

**BOUNDARY AGREEMENT
VILLAGE OF WINDSOR
TOWN OF VIENNA**

THIS AGREEMENT (“**Agreement**” or “**Vienna-Windsor Agreement**”) is made and entered into between the VILLAGE OF WINDSOR, a Wisconsin municipal corporation located in Dane County, Wisconsin, with the powers and privileges of a municipal corporation at common law and conferred by ch. 61 of the Wisconsin Statutes (“**WINDSOR**”), and the TOWN OF VIENNA, a body corporate and politic located in Dane County, Wisconsin, with those powers granted by law and conferred by ch. 60 and ch. 61 of the Wisconsin Statutes (“**VIENNA**”). WINDSOR and VIENNA are collectively referred to herein as the “**Parties**,” and either may be individually referred to as “**Party**.” The Agreement shall be effective when approved and fully executed by the Parties.

RECITALS

WHEREAS, WINDSOR and VIENNA have determined that it is in their mutual interest to commit to certain provisions for future growth and development in a coordinated manner which minimizes the potential for disputes in the future and which protects and implements the respective land use plans of the two communities; and

WHEREAS, WINDSOR and VIENNA are authorized under §66.0301 of the Wisconsin Statutes to enter into agreements for the exercise of governmental functions on a cooperative basis; and

WHEREAS, WINDSOR and VIENNA are authorized under §66.0301(6) of the Wisconsin Statutes to make agreements regarding the maintenance of certain boundaries as well as provisions for boundary changes; and

WHEREAS, the parties have negotiated this Agreement to accomplish the recitals above in accordance with the terms provided for below.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by reference, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, WINDSOR and VIENNA agree as follows:

**ARTICLE I
BOUNDARY ADJUSTMENTS AND ANNEXATIONS**

1.01. Purpose and Intent. The parties acknowledge that WINDSOR has the authority to annex lands and intend by this Article I to set forth their agreement with respect to annexations and boundary adjustments.

1.02 Annexations or Attachments from the Town of Vienna. WINDSOR shall not, during the term of this Agreement, annex or otherwise attach to WINDSOR any lands within VIENNA without the written consent of the Town of Vienna Town Board.

ARTICLE II EXTRATERRITORIAL AND PLANNING AREAS

2.01. Intent. The Parties acknowledge that WINDSOR has extraterritorial land division (plat and certified survey map) approval jurisdiction within VIENNA as well as possible extraterritorial zoning authority within VIENNA, all as set forth in Wis. Stat. chs. 61, 62 and 66. The Parties further acknowledge that the Village of DeForest also has extraterritorial land division (plat and certified survey map) approval jurisdiction within VIENNA as well as extraterritorial zoning rights that overlap WINDSOR's extraterritorial rights in certain areas. One purpose of this Boundary Agreement is to separate such extraterritorial jurisdiction to the full extent possible between WINDSOR and VIENNA so that only one municipality has extraterritorial jurisdiction over any part of VIENNA, and to identify those extraterritorial jurisdiction areas of VIENNA that are outside of any extraterritorial jurisdiction of either WINDSOR or the Village of DeForest.

2.02 Vienna Comprehensive Plan. VIENNA shall retain full authority over the Town of Vienna, subject to any restrictions or obligations VIENNA has by law or agreement, including the Vienna-DeForest Agreement and the Vienna-Windsor Agreement.

The Parties acknowledge that this Agreement was reached in reliance on the Town of Vienna's Comprehensive Plan first adopted June 19, 2006 and as in effect on January 1, 2016 ("**Vienna Comprehensive Plan**"). VIENNA shall regulate developments in the Windsor ETJ Area and the Vienna-Windsor Planning Area¹ in a manner that is consistent with the Vienna Comprehensive Plan.

