

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
DODGE COUNTY AND CANISTEO TOWNSHIP**

WHEREAS, Dodge County ("County") has adopted the Dodge County Zoning Ordinance ("County Ordinance");

WHEREAS, the Canisteo Township ("Township") has adopted the Canisteo Township Zoning Ordinance No. II and intends to adopt the Canisteo Township Zoning Ordinance III ("Township Ordinance") to replace the existing ordinance and to incorporate the provisions of the County Ordinance together with certain zoning regulations that are stricter than those imposed by the County;

WHEREAS, Minnesota Statutes, section 394.33, subdivision 1 provides that once a county has adopted official controls, no township shall enact or enforce official controls inconsistent with or less restrictive than the standards prescribed in the official controls adopted by the county;

WHEREAS, the County and Township recognize the importance of cooperating on land use issues in order to: promote and protect the public health, safety, welfare and morals; promote and provide for the orderly development of agricultural, residential, commercial, industrial, recreational and public areas and land uses; preserve agricultural land and animal agriculture; conserve natural and scenic areas; conserve natural resources and open space; and provide official controls to implement the goals and policies of the comprehensive plan;

WHEREAS, Minnesota Statutes, section 394.32, subdivision 1 authorizes the governing body of a township to contract with the county board for planning and zoning services to be provided by the county; and

WHEREAS, the County and Township desire to enter into this Memorandum of Understanding ("MOU") in order to promote cooperation, consistency, and coordination in the administration of zoning regulations within the Township and to ensure mutual understanding of the respective roles and responsibilities of each of the parties to this MOU related to the administration and enforcement of zoning regulations.

NOW, THEREFORE, the County and Township hereby agree as follows:

1. **Adoption of County Ordinance and Plan by Reference.** Within 90 days of the effective date of this MOU, the Township agrees to adopt the Township Ordinance (Ordinance No. III), which adopts by reference the County Ordinance and the County's comprehensive plan.
2. **Stricter Regulations.** The Township may adopt, as part of the Township Ordinance, now and in the future, zoning regulations which impose stricter regulations than those contained within the County Ordinance. The Township shall notify the County prior to holding a public hearing on any amendments to the Township Ordinance. The parties understand that future changes to the County

Ordinance or the Township Ordinance may necessitate changes to the MOU and the parties agree to communicate about proposed zoning ordinance amendments and to work in good faith to identify and promptly make any changes to this MOU that may be required.

3. **Fee Schedule.** The Township shall adopt by reference the County's schedule of zoning related fees, including any amendments the County may make to its schedule. Only zoning related fees will be adopted by reference and the Township may establish and adopt such other fees related to its business as it may determine is appropriate without reference to the County's fee schedule.
4. **Administration and Enforcement of the Township Ordinance.** The County hereby agrees, pursuant to Minnesota Statutes, section 394.32, subdivision 1, to administer and enforce the Township Ordinance, including the provisions incorporated by reference therein from the County Ordinance, as provided in this MOU. The County shall perform all duties and activities necessary to properly administer and enforce the Township Ordinance including, but not limited to, the following:
 - a. Permit Receipt and Review. All permit applications required by and submitted pursuant to the Township Ordinance shall be submitted directly to the County. The County shall be responsible for processing and taking action in a timely manner on all such applications including, but not limited to, developing and making available application forms, determining if an application is complete, notifying the applicant if additional information is required, and processing complete applications under the Township Ordinance in compliance with the time limitations imposed under Minnesota Statutes, section 15.99 and such other legal requirements that may apply.
 - b. Conduct Necessary Hearings. The County shall, as part of processing applications, provide such notices and conduct such public hearings as are required under the Township Ordinance or by law. The County shall provide the Township at least seven days notice of all public hearings held on applications submitted for property located within the Township.
 - c. Inspections and Enforcement. The County shall be responsible for conducting such inspections, providing such notices, and instituting such enforcement actions as the County may determine are necessary for the proper administration and enforcement of the Township Ordinance.
 - d. Single Process and Amendments. The Township agrees it will not establish a duplicate or additional process for considering applications submitted pursuant to the Township Ordinance. One of the primary purposes of this MOU is to streamline the permitting process and to avoid duplication. This section does not limit the Township's authority to consider and act upon amendments to the Township Ordinance initiated by the Town Board. Any application requesting an amendment to a provision in the Township Ordinance which is, or would result in, regulations that are stricter than the County Ordinance shall be

submitted and processed by the Township. All other applications for zoning amendments, including rezoning applications, shall be submitted to and processed by the County.

