE FOR ORDERLY LAND DEVELOPMENT,
BOUNDARY AGREEMENTS AND SHARED SERVICES**

AGREEMENT, entered into this 23rd day of November, 2004 by and between the City of Port Washington ("City") and the Town of Port Washington ("Town")

WHEREAS, the Town has initiated a lawsuit against the City in the Circuit Court for Ozaukee County (Case No. 30703) concerning an action by the City to annex certain property, known as the "Jacque Annexation" from the Town; and

WHEREAS, Wis. Stats. Section 66.0225 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, the parties desire to work together to arrive at a mutually agreeable resolution to questions currently outstanding as to annexations by the City, and thereby avoid the delays, expense and uncertainty resulting from protracted litigation; and

WHEREAS, in furtherance of this desire, the City and the Town have resolved a significant number of issues pertaining to the common goals of the municipalities through negotiation and approval of this agreement.

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:

NOW, THEREFORE, it is hereby agreed as follows:

I. Temporary Common Borders Established.

The City and Town agree that during the term of this Agreement, and pursuant to

Exhibit A
Stip. & Order 04 CV 338

the provisions set forth below, the maximum external boundary of the City limits shall be as depicted on Map "A" attached hereto. Those areas presently within the Town that are situated within the maximum external boundary of the City shall be referred to as the "City Growth Area".

II. Permanent Common Borders Established.

The City and Town have agreed that a certain area within the Town, commonly referred to as "Knellsville" and more particularly depicted on Map "B" and the legal description for which is attached hereto as Attachment "C", shall, pursuant to the provisions set forth below, remain in the Town in perpetuity.

III. Detachment of City Islands located in Knellsville.

Presently there exists a parcel of land located within Knellsville that is within the City limits, though completely surrounded by the Town. This property, generally depicted on Map B attached hereto and the legal description for which is attached hereto as Attachment "D", was annexed to the City of Port Washington by annexation ordinance enacted by the Common Council of the City of Port Washington on February 7, 1967. Upon the effective date of this Agreement, this parcel shall be detached from the City and attached to the Town, and shall become part of the permanent borders established in Section II of this Agreement

IV. Detachment of Territory within the City Growth Area.

- A. The Town agrees that it will withdraw any objection to the annexation of the Jacque property, and the Jacque property shall, therefore, be attached to the City.
- B. With regard to the remainder of territory presently within the City Growth Area, during the term of this Agreement, City may attach each individual parcel and the Town agrees to detach each individual parcel upon receipt of the City's attachment ordinance, pursuant to the procedure set forth below. The Town shall not object to nor contest the detachment/attachment of said individual parcels in any legal or administrative forum or proceeding.

V. Procedure for Detachment of Land within the City Growth Area. The procedure for detachment of any land within the City Growth Area shall be as follows:

- A. The parcel owner desirous of attaching to the City, dividing an individual parcel or receiving City services, shall file a Petition for Detachment with the Town and City Clerks.
- B. The City, upon receipt of the Petition for Detachment, may, but shall not be so obliged, adopt an ordinance attaching the subject property.

- C. The Town, within forty-five (45) days of receipt of the City's attachment ordinance, shall adopt an ordinance detaching the subject property.

VI. **Territory outside the City Growth Area.** During the term of this Agreement, City agrees that any lands lying outside City Growth Area boundary of the City shall not be annexed into the City unless detachment is approved by Resolution of the Town Board. Notwithstanding the terms of this Agreement, City agrees that any lands lying within Knellsville shall never be annexed into the City unless detachment is approved by Resolution of the Town Board.

VII. **Municipal Services.**

A. **Provision of Sewer Service.**

The City agrees to extend sewer services to those areas located within Knellsville on an extraterritorial basis. Service shall be provided pursuant to the Agreement for the treatment of waste water between Town and the City in the form attached hereto and incorporated herein by reference as Exhibit "E". The Agreement, in general, provides that the service provided to users within the Town shall be at the same rates and upon the same terms and conditions as services provided to City users. The incremental expenses related to the provision of such service (including but not limited to planning, design, miscellaneous engineering, legal, administrative, construction, operation and maintenance) and all costs shall be borne by the Town or the respective property owners to accomplish the availability of access of sewer service. The City shall own the sewer service facility including mains, lift stations if any, and all appurtenances thereto. Laterals will be owned by the property owners. The Town and City shall, simultaneous with the entry of the Judgment of the Court, execute the Agreement for the treatment of wastewater. The agreement to extend sewer service shall not be restricted to the term of this agreement but shall be perpetual.

B. **Provision of Water Service.**

The City agrees to extend water service to those areas located within Knellsville on an extraterritorial basis. Service shall be provided pursuant to the Agreement for the provision of water service between Town and the City in the form attached hereto and incorporated herein by reference as Exhibit "E". The Agreement, in general, provides that the service provided to users within the Town shall be at the same rates and upon the same terms and conditions as services provided to City users. The incremental expenses related to the provision of such service (including but not limited to planning, design, miscellaneous engineering, legal, administrative, construction, operation and maintenance) and all costs shall be borne by the Town or the respective property owners to accomplish the availability of access of water service. The City shall own the water service facility

including mains, reservoirs, and all laterals up to and including the curb stop. On water services larger than two inches, the City shall own and maintain up to the first valve. The agreement to extend water service shall not be restricted to the term of this agreement but shall be perpetual.