2.03 Establishment of Windsor Extraterritorial Jurisdiction; Limitation on Extraterritorial Zoning. WINDSOR's extraterritorial jurisdiction, as established by this Agreement, is not in conflict with the extraterritorial jurisdiction ("**ETJ**") and extraterritorial zoning ("**ETZ**") areas established in the Boundary and Utility Agreement dated January 20, 2014 between the Village of DeForest and Town of Vienna ("**Vienna-DeForest Agreement**").²

The map attached hereto as **Exhibit A** and incorporated by reference ("**Windsor ETJ Map**"), designates the areas of VIENNA in which WINDSOR shall exercise its extraterritorial jurisdiction as to plat map and certified survey map review ("**Windsor ETJ Area**"). The legal description of the Windsor ETJ Area is attached as **Exhibit B** and incorporated by reference.

¹ See Sections 2.03 and 2.04 for description of Windsor ETJ Area and Vienna-Windsor Planning Area.

² NOTE: This Agreement (also referred to as the "Vienna-Windsor Agreement") is between WINDSOR and VIENNA only, and WINDSOR is not a party to the Vienna-DeForest Agreement.

WINDSOR shall not, during the term of this Agreement, exercise its ETZ rights over any lands within VIENNA without the written consent of the VIENNA Town Board.

2.04 Vienna-Windsor Planning Area. The map attached hereto as **Exhibit C** and incorporated by reference depicts the “**Vienna-Windsor Planning Area.**” The legal description of the Vienna-Windsor Planning Area is attached as **Exhibit D** and incorporated by reference.

The Parties agree that, unless otherwise mutually agreed, the Vienna-Windsor Planning Area shall continue to be zoned for exclusive agricultural use consistent with the Vienna Comprehensive Plan. VIENNA shall promptly notify WINDSOR of any applications for land divisions and/or zoning changes within the Vienna-Windsor Planning Area. During the term of this Agreement, VIENNA shall neither approve any land divisions nor recommend any zoning changes that are inconsistent with exclusive agricultural use based on a ratio of one residential development unit (or “split”) per 75 acres. VIENNA shall not amend the Vienna Comprehensive Plan as it relates to the Windsor ETJ Area and/or the Vienna-Windsor Planning Area without first obtaining approval from the WINDSOR Village Board.

2.05 Agreement on Future Road Connectivity. If the lands in VIENNA that are adjacent to WINDSOR are developed, the streets shall be designed, improved and extended to inter-connect with streets within WINDSOR. Construction traffic for development shall be required to use streets within the community in which development is occurring to access any such development areas.

**ARTICLE III
TERM AND TERMINATION**

3.01. Effective Date. Except as provided herein, this Agreement shall become effective thirty-one (31) days after publication by both WINDSOR and VIENNA of this Agreement as a class 1 notice as required by Wis. Stat. §66.0301(6)(c)1. Neither Party shall publish this Agreement unless and until both parties have done all of the following in compliance with Wis. Stat. §66.0301(6)(c):

- (a) Published a Class 1 notice of a public hearing on this Agreement under Wis. Stat. ch. 985, with such notice published at least twenty (20) days prior to the public hearing.
- (b) Held a public hearing on this Agreement in accordance with the published notice;
- (c) Approved this Agreement by resolution adopted by its governing body following the public hearing, all as provided in Wis. Stat. §66.0301(6)(c)1.

Notwithstanding the foregoing, if, within 30 days of the publication of this Agreement, a petition for referendum is filed in accordance with Wis. Stat. §66.0301(6)(c)2., this Agreement shall not be effective until the results of the election in favor of this Agreement are certified. In the event of a referendum whose results do not approve this Agreement, this Agreement shall be void.

3.02. Term of Agreement. This Agreement shall continue in full force and effect for a period of five (5) years after its effective date, unless earlier terminated or extended as provided in this Agreement or as a result of a breach hereof or by the terms of any final judgment. It shall thereafter automatically renew for a period that shall expire on January 19, 2024 (“**Expiration Date**”), which is ten (10) years after the effective date of the Vienna-DeForest Agreement.

One hundred eighty days (180) prior to the Expiration Date, the governing bodies of the parties, or their designated representatives, shall meet to discuss extending the term of this Agreement, or any part hereof, with or without amendments, for five (5) additional years from the termination date. The meetings shall occur at the Vienna Town Hall or the Windsor Municipal Building unless the parties otherwise agree in writing. The failure of the Parties to meet as set forth in this paragraph shall not result in an extension of the Agreement.

