

County of Kenosha

Board of Supervisors

Resolution No. ____

Subject: A RESOLUTION APPROVING 2017 CITY OF KENOSHA/ COUNTY OF KENOSHA INTERGOVERNMENTAL AGREEMENT			
Original <u>X</u>	Corrected <u> </u>	2 nd Correction <u> </u>	Resubmitted <u> </u>
Date Submitted: October 2, 2017			
Date resubmitted: <u> </u>			
Submitted by: Public Works/Facilities Committee			
Fiscal Note Attached: <u> </u>			
Legal Note Attached: <u> </u>			
Prepared By: Corporation Counsel Joseph M. Cardamone III			

WHEREAS, Continued development with Kenosha County benefits us all through the creation of new jobs and the expansion of the economic base; and

WHEREAS, The County of Kenosha, the City of Kenosha, the Village of Somers and the Town of Paris are all desirous of facilitating such development by creating conditions appropriate for it to occur; and

WHEREAS, The aforementioned parties, as well as others, have negotiated a Cooperative Plan and Intergovernmental Agreement designed to permit such development to occur whilst being beneficial to all parties and respectful of both municipal sovereignty and individual property owner rights; and

WHEREAS, As a provision of this Intergovernmental Agreement, the relevant portion of which is attached, the County of Kenosha would be transferring to the City of Kenosha jurisdiction of a portion of 38th Street, also known as County Trunk Highway "N", from I-94 west to 128th Avenue; and

WHEREAS, The balance of the Cooperative Plan and Intergovernmental Agreement does not impose duties or obligations on the County of Kenosha other than agreeing to the dismissal of Kenosha County Circuit Court File No 16-CV-480;

NOW THEREFORE, BE IT RESOLVED, that the County Board of Supervisors does approve the purpose, terms and conditions of the Cooperative Plan and Intergovernmental Agreement which are attached as being those which impact the County. The County Executive, County Clerk and County Highway Commissioner are authorized to sign all necessary and appropriate documents to accomplish this Agreement.

Respectfully submitted:

Public Works/Facilities Committee:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
<hr/> Dennis Elverman, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> William Grady, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Steve Bostrom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John Franco	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Jill Gillmore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John O'Day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Jeff Wamboldt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

operations, and to consider the feasibility of developing a combined fire and rescue operation (e.g., joint, metro, or other form of combined fire and rescue operation). The Town and Village shall share in the cost of this evaluation on a per capita basis, and will attempt to gain the participation of surrounding municipalities in undertaking and financially sharing said cost.

- C. **Refuse and Recycling Services.** The Village shall take the necessary steps to have refuse and recycling services extended to any properties attached to the Village, to the same extent as such services are provided in the remainder of the Village.
- D. **Water and Sewer Service.** The Village shall provide municipal water and sewer service to properties attached within the Village Growth Area. To the extent feasible, the Village shall fund the costs of extension of sewer and water utilities by use of tax incremental financing districts or developer funded extensions. To the extent that special assessments are needed to finance a portion of the cost of extending utilities, the Town shall cooperate with the Village in its levying of special assessments on Town properties within the Village Growth Area, provided that said assessments shall be deferred until the properties choose to connect or are attached to the Village. Said assessments shall be levied pursuant to § 66.0707, Wis. Stats.

Section 12.08 Modification and Dispute Resolution.

Subject to Section 17.03, this Agreement may be modified in writing by the mutual agreement of the Town and Village. In the event of a breach of this Agreement, each Party has a responsibility to mitigate damages. All claims, disputes, or other matters arising out of or related to this agreement or breach thereof shall be subject to the alternate dispute resolution provisions of Chapter 18.

CHAPTER 13 – INTERGOVERNMENTAL AGREEMENT JURISDICTIONAL TRANSFER OF ROADWAY BETWEEN COUNTY OF KENOSHA, WISCONSIN AND CITY OF KENOSHA, WISCONSIN FOR PART OF COUNTY TRUNK HIGHWAY “N”

Section 13.01. Parties, Purpose, Authority, Consideration.

- 13.01.01. **Purpose.** The parties enter this agreement to promote highway safety, improve roadway conditions, handle increased commercial truck traffic and encourage future economic development along an east-west corridor connecting the City to a main

vehicular highway known as Interstate Highway 94. The parties deem this agreement to be the most expeditious and least expensive approach to restructuring the existing rural roadway into an urban profile roadway suitable of handling substantial commercial truck traffic.

13.01.02. Consideration. The mutual promises set forth herein, and the benefit bestowed upon the public by this project, constitute the lawful consideration of this contract.

13.01.03. Subject Highway. The highway that is the subject of this Master Agreement for jurisdictional transfer of roadway is that portion of Kenosha County Trunk Highway "N" from I-94 west to 128th Avenue, as described on the attached Exhibit I; this highway may be referred to as the "Transferred Highway." The Transferred Highway is a recorded highway, as that term is used in Subsection 82.01(8) of the Wisconsin Statutes, that has been worked by the County as a public highway in its current roadbed continuously for over sixty years prior to entry into this Master Agreement. Transferred Highway includes all interest in the right of way acquired by the County through expressed dedications and through prescription by action of law. The description of the current roadbed, which is subject to acquisition of interest in the right of way through prescription by action of law, is more particularly described and depicted in Exhibit I, which is attached hereto and made a part hereof. During the time that the County has worked the Transferred Highway, it has issued permits for others to occupy portions of the right of way, subject to the superior interests of the County in the right of way and subject to conditions that inure to the benefit of the County.

Section 13.02. Transfer of CTH "N", Duties and Obligations.