IX. Cooperative Land Use Planning For Knellsville and Adjacent City Lands.

The Parties agree that the development of the Knellsville area as well as the adjacent City land as depicted on Map G" will have a significant and permanent impact not only upon the infrastructure and resources of the City, but will also impact upon the infrastructure and resources of the Town.

For these reasons, the parties shall work cooperatively with one another to develop joint plans and to incorporate the City's development standards attached hereto and incorporated herein by reference an Exhibit "F" that shall strictly apply to all new development within Knellsville.

These plans shall address, but shall not be limited, to the following:

- A. A road plan for arterial and collector streets for the entire area that will be adequate to accommodate expected access points and traffic volumes.
- B. A utility plan for sanitary and water systems that will accommodate the range and extent of anticipated development
- C. Standards for both architectural design and landscape design that will create a high quality development pattern for all building types.
- D. Procedures for implementing these components including maps depicting required alignments for roads and infrastructure as well a procedures for linking such improvement to approvals for new development
- E. Procedures for reviewing and ensuring compliance with standards for building design and landscape.

X. Temporary and Permanent Boundaries.

It is intended by the Town and City that this Agreement, shall result in temporary and permanent boundaries by and between the respective municipalities. Therefore, outside of the City Growth Area, no lands shall be attached to the City of Port Washington by annexation or any other means, except by mutual consent of both municipalities, and no lands shall be detached by the City and returned to the Town except by mutual consent of both municipalities. Notwithstanding this intent, it is recognized and understood that circumstances may be such that it is in the interest of the City, Town, residents of either, the environment or other factors (including but not limited to conditions affecting individual property owners such

as failed wells or septic systems) to alter the boundaries temporarily or permanently fixed by this agreement. Accordingly, the boundaries temporarily or permanently fixed by this agreement may be amended by written agreement of the City and Town at any time.

XI. Term.

This Agreement shall be effective upon the execution of the Circuit Court order approving the same, subject only to the referendum proceedings of Wis. Stats. Section 66.0225. Except for those provisions of this Agreement intended to survive the term, the term of this Agreement shall expire on December 31, 2025.

XII. Miscellaneous Provisions

A. Maritime Drive.

The parties acknowledge that the City has laid out, constructed and installed improvements along an extension to the road known as Maritime Drive. The road extension crosses territory which currently lies within the Town of Port Washington, through portions of Sections 31 and 32, and crosses the boundary line between the City and the Town. The road extension runs in a generally east-west direction, from approximately the Union Pacific Railroad right-of-way, west to the road's intersection with State Highway 32. With respect to all of such the existing road extension and related improvements lying within the Town, the parties specifically agree that, regardless of the term of this Agreement:

(1) The Town waives, and covenants that it shall never assert, any objection, claim or cause of action against the City in any forum to challenge or contest the laying out, construction of, or improvements to such road extension, including, without limitation, any objection, claim or cause of action under ch. 80, Wis. Stats. relating to laying highways, the determination or allocation of damages, the apportionment of liabilities on account of the road extension, and any other claim, action or proceeding relating to the road extension, whether procedural or substantive, in law or equity.

(2) The Town acknowledges and agrees that such road extension is, and shall continue to be, used as a public highway, whether dedicated or to be dedicated to the City.

(3) The City shall have exclusive control of the road extension, including access from and to adjoining properties. The City shall be responsible for and pay the cost of repairs, improvements and maintenance of the road extension, including, but not limited to, grading, paving, salting, plowing, lighting, signage, landscaping, curbs, gutters, and the installation of sewer and water mains, service pipes and other utilities. It is further agreed by the Town and City, however, that the City may levy special assessments for the whole or any part of the cost of the improvements as a tax upon the properties that the City determines are

especially benefited by the improvements, in the manner provided in sec. 66.0703, Stats.

(4) The Town shall pay to the City all transportation aids which it receives from the state of Wisconsin or any other source after the date of this Agreement for that portion of Maritime Drive lying within the Town. Said payment shall be made to the City within thirty (30) days after receipt of such aids by the Town.

(5) The term of these provisions shall be perpetual.

B. 2003 Wisconsin Act 317

The property tax equivalent payment provisions of 2003 Wisconsin Act 317 shall apply to lands detached from the Town and attached to the City during the term of this Agreement.

XIII. **Division of Assets and Liabilities.**

The parties agree, for purposes of compliance with Sections 60.79 and 66.0235, Wis. Stats., that the division of assets and liabilities regarding the land transfer pursuant to this Agreement results in no assignment of additional assets or liabilities to either party in excess of those assets and liabilities associated with the territory being transferred under this Agreement. Therefore, neither the Town nor the City shall be responsible to transfer any additional assets or incur any additional liabilities (including apportionment of taxes and assessments) other than those specifically set forth in this Agreement. Nothing herein shall affect the division or apportionment of taxes between the City and Town, as provided in sec. 66.0235(13) Stats. for those properties annexed to or detached from the City hereunder.

