

# Memo

To: Plan Commission

Fr: Trevor Fuller, Planning and Zoning Administrator

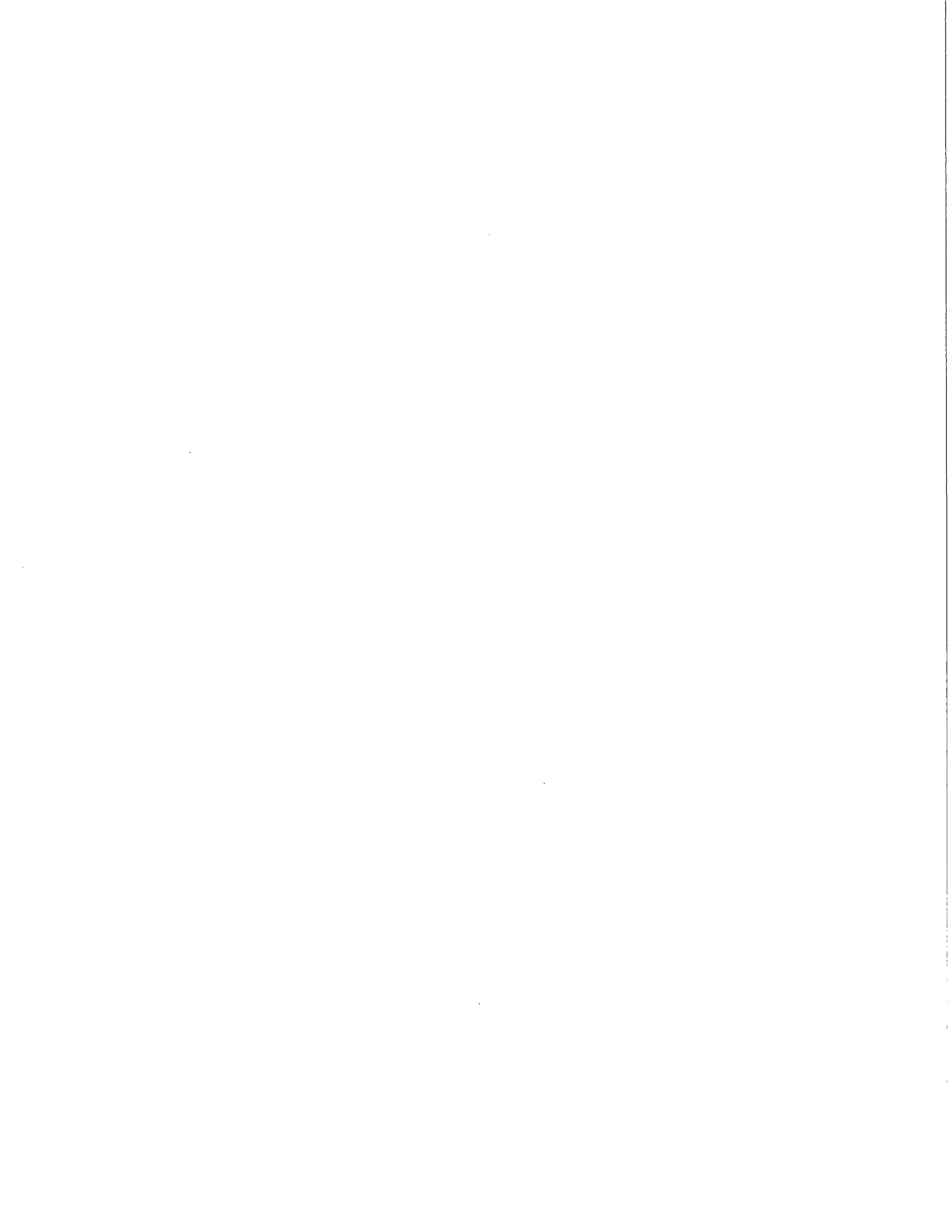
Re: INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DEPERE AND VILLAGE OF ALLOUEZ LEBRUN STREET RECONSTRUCTION AND TRAIL

Date: July 23, 2014

Attached are several documents which will help coordinate a land agreement between the Village of Allouez and the City of De Pere. LeBrun Road is a shared boundary between the two municipalities. This Detachment/Annexation Agreement would only be for the Village of Allouez to acquire the City of De Pere's southern portion of the road between East River Drive and the East River – the rest of the sections would remain "as is" at this time.