- e. Township Review and Comment. The County shall provide the Township an initial staff report on all variance, interim use, and conditional use permit applications, together with a copy of the applications, it receives from within the Township at least seven days before the date of the scheduled hearing. The Township shall review and make a recommendation to the County regarding each such application by the deadline identified in the staff report. The County shall carefully consider the Township's recommendation, but the parties agree the County has the authority, discretion, and responsibility to act on all such applications as it determines is appropriate under the applicable regulations, even if the County's decision is contrary to the Township's recommendation.
 - f. Decision-Making Authority. The County shall make the final decision on all applications submitted to it pursuant to the Township Ordinance. The County's Planning Commission and the County's Board of Adjustments shall constitute the Planning Commission and the Board of Appeals and Adjustments for the purposes of processing and deciding applications submitted to the County pursuant to the Township Ordinance. The Township's planning commission will, during the term of this MOU, serve to only conduct hearings and advise the Town Board on proposed amendments to the Township Ordinance. The Township hereby delegates to the County all authority necessary to administer and enforce the Township Ordinance as provided in this MOU including, but not limited to, the authority to determine if an application is complete, identify what additional information is needed in order to make an application complete, and to take all other actions, issue such orders, and make such decisions as may be needed or convenient to process, hear, decide, and issue permits and to enforce the Township Ordinance.
 - g. Recording. The County shall be responsible for recording conditional use permits, interim use permits, variances, amendments, and such other documents that are required to be recorded in the office of the County Recorder. The Township shall be responsible for recording the Township Ordinance and any amendments it may make to the Township Ordinance.
 - h. Copy to Township. Each month the County shall provide the Township a copy of all permits issued, variances granted, and the record, including findings of fact and staff reports, of all zoning actions and decisions it makes which relate to property within the Township.
5. **Fees and Costs.** The County and Township agree that the County will be compensated as follows for providing administration and enforcement services to the Township under this MOU.

- a. **Application and Permit Fees.** The County shall be entitled to retain all application and permit fees related to requests submitted to the County pursuant to the Township Ordinance.
 - b. **Additional Expenses.** The Township shall reimburse the County for the additional expenses it incurs to administer the provisions of the Township Ordinance that are stricter than those of the County Ordinance and the additional costs the County incurs to enforce those provisions. For the purposes of this section, "additional expenses" shall mean the costs that exceed the application fees, permit fees, fines, and escrow payments (if any) the County receives from the applicant, and the costs to undertake enforcement action of the stricter provisions. The Township retains the right to bring a civil enforcement action of a violation of the Township Ordinance using its own attorney. The County, through its County Attorney's Office, will prosecute any violation brought on a criminal complaint and the County shall retain any resulting fines to recuperate the costs of prosecution. The Township shall not be responsible for the costs of any enforcement or corrective actions filed in district court by the County unless the Township first issues a written approval expressly authorizing the County to bring the action. The need for prior written approval does not apply to routine administrative and enforcement actions, including consultations with the County Attorney or the issuance of enforcement letters and notices, undertaken prior to the decision being made to file an action in court. The County shall provide the Township a detailed invoice for any additional expenses owed at least quarterly. The Township shall pay any such invoice in full within 45 days of receipt unless the County agrees otherwise.
 - c. **Annual Minimum.** The Township shall ensure the County receives at least \$500 for each year of service (or prorated portion thereof) it provides under this MOU. Within 30 days from the end of the year the County shall provide the Township a written summary and total of all zoning related fees it received from the Township and any additional expenses paid by the Township. If the total amount of fees and additional expense payments received by the County in a year does not total at least \$500, the County shall notify the Township and the Township shall, within 60 days from the date of the County's written summary, pay the difference to the County. Except for the additional expenses and this annual minimum, the Township shall not otherwise be responsible for compensating the County or paying any other costs for the services the County provides under this MOU.
6. **Indemnification.** The County agrees to defend, indemnify, and hold the Township, its officers, employees, and agents, harmless from and against all claims, actions, damages, losses and expenses, including attorneys fees, arising out of or resulting from the County's performance of or failure to perform, the duties required under this MOU, including, but not limited to, the administration and enforcement of the Township Ordinance or the County Ordinance, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged error, negligent act, omission, or misconduct of the County. The County, as the entity assuming responsibility for the administration and enforcement of the Township Ordinance,