XIV. **No Third Party Beneficiary.**

This agreement is intended to be solely between the signatories set forth on the following pages. Nothing in this Agreement grants any third party beneficiary rights to any nonparty that may be enforced by any non-party to this Agreement.

XV. **Enforcement of Agreement.**

This Agreement shall be perpetual and shall be enforceable through the Circuit Court for Ozaukee County. However, nothing herein shall limit the parties through mutual agreement, to amend this Agreement. Any amendment to this Agreement shall be in writing and approved by the Common Council of the City and the Town Board.

XVI. **Effect of Referendum.**

In the event a referendum is called for under Wisconsin Statutes Section 66.0225 and said referendum results in a rejection of the stipulation filed with the Court under this Agreement, this entire Agreement, shall be null and void.

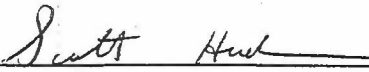
XVII. **Severable Provisions.**

If any clause, provision, or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.


XVIII. **Complete Agreement.**

This Agreement, together with the Exhibits and Attachments, is the complete agreement of the Parties with respect to the matters covered by these Agreements, and shall supercede any and all prior Agreements or municipal policies, resolutions or ordinances to the contrary. No agreement, promises or representations made during or in connection with the negotiations for or approval of these Agreements shall be binding or effective unless they are included herein. This Agreement shall be recorded with the Register of Deeds of Ozaukee County. This Agreement may be introduced into evidence by any party without objection in any action to enforce the terms of this Agreement.

CITY OF PORT WASHINGTON:


By: Mayor

ATTEST:


Clerk

TOWN OF PORT WASHINGTON:


Chairperson

ATTEST:


Clerk

**SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PORT WASHINGTON
AND THE TOWN OF PORT WASHINGTON**

EXHIBITS INDEX

- | | | |
|----|----------------|---------------------------------------|
| 1. | Map "A" | Temporary Common Borders |
| 2. | Map "B" | Knellsville Map |
| 3. | Attachment "C" | Legal Description of Knellsville |
| 4. | Attachment "D" | Legal Description of City Islands |
| 5. | Exhibit "E" | Sewer and Water Service Agreement |
| 6. | Exhibit "F" | City Development Standards |
| 7. | Map G" | Lands Subject to Cooperative Planning |

MAP "A"
CITY GROWTH AREA
(TEMPORARY COMMON BORDERS)

SANITARY SERVICE
BOUNDARY



■ CITY GROWTH AREA
(TEMPORARY COMMON BORDERS)

SCALE 1"=2000'

Exhibit A
SHP. & Order 04 CV 338

RAWN: RPK

DATE: 5/27/2004

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MAP "B"
KNELLSVILLE

SANITARY SERVICE
BOUNDARY



■ KNELLSVILLE AREA

SCALE 1"=2000'

ATTACHMENT "C" – KNELLSVILLE

Knellsville Description:

Parcel being a part of the Northeast ¼, Northwest ¼, Southeast ¼, and Southwest ¼ of Section 16, Township 11 North, Range 22 East, Town of Port Washington, Ozaukee County, Wisconsin; also described as all or part of Government Lots 2, 3, 6, 7, 10, 11, 14, 15, 18, 19, 22, 23, 26, 27, 29, 30, and 31, lying within the following described lands, lying westerly of the east line of the WE Energies right of way (also known as Ozaukee InterUrban Trail) , and southerly of the North lines of the Northeast 1/4 and Northwest 1/4 of said Section 16, easterly of the east right-of-way line of the Union Pacific Railroad, and lying northerly of the north line of Interstate Highway 43 (I-43), together with that part of the Southeast ¼ of Section 9, Township 11 North, Range 22 East, known as Tax key: 07-009-15-007.00.

Said parcel contains approximately 247 Acres.

Parcel being a part of the Northeast ¼, Northwest ¼, and Southwest ¼ of Section 15, Township 11 North, Range 22 East, All those lands including the entirety of Tax keys: 07-015-02-001.00, 07-015-07-002.00, 07-015-08-001.00, 07-015-08-002.00, together with the westerly 400 feet of Tax Key 07-015-09-001.00 lying easterly of the east right-of-way of County Trunk Highway "LL", the westerly 400 feet of Tax Key 07-015-07-003.00 south of Tax key" 07-015-07-002.00, the westerly 300 feet of Tax Key 07-015-07-003.00 north of Tax key 07-015-08-002.00, and the westerly 300 feet of Tax key: 07-015-05-002.00, all said parcels lying easterly of the east right-of-way of County Trunk Highway "LL".

Said parcel contains approximately 35 Acres.

Total Knellsville area approximately 282 Acres.