Allouez staff has been working with the City of De Pere to help negotiate a fair way to address the present and future issues of this stretch of road – future development south of this border, deteriorating road conditions, and future trail access to the East River Trail.

Plan commission is asked to review the material and make a recommendation to the Village Board for their August 19, 2014 meeting to approve the agreement, approve the agreement with conditions, or deny the agreement at this time.



**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE  
CITY OF DE PERE AND VILLAGE OF ALLOUEZ  
(LE BRUN STREET RECONSTRUCTION AND TRAIL)**

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between the City of De Pere, a Wisconsin municipal corporation, (“De Pere”), and the Village of Allouez, a Wisconsin municipal corporation (“Allouez”), both located in Brown County, Wisconsin.

**WITNESSETH**

**WHEREAS**, LeBrun Street is a border street under the joint jurisdiction of the City of De Pere and the Village of Allouez from McCastlen Street to East River Drive; and

**WHEREAS**, De Pere and Allouez intend to undertake joint improvements of the portion of LeBrun Street east of East River Drive and share the costs thereof as described herein; and

**WHEREAS**, Wis. Stats. §66.0301 sets forth procedures whereby municipalities may provide for intergovernmental cooperation for purposes of furthering the public interests of each community; and

**WHEREAS**, Wis. Stats. §66.0301(6) provides a specific mechanism whereby two municipalities whose boundaries are immediately adjacent at any point may enter into a written agreement determining all or a portion of the common boundary line between them; and

**WHEREAS**, De Pere and Allouez each desire that the boundary between them be re-established so that the subject area is detached from DePere and brought into Allouez and so that the boundary between Allouez and De Pere is well planned, with complimentary development on both sides of the boundary between the communities; and

**WHEREAS**, both parties desire to enter into this Agreement to further the public interests and objectives of both De Pere and Allouez and to provide for cooperation that is beneficial to citizens in both communities.

**TERMS OF AGREEMENT**

1. **Reconstruction Le Brun – East River Drive to Wiese Park.** The Village of Allouez and the City of De Pere agree to each pay equal share of the cost to reconstruct east Le Brun Street from East River Drive to Wiese Park based on reconstructing the roadbed, installing curb and gutter as necessary, and including

engineering costs. This work will be engineered by the Village of Allouez and bid. The City of De Pere may provide field engineering survey as part of its share of the cost.

2. **Trail Le Brun – East River Drive to Wiese Park.** The Village of Allouez and the City of De Pere agree to each pay equal share of the cost to construct a public access trail along east Le Brun Street from East River Drive to Wiese Park, less any grants obtained for this project. The public trail shall be a 10 foot asphalt trail or concrete trail installed along and/or adjacent to the street. This trail may be installed at a time different from the street reconstruction. This trail will be engineered by the Village of Allouez, and will be maintained by Allouez. The City of De Pere may provide field survey work as a portion of its project cost.
3. **Trail Funding Le Brun – McCastlen to Wiese Park.** The Village of Allouez and the City of De Pere agree to work jointly to apply for funding assistance for construction of a pedestrian trail/walkway from McCastlen Street to Wiese Park..
4. **Village Annexation City Detachment S1/2 E. Le Brun East River Drive to East River.** The Village of Allouez and the City of De Pere agree that the Village of Allouez will annex the south one-half of east Le Brun Street from East River Drive to the East River with detachment from the City of De Pere. The Village of Allouez and the City of De Pere by separate Intergovernmental Agreement will provide for the annexation and detachment as described herein.
5. **City Access to Le Brun-East of East River Drive.** Allouez shall allow such access points to LeBrun Street as are approved by the De Pere Plan Commission in its site plan approval process of future developments of Parcel ED-1128-11, and any subdivision(s) thereof.
6. **Permission for Access or Construction of Improvement.** The City consents to the Village's access to the LeBrun right-of-way east of East River Drive for the purpose of constructing the roadway and public access trail as provided in this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2014.