shall be solely responsible for responding to all appeals, suits, or other actions brought or arising out of its administration or enforcement activities and for initiating such criminal or civil proceedings as the County may determine is appropriate or necessary to properly enforce the Township Ordinance. The Township agrees to defend, indemnify and hold harmless the County, and its officials, employees, and agents from and against all claims, actions, damages, losses and expenses, including attorneys' fees, arising out of or resulting from Township's performance of the duties required under this MOU, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged error, negligent act, omission, or misconduct of the Township. Nothing in this MOU shall be construed as a waiver by either party of any defenses, immunities or limitations on liability to which either may be entitled under Minnesota Statutes, Chapter 466, common law, or otherwise. The essential purpose of this MOU is to transfer responsibility for the administration and enforcement of the Township Ordinance to the County. To the extent the activities provided for in this MOU are viewed by a court of competent jurisdiction as being a joint venture or joint enterprise, the Township and County shall be considered a single governmental unit for the purposes of determining total liability as provided in Minnesota Statutes, section 471.59, subdivision 1a.

7. **Effective Date and Term.** This MOU shall be effective as of the date indicated below and the County shall begin providing the Township administration and enforcement services as of the effective date of the Township Ordinance. The MOU shall continue in effect unless terminated as described in Section 8 of this MOU.
8. **Termination.** This MOU may be terminated by mutual written agreement or by either party upon submitting at least a 180-day written notice of termination to the other party. If the reason for termination is the other party's breach of any term or condition of this MOU, this MOU may be terminated upon 60 days' written notice if the other party fails to correct the breach within the 60-day notice period. Upon the effective date of the termination of the MOU, the Township shall assume responsibility for the administration and enforcement of the Township Ordinance.
9. **Miscellaneous.**
 - a. **Record Retention.** The County shall be responsible for retaining all governmental records associated with its administration and enforcement of the Township Ordinance. The County may periodically transfer the records to the Township and, upon termination of this MOU, shall transfer all such records to the Township. During the term of this MOU, the County may destroy any governmental records it created or received in its administration and enforcement of the Township Ordinance according to the County's records retention policy, unless the Town Board requests the documents be turned over to the Township for retention or destruction.
 - b. **Legal Compliance.** Both parties agree to comply with all applicable state, federal and local laws, rules and regulations in the performance of their duties under this MOU.


- c. Independent Contractor. The County is and shall remain at all times an independent contractor with respect to all services performed under this MOU. The County represents that it has, or will secure at its own expense, all personnel and equipment required in performing services under this MOU and to maintain adequate insurance coverages related to same. Any and all personnel of the County engaged in the performance of any work or services under this MOU shall be considered, for all purposes, employees of the County and not the Township. Such personnel shall not require, nor be entitled to, any compensation, rights or benefits of any kind whatsoever from the Township, including, without limitation, medical and hospital care, sick and vacation leave, workers' compensations, unemployment compensation, disability, severance pay, or PERA.
- d. Entire Agreement. This MOU represents the entire agreement between the County and Township and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof. Any amendments, addenda, alterations, or modifications to the terms or conditions of this MOU are not effective unless in writing and approved and signed by both parties.
- e. Third Parties. This MOU does not confer any rights upon any third parties or parties who are not signatories to this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU, and it shall be effective as of MAY 22, _____, 2012.

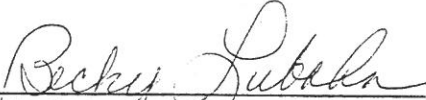
DODGE COUNTY

Approved on the 22 day of MAY, 2012.

BY THE COUNTY BOARD



Don Gray, Chair
Dodge County Board of Commissioners

Attest: 

Becky Lubahn, Deputy Clerk
Dodge County Board of Commissioners

CANISTEO TOWNSHIP

Approved on the 12 day of May, 2012.

BY THE TOWN BOARD


Town Chairperson

Attest: 
Town Clerk