ATTACHMENT "D"

City Island to be Detached:

Parcel "A" being a part of the east one-half of the northwest one-quarter of Section 16, also described as a part of Government Lots 6, 11, and 14, east of the Union Pacific Railroad Company (formerly owned by Chicago and Northwestern Railroad Company) right-of-way fence and east of the east right-of-way of S.T.H. 84. The metes and bounds of description being as follows: Commencing at the north quarter corner of Section 16; thence South 0° 41' 00" West, 661.13 feet along the north-south quarter line to the Point of Beginning (said quarter line being along C.T.H. "KW"); thence continue along said north-south quarter line south 0° 41' 00" west, 1,997.44 feet to the center of Section; thence South 88° 35' 08" West, 800.38 feet to the east right-of-way line of C.T.H. "H"; thence North 28° 51' 40" West, 226.20 feet along said east right-of-way line; thence North 30° 40' 30" West, 440.21 feet along said east right-of-way line to its intersection with the east right-of-way fence of the Union Pacific Railroad Company; thence North 25° 09' 17" East, 1,578.92 feet along said east Railroad right-of-way fence; thence North 88° 40' 25" East, 486.49 feet to the Point of Beginning.

Said parcel "A" contains 39.42 Acres.

EXHIBIT E

**AGREEMENT FOR THE TREATMENT OF WASTEWATER
AND PROVISION OF WATER SERVICE BETWEEN
THE TOWN OF PORT WASHINGTON AND THE CITY OF PORT
WASHINGTON**
(Sec. 66.0301 Wis. Stats.)

THIS AGREEMENT, entered into this day 23 of 11 2004, by and between Town of Port Washington organized and existing under the laws of the State of Wisconsin with principal offices at 3473CTH KK, Port Washington, Wisconsin, hereinafter called the "Town" and the City of Port Washington, a Municipal Corporation organized and existing under the laws of the State of Wisconsin with principal offices at 100 E. Grand Avenue, Port Washington, Wisconsin, hereinafter called the "City", is as follows:

WITNESSETH

WHEREAS, the City owns and operates a wastewater treatment facility which has capacity for the treatment of wastewater originating from a limited area within the Town, as well as a water distribution system which shall have capacity to serve a limited area within the Town; and

WHEREAS, the City has agreed to plan, design, construct, own, and operate a wastewater collection system and interceptor and water distribution system located principally in the City and extending into the Town limits; and

WHEREAS, the Town has no wastewater treatment capabilities or municipal water facilities and has expressed a desire that the City treat the wastewater and to provide water service in a limited area within in the Town; and

WHEREAS, the City has agreed to accept and treat wastewater and provide water service within a limited area of the Town as part of a comprehensive Boundary Agreement notwithstanding a long standing policy of requiring, annexation before extending sewer service, and has also agreed to provide the required personnel, equipment, and facilities necessary to maintain and operate a wastewater collection system and interceptor capable of serving the Town under the terms and conditions of this agreement; and

WHEREAS, the wastewater to be treated and disposed of by the City from the Town shall be only of the type and nature presently being collected and treated by the City; and

Exhibit A
Stip. & Order 04 CV 338

7/30/04

WHEREAS, wastewater of the Town to be treated and disposed of by the City will originate from various land uses, including primarily commercial businesses and industrial users within the boundaries of the Town, which uses are hereinafter referred to as "users"; and

WHEREAS, water service to the Town shall be only of the type and nature presently being provided by the City to City users; and

WHEREAS, the Town has expressed willingness to enter into a contract for wastewater treatment and water service pursuant to Section 66.0301 Wis. Stats.; and

NOW, THEREFORE, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration to each in hand paid by the other, receipt of which is hereby acknowledged, and in further consideration of the covenants herein contained and the benefits derived by each, the Town and the City contract and agree as follows:

A. GENERAL INTENT

The City will plan, design, construct, own and operate a wastewater sewerage system and water distribution system within the Town and connecting to the City of Port Washington sewerage system, for the purpose of collecting and transporting to the City, the wastewater of users located within said Town. The City intends to accept, treat and dispose of such wastewater at its wastewater treatment facility.

B. SERVICE AREA AND CAPACITY

The service limits for the treatment of wastewater and water distribution for the Town shall include those lands described in Exhibit A attached hereto. Any additions of area to these original "service areas" by the Town must be approved by the Common Council.

C. TOWN SEWER COLLECTION AND WATER DISTRIBUTION SYSTEMS

- (1) Except as otherwise provided in this Agreement, the City shall be responsible for the planning, design, construction, ownership, operation and maintenance of the sewerage system and water distribution system located within the Town boundaries. The Town shall be responsible for all costs associated with the planning, designing and construction of the sewerage system and water distribution system, including any interceptor connection to the City's sewerage system and connection to the City's water system. All plans and specifications for the Town sewers shall be submitted to and approved by the Town. The Town shall grant to the City any necessary Wis. Stat. 60.52 permits or easements over public roads or lands for said construction. The Town shall obtain from and compensate private landowners for necessary easements over private property, which easements shall either run to the City.