**VILLAGE OF ALLOUEZ**

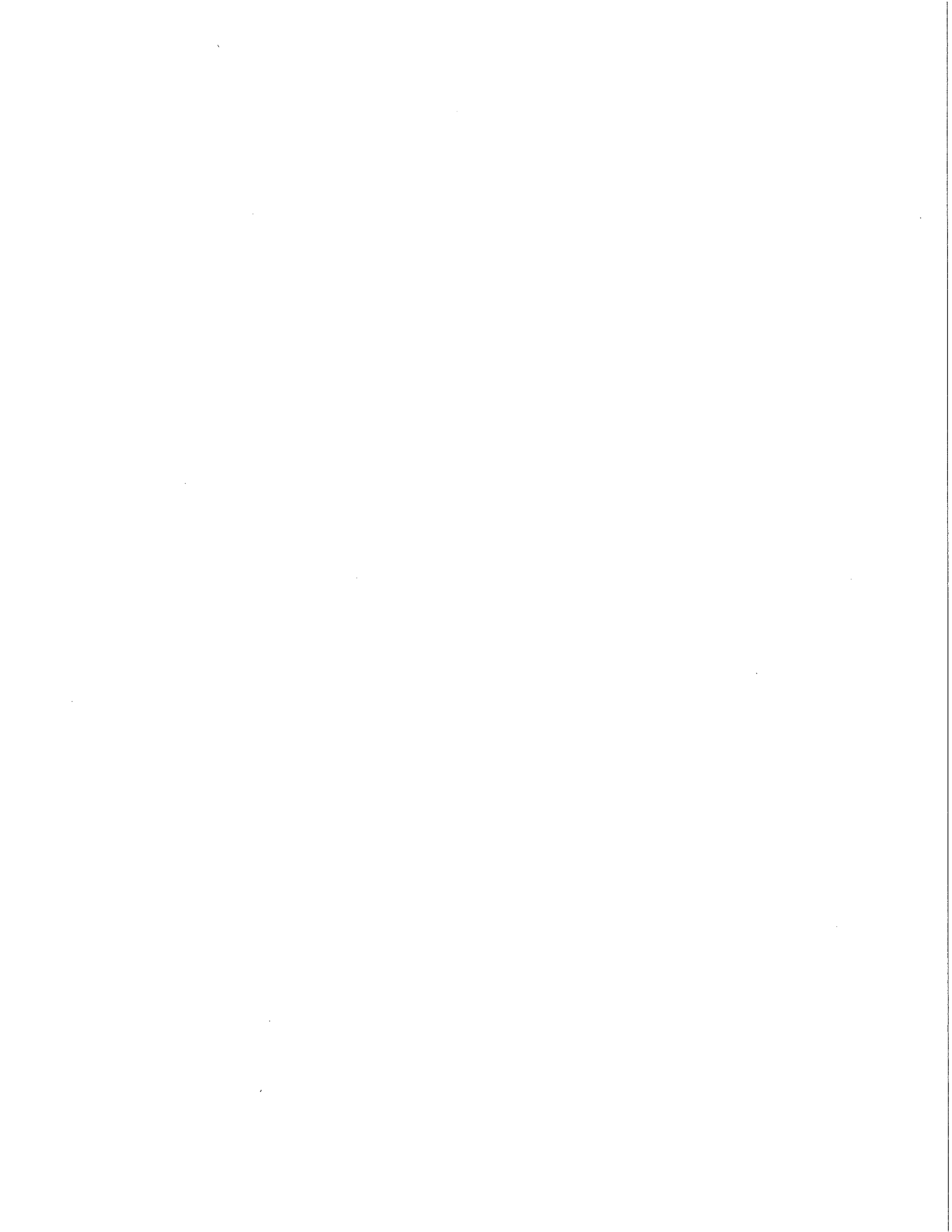
**CITY OF DE PERE**

By: \_\_\_\_\_  
Steven VandenAvond  
Village President

By: \_\_\_\_\_  
Michael J. Walsh, Mayor

By: \_\_\_\_\_  
Debra M. Baenen  
Village Clerk

By: \_\_\_\_\_  
Shana Defnet, Clerk-Treasurer



ORDINANCE NO. \_\_\_\_\_

DETACHING TERRITORY FROM THE CITY OF DE PERE

THE CITY COUNCIL OF THE CITY OF DE PERE DO ORDAIN AS FOLLOWS:

Section 1: Territory Detached. In accordance with Wis. Stats. §66.0301(6) and the Intergovernmental Cooperation Agreement Between the City of De Pere and Village of Allouez to Determine a Portion of the Common Boundary Line through Detachment and Annexation of Territory, approved on \_\_\_\_\_, 2014, the following described territory in the City of DePere, Brown County, Wisconsin, is detached from the City of DePere, Brown County, Wisconsin: See Exhibit A – Map and Exhibit B – Legal Description attached hereto and made part hereof.