The parties further agree that in the event of any change in the laws governing the subject matter of this Agreement during the term hereof which materially affect the rights or obligations of either party hereunder, they shall meet and discuss the possibility of amending this Agreement to address such changes.

This Agreement shall also terminate, at WINDSOR’s option, in the event of any amendments to the Boundary and Utility Agreement dated January 20, 2014 between the Village of DeForest and VIENNA.

ARTICLE IV ENFORCEMENT

4.01. General. The parties agree that the provisions of this Agreement, and any remedy for a breach hereof, may be enforced through any appropriate legal action.

4.02. Notice Prior to Litigation. The Parties agree to use all good faith efforts to reach a collaborative resolution of any disputes that arise during the term of this Agreement. To that end, no less than forty-five (45) days written notice shall be provided to the other Party prior to commencing litigation as a means to resolve a dispute arising from this Agreement.

ARTICLE V MISCELLANEOUS PROVISIONS

5.01. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective municipalities who are parties hereto and to any successor municipality which acquires jurisdiction of the lands governed hereby through incorporation, consolidation, charter amendment or otherwise.

5.02. Entire Agreement. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a written agreement executed by both parties.

5.03. Severability. Except as provided in Section 5.03(a), the various provisions in this Agreement are intended to be severable. In the event that any single term in this Agreement is determined to be invalid or unenforceable, such determination shall not affect any of the remaining provisions which shall continue in full force and effect.

- (a) **Material Provisions.** A determination that a material provision in the various sections of this Agreement is invalid shall allow the party whose interests are adversely affected by such determination to terminate this Agreement.
- (b) **Meaning of Invalidated.** For purposes of this section, a provision shall be considered invalidated if it is held invalid or unenforceable by a court of competent jurisdiction. Whenever a party has an option to void, cancel or terminate all or part of this Agreement under this section, such option may be exercised only by written notice to the other party within thirty (30) days of notice of the event or determination giving rise to the option.

5.04. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Wisconsin; and, in the event of a dispute, venue shall be in the Circuit Court of Dane County, Wisconsin.

5.05. Conflicting Ordinances. In the event of any conflict between the terms of this Agreement and any ordinance, regulation, resolution or order enacted, adopted or issued by either party, the provisions of this Agreement shall control. The party whose ordinance, regulation, resolution or order is in conflict with the terms hereof shall, upon notice thereof, promptly take action to amend such ordinance, regulation, resolution or order as necessary to bring it into conformity with this Agreement and to seek any other governmental approvals necessary to effectuate the amendment.

5.06. Section Captions/Area Designations. The captions or headings of the various sections of this Agreement are intended for ease of reference only and shall not be deemed to define, limit or describe the scope or intent of this Agreement and are not part of this Agreement.

5.07 Neutral Construction. The parties acknowledge that this Agreement is the product of negotiations between the parties and that, prior to the execution hereof, each party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against either party because that party's attorney drafted this Agreement or any part hereof.

5.08. Assignment. No party may assign any of its rights under this Agreement to any other person or entity, except that such rights shall be automatically assigned to a successor entity as described in section 5.01.

5.09. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto. Nothing in this Agreement shall be construed to provide any right or remedy to any person, firm, corporation or entity not a party to this Agreement.

Approved by the Village of Windsor by Village Board Resolution 2016-____ on February ____, 2016.

Approved by the Town of Vienna by Town Board Resolution _____ on February ____, 2016.

VILLAGE OF WINDSOR

TOWN OF VIENNA

By: _____
Robert E. Wipperfurth,
Village President

By: _____
Lonnie Breggeman, Town Chairperson

Attest:

Attest:

Tina Butteris, Deputy Village Clerk

Shawn Haney, Town Clerk

Incorporated by Reference:

Exhibit A: Windsor ETJ Map

Exhibit B: Legal Description of Windsor ETJ Area

Exhibit C: Vienna-Windsor Planning Area Map

Exhibit B: Legal Description of Vienna-Windsor Planning Area