Exhibit A
Stip. & Order 04 CV 338

or be assignable to the City. The City shall obtain written permission from the Town prior to beginning construction within the Town. The City shall restore to its original condition or the condition agreed to in any easement, the surface of any ground or street within the Town disturbed as a result of said construction. Restoration upon completion of construction must be approved by the Town prior to final payment by the City to the contractor retained by the City for said work, which approval will not be unreasonably withheld. City agrees that it will utilize the public bidding requirements of Wisconsin law and that it will be reasonable in its charges back to the Town. City agrees that it will allow the Town input on all bids received before awarding said contracts.

- (2) Wastewater collected from the Town service area shall be transmitted to the City's wastewater collection system at the established connection points, which shall be identified by the City Engineer. Any proposed substitute connection points must be approved by the City.
- (3) Water service to the Town service area shall be connected to the City's water system at the established connection points, which shall be identified by the City Engineer. Any proposed substitute connection points must be approved by the City. At the time that water and sewer service is required at the property located in the southwestern-most property located in the Town service area, a water main of appropriate size shall be directionally drilled underneath IH-43 for the purpose of establishing a second connection point to the Thomas Dr. tower. The total area to be ultimately served by this tower is approximately 1,420 acres, of which, approximately 247 acres will be in the Town's service area. Therefore, the cost for this second connection shall be paid through a City/Town split of 82.6%/14.4%.
- (4) Upon completion of the construction of the Town's sewerage and water systems and acceptance by the Town and the City, the City shall take over the responsibility for the operation and maintenance of the Town's systems. The City's operating and maintenance responsibility shall apply only to the collection system, interceptor components and water mains and connections operated by the City and shall not include the responsibility for maintenance of any service laterals from the sewer main to the building served, the water service curb stop to the building served, or of any facilities located on privately owned property not located in easements. Any future expansion of the Town's sewerage or water systems or extensions within the "Service Area" will also be undertaken by the City at the Town's request and paid for by the Town.

D. TOWN FLOW METERING OF WASTEWATER

E. FLOW VOLUMES AND CHARACTERISTICS

The parties agree that the wastewater generated by the Town is of normal domestic strength as defined in Chapter 13 of the City's Municipal Code. Flows with strength characteristics higher than the stated limits shall be pretreated or corrected at the source prior to entry into any interceptor sewer or collector sewer connected to the City's sewerage system. All wastewater flows shall be calculated from the users' water meters. All buildings connecting to the City's sewer system shall be required to simultaneously connect to the City's water system.

F. TOWN METERING OF WATER

As part of the Town's water system, the City shall install or shall require as a condition of individual connection the installation of water meters and the City shall pay for necessary meters, which accurately measure the total volume of water which is provided to users within the Town provided by the City. The City shall continue to own and maintain the individual water meters. The cost of the meters is included in the City's bi-monthly water utility charges.

G. REVIEW OF COSTS

All costs for the planning, design and construction of the sewerage and water systems shall be billed to and paid by the Town. The City shall provide the Town an itemized breakdown of all costs billed to the Town. Each party shall act to minimize the financial risk of the other. The City shall not approve construction contracts earlier than 30 days after bid opening, by which date the Town shall determine if it is unwilling to proceed with the project, and notify the City accordingly. If the Town is willing to proceed, it must certify that provisions have been made to finance the project. If the Town decides not to proceed with the project, the Town shall be solely responsible for the costs incurred by the City to that point. All other reasonable legal and professional costs not directly associated with the project design, bidding and contract award incurred by the City such as preparation of easement descriptions, appraisals, easement acquisition, land acquisition and negotiation, and legal fees, shall be billed to and paid for by the Town. If the Town provides and pays for any easement acquisition services, only the City's review costs would be billed to the Town. The Town shall be billed within 10 days of City staff approval of each invoice and the Town will reimburse the City within 30 days of receipt of the City's invoice.

H. SEWERAGE AND WATER SERVICE

- (1) The Town hereby agrees to comply with the City's Municipal Code now in existence or enacted or amended at any time during the existence of this agreement or any extension thereof. City agrees that any sewer or water use ordinance enacted or to be enacted or amended will treat users in the Town the same as users in the City, except as otherwise specifically provided herein.
- (2) The Town shall adopt, as soon as practicable prior to connection, a sewer and water use ordinance substantially in conformance with the City of Port Washington Municipal Code. Such sewer ordinance shall require all users of the Town's system to comply with all applicable ordinances, rules and regulations of the City and Town shall strictly enforce said regulations.
- (3) The parties agree that the City shall have the right to inspect all users within the Town and if, from any inspection, it is determined by the City that any deleterious waste is improperly entering the system, or that either the Town or a user are violating any ordinance rule or regulation or this agreement, the user and the Town will be notified in writing and shall be required to cease and desist such discharge or other violation immediately in the case of deleterious waste and within five days if some other violation. In the event the Town and/or user fail to take corrective action (or in the alternative to satisfactorily assure the City that corrective action will be taken within a specified period of time), the City shall pursue any and all remedies available to achieve compliance.
- (4) The Town agrees that federal, state and local regulations regarding pretreatment of those industrial wastes demanding such pretreatment shall be rigidly monitored and enforced upon the applicable industrial dischargers by the Town.