Section 2: Severability. If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section 3: Effective Date. This ordinance shall take effect on October 1, 2014.

Adopted by the City Council of the City of DePere, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Michael J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Shana Defnet, Clerk-Treasurer

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_



**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE  
CITY OF DE PERE AND VILLAGE OF ALLOUEZ TO DETERMINE A  
PORTION OF THE COMMON BOUNDARY LINE THROUGH DETACHMENT  
AND ANNEXATION OF TERRITORY  
(LeBrun Street East of East River Drive)**

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between the City of De Pere, a Wisconsin municipal corporation, (“De Pere”), and the Village of Allouez, a Wisconsin municipal corporation (“Allouez”), both located in Brown County, Wisconsin.

WITNESSETH

WHEREAS, De Pere and Allouez share a common boundary, LeBrun Street; and

WHEREAS, that portion of LeBrun Street east of East River Drive is subject to a separate Intergovernmental Cooperation Agreement between the City of DePere and the Village of Allouez for the establishment of a recreational trail and reconstruction of said portion of LeBrun Street and that Intergovernmental Agreement calls for that portion of LeBrun Street located in the City of De Pere to be detached from the City of De Pere and annexed to the Village of Allouez to accomplish the purposes of that Intergovernmental Agreement; and

WHEREAS, Wis. Stats. §66.0301 sets forth procedures whereby municipalities may provide for intergovernmental cooperation for purposes of furthering the public interests of each community; and

WHEREAS, Wis. Stats. §66.0301(6) provides a specific mechanism whereby two municipalities whose boundaries are immediately adjacent at any point may enter into a written agreement determining all or a portion of the common boundary line between them; and

WHEREAS, De Pere and Allouez each desire that the boundary between them be re-established so that the subject area is detached from De Pere and brought into Allouez and so that the boundary between Allouez and De Pere is well planned, and promotes the establishment of a recreational trail on and the reconstruction of a portion of LeBrun Street for the benefit of both communities; and

WHEREAS, both parties desire to enter into this Agreement to further the public interests and objectives of both De Pere and Allouez and to provide for cooperation that is beneficial to citizens in both communities.

NOW THEREFORE, in accordance with the authority granted them under Wisconsin Statutes and for their mutual benefit and in the public interest, the parties agree as follows:

1. Detachment of Subject Area. Effective upon the effective date ( October 1, 2014) of the detachment and annexation ordinance requirements under paragraph 3, the boundary between De Pere and Allouez shall be adjusted to detach from City of DePere and attach to Village of Allouez the lands located on LeBrun Street, currently located in Allouez. A map depicting such area to be detached from City of DePere and attached to Village of Allouez is attached hereto as Exhibit A. The legal description of the lands in question is attached hereto as Exhibit B.

2. Public Hearing Required. Prior to the approval of this Agreement, both parties shall have held a public hearing therein, preceded by a Class 1 Notice of such hearing and by mailing, via certified mail, each property owner affected by this Agreement a copy of such Public Notice.

3. Ordinances Required. Upon approval of this Agreement by resolution, City of DePere shall enact such Ordinance for the Detachment of Certain Property as is attached as Exhibit C, detaching the area identified in Exhibits A and B. Village of Allouez shall, upon approval of this Agreement by resolution, such Ordinance for the Annexation of Certain Property as is attached as Exhibit D, annexing such territory from City of DePere as is identified in Exhibits A and B.

4. Agreement to be Published. Both parties shall publish the Agreement in the territory in in the subject area as a Class 1 Notice as required under Wis. Stats. §66.0301(6)(c)2.

