



MEMO

TO: Finance Committee

FROM: Paula Vandehey, Director of Public Works *PAN*

DATE: June 2, 2020

SUBJECT: **Request to approve Intergovernmental Cooperation Agreement between the City of Appleton and Town of Buchanan to create a revised common boundary line between the municipalities.**

The City of Appleton is reconstructing Newberry Street from Schaefer Street to HWY 441 in 2021. This project includes properties within the Town of Buchanan. As you can see from the attached map, these town islands are not conducive to providing efficient services.

During discussions for a possible cost share for the Newberry Street reconstruction project, the idea of a boundary adjustment was raised by the Town of Buchanan. Based on those discussions, the attached Intergovernmental Agreement is proposed for your consideration. The highlights of the agreement include:

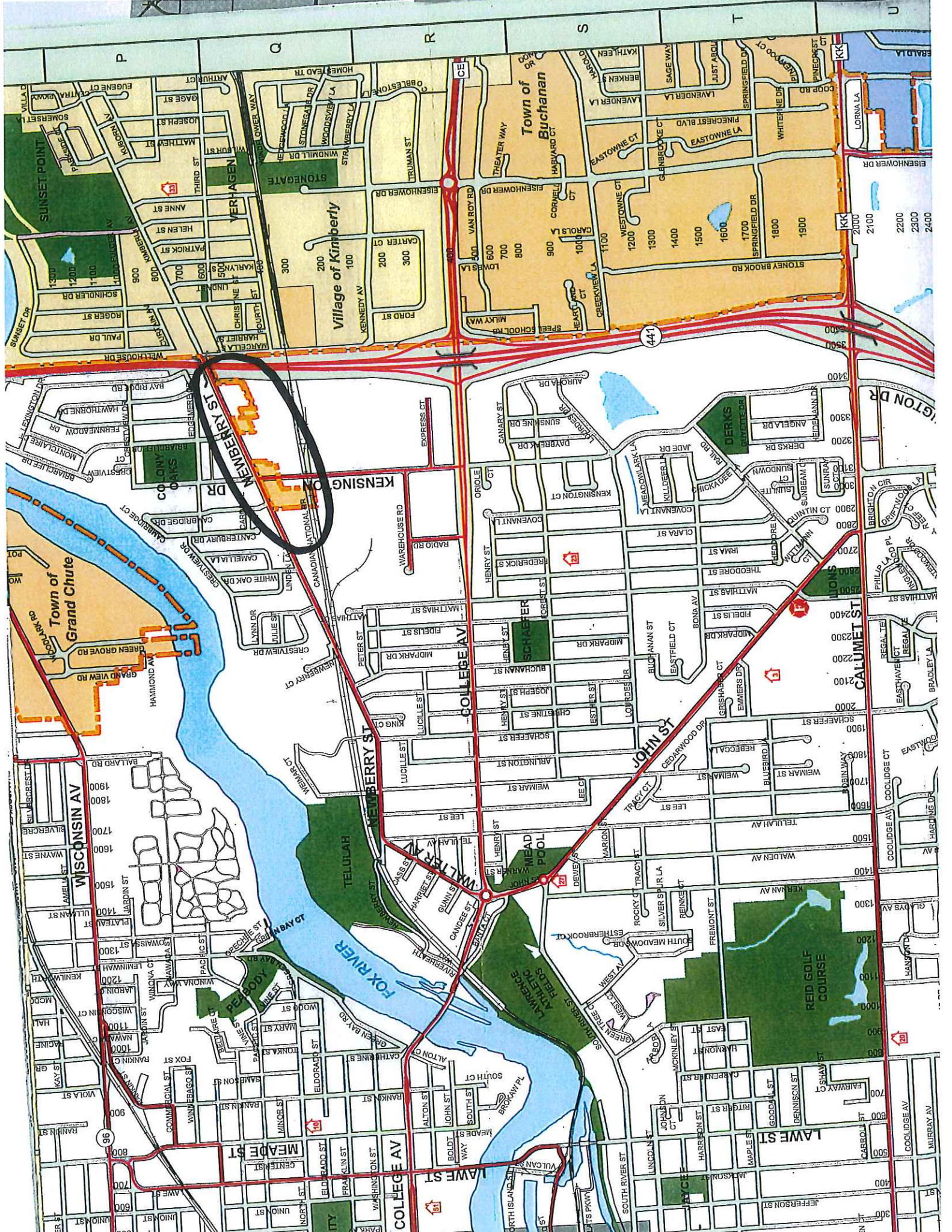
1. New boundary line would become HWY 441, eliminating the town islands.
2. The City agrees to pay annually to the Town, an amount equal to the amount of property taxes that the Town levied on the annexed territory in the year immediately prior to the annexation for a 5-year period. For reference, based on the 2019 City tax rate of \$8.35, the City would collect \$9,325 in taxes and pay to the Town of Buchanan \$3,540 based on the 2019 Town tax rate of \$3.18 to make them whole for the 2020 budget year.