13.02.01. Transfer of "N" and Duties and Obligations of the County of Kenosha.

A. The County of Kenosha hereby gives, devises, grants and transfers ownership, control, authority and jurisdiction of Transferred Highway, to the City of Kenosha and its successors and assigns forever. This transfer shall include all of the legal interests of the County in such land and roadway as those rights exist on the date of this agreement. This transfer includes all rights of any kind relating to such Transferred Highway, and includes all rights to control the location and relocation of utilities and other installations, structures or facilities within the right of way of the Transferred Highway, whether the County obtained such rights by statute, regulation, permit, easement, deed, contract, permission or otherwise. In all other respects, the Transferred Highway is given in its current condition, "as is, with all faults", except as specifically set forth in this agreement.

B. The County of Kenosha will adopt a resolution by the County Board memorializing that the Transferred Highway is a recorded highway, as that term is used in § 82.01(8), Wis. Stats., that has been worked by the County as a public highway in its

current roadbed continuously for over sixty years, said resolution in a form substantially similar to that attached hereto as Exhibit J.

C. The County warrants that it has no notice or knowledge of any conditions of the Transferred Highway that would subject the City to liability, specifically including, but not limited to, adverse environmental conditions.

13.02.02. Transfer of “N” and Duties and Obligations of the City of Kenosha.

A. The City of Kenosha hereby accepts the transfer of ownership, control, authority and jurisdiction the Transferred Highway, from the County of Kenosha. Such Transferred Highway is accepted on an “as is, with all faults” basis, except as specifically set forth in this agreement. The City accepts all appurtenant rights, legal interests and responsibilities transferred by the County.

B. The City will perform all necessary maintenance and roadway improvements on the transferred roadway in the future. The City will hereafter be the legal authority to issue right of way permits and otherwise control and approve the location and relocation of utilities and other installations, structures or facilities within the right of way of the Transferred Highway. It is the intent of the County and the City that the County is transferring to the City all rights that the County has with respect to relocation of utilities that are existing in the right of way at the time of entry into this Master Agreement.

Section 13.03. Obey All Laws; Savings Clause.

The County and the City each agree to abide by all applicable state, federal and local laws and regulations in connection to all acts related to this agreement. If any part of this agreement is deemed to be void or unenforceable by a court of competent jurisdiction, such part shall be deemed to be severable from the remaining terms of the agreement and shall not affect the validity of the balance of this agreement, if such interpretation can reasonably give effect to the main purpose and intent of the parties.

CHAPTER 14 – DISMISSAL OF LITIGATION

The Plaintiff City, and the Counterclaiming Defendants Village and Town, and the involuntary third-party defendant, County of Kenosha, hereby agree to the following terms and conditions to fully and finally compromise and resolve the pending Litigation between them:

Section 14.01. The parties’ pleadings are to be dismissed with prejudice.

Section 14.02. That each party will be responsible for its own fees and costs, including attorney fees.

Section 14.03. The terms of this agreement represent the results of negotiation of a disputed matter, and shall not be construed as an admission of liability by any party.

Section 14.04. The Court may enter an Order dismissing this matter in accordance with the terms of this stipulation without further notice.

CHAPTER 15 – PROTECT KENOSHA WATER UTILITY

Section 15.01 Context and Intent

The Parties to this Master Agreement acknowledge that in Section 1991m. of 2015 Wisconsin Act 55, the Wisconsin legislature created § 66.0813(5m), Wis. Stats. The Parties further acknowledge that in identifying the scope of the regulation in that statute to a municipally-owned water or sewer utility “in a county bordered by Lake Michigan and the state of Illinois,” the Legislature created legislation that was intended to have a disproportionate effect on the Kenosha Water Utility relative to municipally-owned water or sewer utilities outside of Kenosha County.

Moreover, the Parties acknowledge that § 66.0813(5m)(c) contains language that its provisions “appl[y] even if the municipality that owns and operates the water or sewer utility has, before July 14, 2015, enacted an ordinance or entered into an agreement specifying that the municipality is not obligated to provide utility service beyond an area covered by the ordinance or agreement.” The Parties acknowledge that this provision in § 66.0813(5m)(c) had the potential effect of superseding provisions in the agreement that the Kenosha Water Utility has with the Town of Somers, *et al.* (and to which the Village of Somers is becoming a party by provisions in this Master Agreement).

The Parties also acknowledge that the City has enacted Charter Ordinance 37 opting out of application of § 66.0813(5m), Wis. Stats.

It is the intent of the Parties that provisions of § 66.0813(5m), Wis. Stats., will not be voluntarily exercised by the Parties in a manner that would contravene any provision of this Master Agreement. It is further the intent of the Parties that any future Disproportionate Acts should not be voluntarily exercised in a manner that would supersede provisions of this Master Agreement. It is further the intent of the Parties that in the event that either § 66.0813(5m) or any future Disproportionate Act in application supersedes a provision of this Master Agreement that is identified in 18.02 as a Crucial Provision for the Kenosha Water Utility, stipulated compensation as provided herein will be provided to the Kenosha Water Utility.

Section 15.02 Policy

The parties agree that Article I, §12, of the Wisconsin Constitution generally prohibits the state legislature’s passage of laws that impair existing contracts. The parties are aware that prohibition is not absolute, and the Wisconsin caselaw has countenanced legislative action that substantially impairs contracts under circumstances where such substantial impairment is “justified.” (*See, Reserve Life Ins. Co. v. LaFollette*, 108 Wis.2d 637, 323 N.W.2d 173 (Ct. App. 1982).) The parties agree that they choose to be bound by the provisions of this Master Agreement as it is written at the time of its execution and as it may be amended by action of the parties, and