5. Referendum May be Required.

A. If, within 30 days of the publication required under paragraph 4, a petition for referendum conforming to the requirements of Wis. Stats. §8.40, signed by at least 20% of the electors residing in the subject area is filed with each municipal clerk, a referendum on the Agreement shall be held in accordance with Wis. Stats. §66.0301(6)(c)2.

B. Any referendum required hereunder shall be conducted jointly by the parties and shall otherwise be conducted as an annexation referendum under Wis. Stats. §66.0217.

6. Effective Date of Boundary Change. The boundary change effectuated under this Agreement shall take effect on October 1, 2014. If a referendum is required under paragraph 5 and the Agreement does not pass, this Agreement shall be deemed void *ab initio*.

7. Binding Effect. This Agreement shall bind, and accrue to the benefit of, the parties, as well as their legal successors. This Agreement is for the exclusive benefit of the parties and their successors and assigns, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity.

8. Challenges to Agreement.

- (a) No action to contest the validity of this Agreement may be commenced after 60 days from the date the Agreement becomes effective.
- (b) In the event of a court action by a third party challenging the validity or enforceability of this Agreement or any of its provisions, both parties shall cooperate to vigorously defend the Agreement.
  - (1) If only one Party is named as a party to the action, the other shall seek to intervene and the named Party shall support such intervention.
  - (2) No settlement of such an action shall be permitted without the approval of the governing bodies of both Parties.
  - (3) The workload to defend the Agreement shall be shared equally by the Parties.
- (c) A challenge to the Agreement by one of the parties or failure to vigorously defend the Agreement constitutes a breach of the Agreement.

9. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior discussions, drafts, agreements and writings are specifically superseded by this Agreement. This Agreement represents the mutual intent of the parties and the fact that one or more of its provisions was drafted by one party or the other shall not be construed to the benefit or detriment of either party.

10. Notices. Notices required or permitted hereunder shall be given by 1<sup>st</sup> class mail to:

If to Allouez:

To: Village Clerk  
1900 Libal Street  
Green Bay, WI 54301

With copy to:

Village Administrator  
1900 Libal Street  
Green Bay, WI 54301

If to De Pere:

To: City Clerk-Treasurer  
335 South Broadway Street  
De Pere, WI 54115

With copy to:

City Administrator  
335 South Broadway Street  
De Pere, WI 54115

11. Authority. Each party represents that it has the authority to enter into this Agreement and all necessary procedures have been followed to authorize the Agreement. Copies of the Resolutions of the governing bodies of De Pere and Allouez authorizing this Agreement are attached as Exhibits E and F. Each person signing this Agreement represents and warrants that he or she has been duly authorized to do so.

IN WITNESS WHEREOF, the parties hereto have entered this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2014.

**VILLAGE OF ALLOUEZ**

**CITY OF DE PERE**

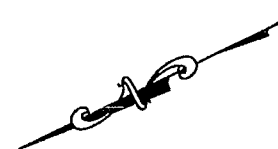
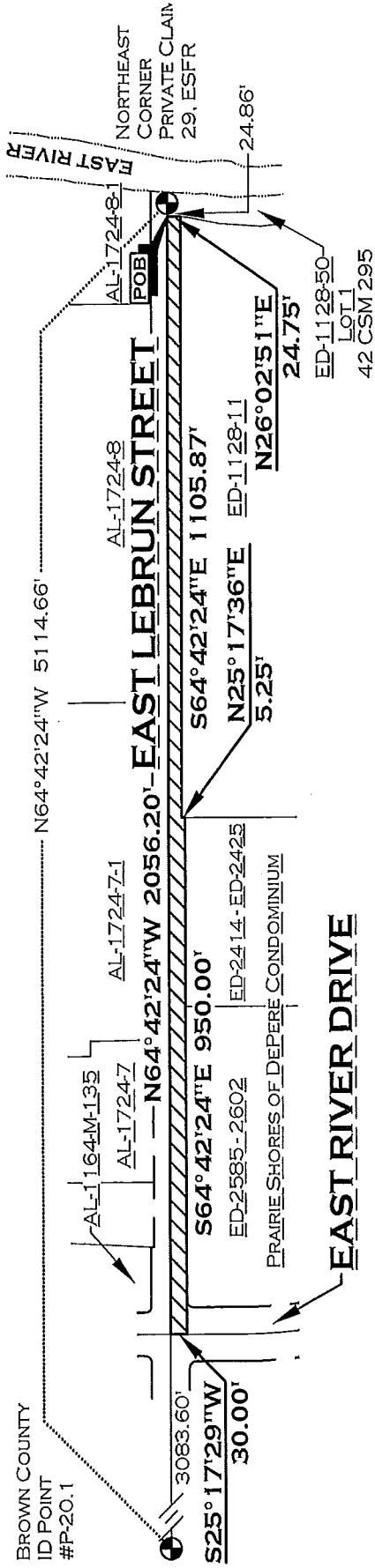
By: \_\_\_\_\_  
Steven VandenAvond,  
Village President