In addition to the Intergovernmental Agreement, several property owners that will be annexed as part of this agreement are requesting that the City of Appleton's Sidewalk Special Assessment be waived. Staff is recommending against that request.

Staff recommends the Common Council APPROVE entering the intergovernmental cooperation agreement with the Town of Buchanan to create a revised common boundary line between the municipalities.

Attachments

C: Tony Saucerman, Finance Director



Village of Kimberly

Town of Buchanan

Town of Grand Chute

NEWBERRY ST

COLLEGE AV

JOHN ST

CALUMET ST

FOX RIVER

MEAD POOL

REID GOLF COURSE

WISCONSIN AV

MEADE ST

CITY

COLLEGE AV

LAWE ST

COOLIDGE AV

MURRAY AV

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INTERGOVERNMENTAL COOPERATION AGREEMENT
between
City of Appleton and Town of Buchanan

This is an Intergovernmental Cooperation Agreement effective as of the 1st day of June, 2020 by and between the City of Appleton, a Wisconsin municipal corporation, located in Outagamie, Calumet and Winnebago counties (hereinafter "City"), and the Town of Buchanan, a body corporate and politic, located in Outagamie County, Wisconsin (hereinafter "Town").

RECITALS

WHEREAS, Wisconsin Statutes § 66.0301(6) authorizes any two municipalities whose boundaries are immediately adjacent at any point to enter into a written agreement determining all or a portion of the common boundary line between the municipalities; and

WHEREAS, § 66.0301(1)(c) provides that for purposes of §66.0301(6), municipality means any city, village, or town; and

WHEREAS, the City and Town have long recognized that intergovernmental cooperation and joint planning provide for the best use of land and natural resources, and the provisions of high quality and efficient services; and

WHEREAS, the City and Town recognize that a common boundary between the City and Town will promote the efficient provision of municipal services to citizens who reside in proximity to the common border between the City and Town; and

WHEREAS, tax parcels 030046101, 030046300, 030046200, 030046100, 030046102, 030045700, 030045800, 03004500, 030044900, 030044800, 030044300, 030043900 are currently located in the Town of Buchanan but comprise two municipal islands surrounded by the City of Appleton (hereinafter collectively "Town Islands"); and,

WHEREAS, the Town and City wish to work cooperatively and expeditiously under the authority of § 66.0301(6) to change their respective boundaries such that the parcels comprising the Town Islands become located within the City of Appleton thus eliminating the two municipal islands.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. The common boundary between the City and the Town shall be the right-of-way of U.S. Highway 441.

2. That any portions of the boundary between City and Town located west of U.S. Highway 441 shall be eliminated.

3. The elimination of the portions of a boundary between the City and the Town shall include the Town Islands located west of U.S. Highway 441, located more particularly on or near Newberry Street, so that the parcels comprising the Town Islands shall become part of the City.

4. After the Town and City have completed requirements set forth in Wis. Stat. § 66.0301(6)(c), the City shall be the governing body designated to enact an ordinance to accomplish the boundary change in accordance with Wis. Stat. § 66.0301(6)(e).

5. The City agrees to pay annually to the Town, for five years, an amount equal to the amount of property taxes that the Town levied on the Town Islands' parcels, as shown by the tax roll, in the year in which the Town Islands becomes part of the City. The first annual payment shall be due on or before January 31st of the year after the Town parcels become City parcels. The remaining four annual payments shall be due on or before January 31st of each year thereafter.

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

7. The term of this Agreement shall be ten years. Upon expiration of the agreement, all terms shall expire except that any boundary change shall remain.

8. As partial consideration for this agreement, in exchange for the Town's cooperation in adjusting the boundaries of the Town Islands, the City agrees not to pursue a cost-sharing arrangement with the Town for the Newberry Street Reconstruction Project. (The Town share of the Newberry Street Reconstruction Project cost was estimated to be \$238,062 with the project concluding in the fall of 2021.)

9. In the event that the boundary adjustment and complete elimination of the Town Islands does not occur as contemplated by this Agreement, the Town and City reserve their respective rights to cooperatively assess any parcel comprising the Town Islands, that remains in the Town, for that parcel's proportionate share of the Newberry Street Reconstruction Project costs. In such case, the Intergovernmental Agreement approved by the Buchanan Town Board on July 16, 2019, attached hereto as Exhibit A and incorporated herein in its entirety, shall

become the controlling document and project costs shall be collected as set forth therein. In addition to the foregoing, both the Town and City specifically reserve any and all other rights, including but not limited to those under § 66.0707, to specially assess Newberry Street Project costs to any parcel that does not become part of the City pursuant to this Agreement.

10. The Town and City acknowledge that time is of the essence and both parties shall work cooperatively and expeditiously to meet the requirements set forth in Wis. Stat. § 66.0301(6).

11. **Amendment.** This Agreement may be amended by written agreement by the governing bodies of both parties.