I. SERVICE CONNECTIONS

- (1) No connections shall be made to the Town collection system without prior written notice to the City. The Town agrees that it will ensure that no plumbing, permits are issued for any improvement which involves new connections to the sewerage or water systems unless the applicant first pays all applicable fees and written notice has been given to the City.
- (2) The City shall have the right to inspect the Town building permit records to ensure compliance with this agreement. The City shall also have the right to inspect any work performed relating to sewer service connections. All connections to the system shall meet the requirements of the Municipal Code of the City.

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J. **BILLING DATES AND PROCEDURES; PAYMENT TERMS**

- (1) The City is providing wastewater treatment, and collection and interceptor operation and maintenance services and water service to the Town and the Town shall be liable for payment for all charges relating to these services. The City shall bill the individual users on a bi-monthly basis for all charges. All invoices shall be paid in full within 30 days after the date of billing, and if not so paid, the account shall be considered delinquent. Delinquent payments shall be subject to the same penalties and charges assessed by the City to City residents who are delinquent in the payment of sewer charges. The City shall have the right to withhold approval of any sewer connections while bills are delinquent. Town will be responsible for collecting delinquent accounts and reimbursing the City for those delinquent accounts.

K. **RATES**

- (1) For the acceptance, conveyance, treatment, and disposal of sewage transmitted to the City from the Town and for the operation and maintenance costs, including DNR-mandated replacement fund expenses for the treatment facility, collector sewers and interceptor system and recovery of the capital costs, the Town residents and businesses shall have the same rate as City residents.
- (3) The sewer user charge rate shall be applied as metered at the individual water meters..
- (4) For provision of water service by the City to the Town and for the operation and maintenance costs, including wells, towers and mains and recovery of the capital costs, the Town shall have the same rate as City residents.

L. **TREATMENT PLANT EXPANSION AND TREATMENT PROCESS IMPROVEMENTS**

- (1) It is understood by the Town that the City's wastewater treatment facility is considered a regional facility and accordingly, the potential exists for future agreements by the City for treatment of wastewater originating in other municipalities, or sanitary and utility districts created therein. Additions to the capacity of the wastewater treatment facility or interceptors, consistent with upgraded treatment processes as required by Department of Natural Resources and the Environmental Protection Agency (EPA) or caused by growth, may be necessary in the future.

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- (2) Inasmuch as the City is not reserving capacity for the Town or any other entity to be served, and is not therefore intending to sell reserve capacity, any wastewater treatment facility expansion or interceptor extension not covered by this Agreement shall be financed by the City.
- (3) If improvements to the wastewater treatment facility or the addition of a specific process for treating wastewater are required due to the treatment of wastewater from a user within the Town, the total of such expense shall be paid by the Town.

M. SEWER AVAILABILITY CHARGES

- (1) Sewer availability charges shall be levied pursuant to City of Port Washington Ordinances. The charges and fees shall be collected by the Town prior to issuance of a plumbing permit for connection to the sewerage system.
- (2) The City shall require the Town to pay the equivalent of the City's impact fee for the portion of the fee covering the cost of improvements to the Wastewater Treatment plant. The fee will be calculated exactly as it is calculated for City residents.
- (3) Each month, the Town shall provide records to the City of all plumbing permits issued in the previous month for connection to the Town's sewerage system

N. DISPUTES

The parties hereto agree to be bound by the provisions of Section 66.0821(5) of the Wis. Stats. in the resolution of any dispute concerning the interpretation of this agreement or the rates, rules and practices of the parties.

O. MAINTENANCE AND REPAIR

It shall be the obligation of City to construct and the Town to pay for the cost and expense of the Town's local sewerage and water systems as shall be required to connect to the City's sewerage and water systems and provide wastewater collection and water service to the users in the Town. Upon completion of the construction and acceptance by all parties, the City shall provide for all costs of repairing, operating and maintaining the Town's local sewerage and water systems. This maintenance shall pertain only to the main-line conveyance and transmission systems, including the water service lateral to a point including the shut-off valve and box (commonly called a curb-stop). The City shall not assume any responsibility for any water services beyond the curb-stop, nor for any part of the sewer service lateral. Any expansion of the sewerage or water systems or extensions within the Town's service area would be planned, designed and constructed by the City and paid for by the Town.

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P. PENALTIES

Town agrees that in the event of violation of this agreement or the City's Municipal Ordinance, and after notice as provided in Section G.3., penalties may be assessed as allowed by the City's Municipal Code for each violation, with each day of continued violation considered as a separate "offense" for which an additional penalty assessment would be due. All such penalties shall be paid at the time the next monthly billing is due and payable.