By: \_\_\_\_\_  
Michael J. Walsh, Mayor



By: \_\_\_\_\_  
Debra M. Baenen,  
Village Clerk

By: \_\_\_\_\_  
Shana DefnetClerk-Treasurer


# EXHIBIT A



## LEGEND

-  ANNEXATION AREA
-  POINT OF BEGINNING

DRAFTED BY: T. HEWITT ON 08/02/12

PREPARED BY:  
  
**ROBERT E. LEE & ASSOCIATES, INC.**  
 ENGINEERING, SURVEYING, ENVIRONMENTAL SERVICE  
 4664 GOLDEN POND PARK CT.  
 HOBART, WI. 54155 PHONE:(920) 662-9641  
 FAX:(920) 662-9141 INTERNET: WWW.RELEINC.COM

## EXHIBIT B

### ANNEXATION LEGAL DESCRIPTION

Part of East Lebrun Street located in Private Claim 29, East Side of Fox River, City of De Pere, Brown County, Wisconsin more fully described as follows:

Commencing at the Northeast Corner of said Private Claim 29;

thence N64°42'24"W, 24.86 feet along the north line of said Private Claim 29 to the **POINT OF BEGINNING**;

thence continuing N64°42'24"W, 2056.20 feet along said north line also being the centerline of East LeBrun Street to the centerline of East River Drive;

thence S25°17'29"W, 30.00 feet along said centerline to a southerly right of way of East LeBrun Street extended westerly;

thence S64°42'24"E, 950.00 feet along said southerly right of way to an easterly right of way of East LeBrun Street;

thence N25°17'36"E, 5.25 feet along said easterly right of way to a southerly right of way of East LeBrun Street;

thence S64°42'24"E, 1105.87 feet along said southerly right of way to an easterly right of way of East LeBrun Street;

thence N26°02'51"E, 24.75 along said easterly right of way to the Point of Beginning.

ORDINANCE NO. \_\_\_\_\_

ANNEXING TERRITORY TO THE VILLAGE OF ALLOUEZ

THE VILLAGE BOARD OF THE VILLAGE OF ALLOUEZ DO ORDAIN AS  
FOLLOWS:

Section 1: Territory Annexed. (Direct Annexation) In accordance with Wis. Stats. §66.030(6) and the Intergovernmental Cooperation Agreement Between the City of De Pere and Village of Allouez to Determine a Portion of the Common Boundary Line through Detachment and Annexation of Territory, entered into on \_\_\_\_\_, 2014, the following described territory in the City of DePere, Brown County, Wisconsin, is annexed to the Village of Allouez, Wisconsin: See Exhibit A - Map and Exhibit B – Legal Descriptions attached hereto and made part hereof.

Section 2: Effect of Annexation. From and after the date of this ordinance the territory described in Section 1 shall be a part of the Village of Allouez for any and all purposes provided by law and all persons coming to or residing within such territory shall be subject to all ordinances, rules and regulations governing the Village of Allouez.

Section 3: Ward Designation. The territory described in Section 1 of this ordinance is hereby designated ward of the Village of Allouez, subject to the ordinances, rules and regulations of the Village of Allouez governing wards.

Section 4: Severability. If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section 5: Effective Date. This ordinance shall take effect October 1, 2014.

Adopted by the Village Board of the Village of Allouez, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Steven VandenAvond, Village President

ATTEST:

\_\_\_\_\_  
Debra M. Baenen, Village Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_