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

13. **Severable Provisions.** The invalidity of any part of this Agreement shall not impair or affect in any manner the validity, enforceability or effect the balance of the terms and conditions of this Agreement.

14. **Advancement of Mutual Interests.** In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of all relevant agencies. To the extent practicable, the parties will, where necessary to obtain such required approval, submit a single, joint request or other appropriate documents requesting the approval.

15. **Enforceability.** The Parties have entered into this Agreement under the Authority of § 66.0301 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 be construed so as to be binding on their respective successors, agents and employees. The Parties will not challenge the provisions of the Agreement except upon breach by the other party.

16. **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 all affected parties. Waiver of one right, or release of one obligations, will not constitute 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.

17 **Notices.** All notices required under this Agreement must be served, either personally or by certified mail, upon the Parties' respective municipal clerks. A copy of the

notices shall also be mailed via regular U.S. Mail to the Town Chair and Mayor of the City.

18. **Effective Date.** This Agreement shall take effect upon completion of the process provided for in § 66.0301(6)(c), Wisconsin Statutes.

Dated this _____ day of _____, 2020.

Town of Buchanan

Attest: _____
Printed Name: _____

By: _____
Mark McAndrews, Town Chair

Attest: _____
Printed Name: _____

By: _____
Cynthia Sieracki, Town Clerk-Treasurer

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

Printed Name: _____
Title: _____

Printed Name: _____
Attorney

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

City of Appleton

Attest: _____
Printed Name: _____

By: _____
Jacob A. Woodford, Mayor

Attest: _____
Printed Name: _____

By: _____
Kami Lynch, City Clerk

Provision has been made to pay the liability
that will accrue under this contract.

Approved as to form:

Anthony D. Saucerman, Finance Director

City Law: A20-0249
Last Update: May 27, 2020

Christopher R. Behrens, City Attorney

EXHIBIT A

CITY OF APPLETON/TOWN OF BUCHANAN
Newberry Street

INTERGOVERNMENTAL AGREEMENT

DATE: April 24, 2019

FOR RECONSTRUCTING NEWBERRY STREET FROM SCHAFER STREET TO HWY 441 WITH CONCRETE PAVING, SIDEWALKS AND STORMWATER MANAGEMENT

PROJECT TITLE: Newberry Street

The Town of Buchanan, hereinafter called the "Town", through its undersigned duly authorized officers or officials, hereby enters into an agreement with the City of Appleton, through its Public Works Department, hereinafter called the "City", to reconstruct Newberry Street with concrete paving, sidewalk and stormwater management.

PROPOSED IMPROVEMENT

Reconstruct Newberry Street with underground utilities in 2020 and concrete paving, curb and gutter, driveway aprons and sidewalks in 2021.

COST ESTIMATE AND PARTICIPATION

| PHASE | ESTIMATED COST | | | |
|-------------------------------|------------------|----------------|------------------|--------------|
| | Estimated Cost | Town | City | % Town Share |
| Newberry Street Frontage | | 909' | 9941' | 8.38% |
| Roadway | \$ 1,908,100 | \$ 159,899 | \$ 1,748,201 | 8.38% |
| Sidewalk | \$ 192,202 | \$ 22,725 | \$ 169,477.00 | * |
| Stormwater Management | \$ 566,548 | \$ 47,477 | \$ 519,071 | 8.38% |
| Engineering & Inspection (5%) | \$ 95,000 | \$ 7,961 | \$ 87,039 | 8.38% |
| TOTAL PROJECT COST | 2,761,850 | 238,062 | 2,523,788 | |

*Based on 909' x 5' x \$5.00/SF sidewalk

TERMS AND CONDITIONS:

1. The City of Appleton will be the lead agency for this project.
2. All plans and specifications for the improvements will be provided for Town of Buchanan's approval and records.

3. The project cost in the agreement is an estimated amount. The Town of Buchanan shall pay the City of Appleton upon completion of the project based on actual costs.
4. All driveway aprons shall be replaced with concrete.
5. Any necessary Temporary Limited Easements shall be the responsibility of the municipality in which the property resides.
6. The intersection of Kensington Drive and Newberry Street will remain 4-Way Stop controlled as part of this reconstruction project.

City of Appleton

Attest: _____
 Printed Name: _____

By: _____
 Timothy M. Hanna, Mayor

Attest: _____
 Printed Name: _____

By: _____
 Kami L. Lynch, City Clerk

Provision has been made to pay the liability
 that will accrue under this contract.

Approved as to form:

 Anthony D. Saucerman, Finance Director

 James P. Walsh, City Attorney

Town of Buchanan

Attest: _____
 Printed Name: _____

By: _____
 Mark McAndrews, Town Chairperson

Attest: _____
 Printed Name: _____

By: _____
 Cynthia Sieracki, Town Clerk – Treasurer

Approved as to form:

 Attorney for the Town of Buchanan