Q. BOOKS AND RECORDS

The Town and the City shall keep accurate books, records, and accounts of costs, expenses, expenditures, and receipts as they pertain to this Agreement. Upon reasonable notice, either party shall be entitled to examine any and all such books and records. Either party may request an annual certified audit report of the books and records of the other party.

R. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which it is executed by the last of the parties to this Agreement.

S. TERM OF CONTRACT; REMEDIES

- (1) This contract shall be renewed for three-year periods commencing on the 1st day of January, 2005 and on January 1st of each three year increment thereafter, unless the contract is terminated by mutual agreement.
- (2) In addition to the penalties provided herein, and in the event of violation of the terms of this Agreement or of any rule and regulation of the Wisconsin Department of Natural Resources or the United States Environment Protection Agency, or other authority having legal jurisdiction in these matters, either party may sue in any court of record for declaratory judgment or other relief as may be provided by law.

T. EFFECT OF AGREEMENT

The City and Town recognize that this Agreement is the product of a unique set of circumstances. Accordingly, it is mutually acknowledged that many of the provisions contained herein are unique unto themselves and should not be seen as precedent for any future agreement between the City and other entities.

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U. **SEVERABILITY**

If any clause, provision, or section of this Agreement be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions.

V. **BINDING AGREEMENT**

This Agreement is binding upon the parties hereto and their respective successors and assigns.

CITY OF PORT WASHINGTON:

Scott Hueb
By: Mayor

ATTEST:

Mark Gram
Clerk

TOWN OF PORT WASHINGTON:

Lu Seltman
Chairperson

ATTEST:

ASusan K. Woodale
Clerk

EXHIBIT "F"

BP Business Park District

A. Statement of Intent. This district is intended to provide for the development of an attractive and aesthetically mixed grouping of office and limited retail and retail services, and light industrial uses, in a highly landscaped setting free of outside storage or display, where the setting is highly visible to one or more main traffic arteries, and all of the uses seek or require such exposure and all are willing to adhere to a higher standard of architectural and grounds appearance to maximize the benefit of such visibility.

A. General Requirements.

1. Buildings shall not exceed 40,000 square feet of gross floor area; except that following a public hearing the Plan Commission may approve larger buildings based on their location within the Business Park and surrounding area.
2. Development shall be designed and sized in such a manner that is architecturally, aesthetically and operationally harmonious with surrounding development.
3. All business, servicing, processing or storage, except for off-street parking, shall be conducted within completely enclosed buildings.
4. All utilities shall be underground.
5. Vehicular circulation within Business Park development shall be oriented to internal circulation drives with limited access provided to city streets.
6. No external nuisance which is offensive by reason of odors, lighting, smoke, fumes, dust, vibrations, noise, pollution or which is hazardous by reason of excessive danger of fire or explosion shall be permitted.
7. Project elements, such as architecture, landscaping, lighting, signage, access, circulation, parking and utilities shall be designed and constructed in a coordinated manner. In approving or disapproving proposed locations for uses in this district, the Plan Commission shall give due consideration to the character of the use and its suitability in relationship to other nearby uses, and shall also base its decision on such evidence as may be presented to the Plan Commission regarding traffic generation, heavy vehicular traffic, soil limitations, emission of noise, smoke, dust or dirt, odorous or noxious gases attributed to the proposed use.
8. The Design Review Board or Plan Commission shall approve site development in accordance with Section 20.31.000 of the City of Port Washington Zoning Code.

B. General Restrictions.

1. No continuous or intermittent noise from operations greater than the volume and range of noise emanating from vehicular traffic or its equivalent in noise shall be detectable at the boundary line of any residential district.
2. No toxic matter, noxious matter, smoke or gas, and no odorous or particulate matter detectable beyond the lot lines shall be emitted.
3. No vibrations shall be detectable beyond the lot lines.

4. No glare or heat shall be detectable beyond the lot lines.
5. No merchandise shall be handled for sale or service rendered on the premises except that which is incidental or accessory to the principal permissible use of the premises.
- C. Permitted Uses. The following uses are permitted in this district if the Plan Commission determines they are not detrimental to the surrounding area and are in compliance with the general restrictions stated above.
 1. Professional offices and services including, but not limited to, accounting, architectural, chiropractic, dental, medical, engineering and legal services.
 2. Business offices and services including, but not limited to, advertising agency, management consulting, manufacturing representatives, public relations, stenographic, travel agency, and duplicating services.
 3. Financial, insurance and real estate offices and services including, but not limited to, financial institutions, security brokers, holding and investments, insurance agency, insurance carriers, electronic data processing and information technology.
 4. Restaurants (excluding fast food and drive-thru restaurants), motels and hotels.
 5. Retail and retail service shops located on the street level of office buildings, up to 5,000 square feet per building in the aggregate or 50% of the first floor area, whichever is less. No individual retail space shall be larger than 2,000 square feet.
 6. Any similar use meeting all the requirements of this District.
- E. Permitted Accessory Uses.
 1. Garages for storage of vehicles used in conjunction with the operation of the business or for occupants of the premises.
 2. Signage subject to Section 20.29.000 of the City of Port Washington Zoning Code.
 3. Governmental and public services.
- F. Prohibited Uses.
 1. Automobile wrecking yards, junkyards, or similar uses.
 2. Excavating, grading, trucking and similar construction yards.
 3. Drop forges, foundries, grain elevators, refineries, tank farms, tanneries and similar uses.
 4. Dairies, cheese factories, stockyards and rendering plants.
 5. Fertilizer storage and packaging.
 6. Landscape contractors or landscape services.

7. Uses involving the storage, utilization or manufacture of materials or products, which decompose by detonation.
8. Mini-warehouses.
9. New and used car and truck sales.
10. Drive-thru and fast food restaurants.
11. Waste disposal, dumping, incineration, hazardous waste storage and similar uses.
12. All types of residential uses.

C. Conditional Uses.

1. Light industrial uses involving the manufacture and fabrication of goods within the confines of a building, and in which any noise, vibration, heat, flash or odor produced in the manufacturing process is confined within the building.
2. Wholesale and distribution facilities (excluding mini-warehouses) for the storage of non-hazardous goods and materials, where such goods or materials are stored inside a building.
3. Research and development.
4. Printing and publication.
5. Warehousing.
6. Public and/or private utility, transmission and distribution lines, and other accessories, provided that when the utility proposes a main inter-city transmission facility, the utilities shall give notice to the Plan Commission of such intention and of the date of any hearing before the Public Service Commission, and, before actual construction, shall file with the Plan Commission a map description of the route of any transmission line.

H. Lot Size. The minimum lot size in the BP Business Park District is 40,000 square feet.

I. Building Floor To Lot Area Ratio. The floor to lot area ratio of the building(s) shall not exceed forty percent (40%) of the lot area.

J. Building Height. The maximum height of principal structures shall not exceed thirty-five feet (35ft) unless otherwise allowed as part of a planned development agreement and overlay zoning pursuant to Section 20.21.000 of the City of Port Washington Zoning Code. The maximum height of accessory structures shall not exceed thirty feet (30ft).

K. Minimum Building Setback. All structures within the BP Business Park District shall be set back forty feet (40ft) from the ultimate road right-of-way.

L. Minimum Building and Parking Offset. Building or structure offsets shall be a minimum of twenty-five feet (25ft) from a side or rear lot line, except where the property is adjacent to an existing or proposed residential development, in which case the minimum offset shall be one hundred feet (100ft.).

M. Buffer Area Landscaping. Thirty feet (30ft) of all offsets immediately adjacent to residential

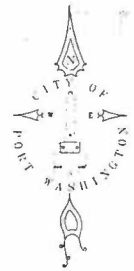
zoning districts shall be landscaped in the following manner: 1.) With a minimum of 120 points for every 100 lineal feet of side or rear lot line. 2.) Decorative fencing may be incorporated into, but not replace, the landscape buffer. When decorative fencing is incorporated into the landscape buffer, the total number of required buffer area points may be reduced by 15 points for every 50 lineal feet of fencing. Said buffer area landscaping shall be in addition to that required under the landscape ordinance (Section 20.31.050 of the Zoning Code).

- N. Lot Coverage and Open Space Ratio. A maximum of 70% of each lot shall contain buildings, structures and pavement. A minimum of 30% of each lot shall be open space.
- O. Lot Width. The minimum lot width shall be 150 feet.
- P. Off-street Parking. Shall be in accordance with applicable regulations set forth in Section 20.24.000 of the Zoning Code.
- Q. Minimum Parking and Driveway Offset. No driveway shall be located closer than twenty feet (20ft) from a side or rear lot line unless specifically waived by the Plan Commission, except where property is adjacent to an existing or proposed residential property no parking space or access driveway shall be closer than one hundred feet (100ft).
- R. Minimum Parking Setback. No driveway (excluding the portion of driveway required for road access) or parking area shall be located closer than twenty-five feet (25ft) to the ultimate road right-of-way.
- S. Landscaping. All premises shall, within one year after the date of receiving occupancy permit, be planted with sod or seeded (except for parking areas) and landscaped throughout pursuant to Section 20.31.000 and Section 34.170M of the City of Port Washington Zoning Code.
- T. Loading Docks. Loading docks shall generally not face a dedicated or reserved public street. Loading docks on property adjacent to a residential property shall not face the residential property.
- U. Exterior Mechanical Equipment. All exterior equipment shall be located, screened and painted to minimize visibility from streets and adjacent sites.
- V. Storage. Garbage and refuse containers shall be screened from view from streets and adjacent sites.
- W. Minimum Design Standards. All office or industrial buildings constructed in the BP Business Park District shall be of tilt-up construction, split-face block or brick.

MAP "G"

LANDS SUBJECT TO COOPERATIVE PLANNING

SANITARY SERVICE
BOUNDARY



■ LANDS SUBJECT
TO COOPERATIVE PLANNING

SCALE 1"=2000'