

Kenosha



County

BOARD OF SUPERVISORS

RESOLUTION NO. _____

Subject: Resolution authorizing the acceptance and expenditure of funds from CCM-Somerville, LLC for the acquisition of right-of-way and highway improvements at the intersection of CTH E and CTH EA	
Original <input checked="" type="checkbox"/> Corrected <input type="checkbox"/> 2 nd Correction <input type="checkbox"/> Resubmitted <input type="checkbox"/>	
Date Submitted:	Date Resubmitted:
Submitted by: Clement Abongwa	
Fiscal Note Attached <input checked="" type="checkbox"/>	Legal Note Attached <input type="checkbox"/>
Prepared by: Clement Abongwa	Signature: <i>Clement Abongwa</i>

WHEREAS, Kenosha County and CCM-Somerville, LLC have agreed to enter a Memorandum of Understanding to promote safety and improve highway conditions to accommodate increased traffic caused by a proposed development and encourage future economic development in the area.

WHEREAS, CCM-Somerville, LLC is developing property at the southeast corner of intersection CTH E and CTH EA on the east and south side of Somers Elementary School,

WHEREAS, CCM-Sommerville, LLC has developed the plat and completed the design for the major highway improvement required,

WHEREAS, The County has reviewed and approved the design plans to ensure County standards are met,

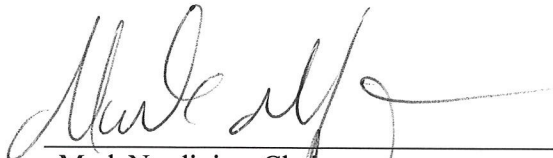
WHEREAS, CCM-Somerville shall be responsible for funding the acquisition of right-of-way and the construction of the project while the County shall manage the acquisition of right-of-way and construction of the project to County construction standards,

WHEREAS, The project cost for acquisition of right-of-way and construction of the highway improvements at intersection of CTH E and CTH EA is estimated to be \$1,406,416.28,

NOW, THEREFORE BE IT RESOLVED, The County Board of Supervisors approves the attached plat and authorizes the acceptance and expenditure of \$1,406,416.28 from CCM-Somerville, LLC for the acquisition of right-of-way and the construction of highway improvements at the intersection of CTH E and CTH EA.

Respectfully Submitted:

Committee:



Mark Nordigian, Chairperson




Zach Stock, Vice Chairperson


Supervisor Laura Belsky




Supervisor Aaron Karow



Supervisor John O'Day



Supervisor Tim Stocker



Supervisor Brian Thomas

Aye	Nay	Abstain	Excused
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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FINANCE/ADMINISTRATION COMMITTEE

	Aye	Nay	Abstain	Excused
<hr/> Supervisor Terry Rose, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor Dave Geertsen, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor Brian Bashaw	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor Erin Decker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor William Grady	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor John Poole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Supervisor Tim Stocker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Kenosha County
Administrative Proposal Form**

1. Proposal Overview

Division: Highways Department: Public Works

Proposal Summary (attach explanation and required documents):

Resolution Authorizing the Acceptance of Funds from CCM-Somerville, LLC for the Acquisition of ROW and Highway Improvements at CTH E & CTH EA

Dept./Division Head Signature: Clement Abongwa Date: 10/27/2023
Print Name: Clement Abongwa

2. Department Head Review

Comments:

Recommendation: Approval ☒ Non-Approval ☐

Department Head Signature: S. Billingsley Date: 10-31-23
Print Name: _____

3. Finance Division Review

Comments:

Recommendation: Approval ☒ Non-Approval ☐

Finance Signature: Chris Walton Date: 10-31-23
Print Name: _____

4. County Executive Review

Comments:

Action: Approval ☒ Non-Approval ☐

Executive Signature: Samantha Keckman Date: 11/8/2023
Print Name: _____

DOCUMENT # _____ G/L DATE _____

BATCH # _____ ENTRY DATE _____

PURPOSE OF BUDGET MODIFICATION (REQUIRED):

[illegible][illegible]

COLUMN TOTALS (EXP TOTAL + REV TOTAL)

SEE BACK OF FORM FOR REQUIRED LEVELS OF APPROVAL FOR BUDGET MODIFICATION.

Signature: Patricia Date: 10/31/23

(9) Balance available after transfer (col 8 - col 7).

**Memorandum of Understanding by and between the County of Kenosha, Wisconsin and
CCM-Somerville, LLC for Highway Improvements on County Road E and County Road
EA, in the Village of Somers ("MOU")**

I. Parties, Purpose, Authority, Consideration.

- A. Parties. The County of Kenosha is a municipal corporation and a political subdivision of the State of Wisconsin having its principal offices located at 1010 56th Street Kenosha, Wisconsin (referred to herein as the "County" or "Kenosha County"). CCM-Somerville, LLC (referred to herein as "Somerville LLC") owns the Property (as hereinafter defined), and has its principal offices located at 901 South 70th Street, West Allis, Wisconsin. Kenosha County and Somerville LLC, hereinafter collectively "the Parties," agree to the terms set forth in this MOU, as their final agreement regarding required improvements along CTH EA and CTH E as shown in the attached plans
- B. Purpose. The Parties are entering into this MOU to promote highway safety, improve roadway conditions, handle increased traffic and encourage future economic development in the area. The Parties deem this MOU to be the most expeditious and least expensive approach to improve the roadway and intersection profiles and handle increased traffic, (the "Project")
- C. Authority. The Parties are relying upon all the laws of the State of Wisconsin for authority to enter into this MOU.
- D. Consideration. The mutual promises set forth herein, and the benefit bestowed upon the public by this Project constitute the lawful consideration of this MOU.

II. The Roadway Improvement Project.

- A. Somerville LLC is developing the property (the "Development") located East and South of the Kenosha Unified School property, located at the southeast corner of County Road EA and Country Road E, as legally described on Exhibit A-draft Certified Survey Map attached hereto (the "Property"). To address increased traffic caused by the Development, a right of way plat (the "Plat") will need to be approved by the County and filed or recorded as a relocation order approved by the County in the form of a resolution to facilitate the acquisition of private property for this Project under Wisconsin statute 32.05. The plat is attached hereto as Exhibit B.
- B. The Parties have determined that the Project shall include those improvements shown on the plans on Exhibit C attached hereto (the "Roadway Improvements"). The Roadway Improvements shall be completed by the County at time that is beneficial for both parties and at a time that the County deems it is likely to obtain the most cost-effective bids, but in no event later than Somerville LLC's completion of Phase 1 of the Development (expected in summer of 2024).

- C. Subject to the terms and conditions herein, Somerville LLC shall be responsible for the costs of the Plat, the cost of the right-of-way acquisition and the costs of design and construction of the Roadway Improvements, which shall include the costs of purchasing land from third parties, as shown on the Plat. **Notwithstanding anything to the contrary herein, this is a County project which is being funded by payments from Somerville LLC as set forth in this MOU. The County shall be responsible for the land acquisitions as set forth herein and construction of the Roadway Improvements pursuant to construction contracts to be entered into by the County.** The current expected dates for design and construction of the Roadway Improvements are as follows:

- i. Design and Engineering: April, 2023
- ii. Utility Coordination: April, 2023 to October, 2023
- iii. Project Approvals: May, 2023.
- iv. Land Acquisitions: June, 2022 to September, 2023
- v. Utility Relocation: October, 2023 to March, 2024
- vi. Construction: April, 2024 to October, 2024 (not to commence until after Somerville LLC provides the Notice to Proceed): TBD

III. Responsibilities and Rights of Kenosha County

- A. The County's approval of this MOU shall be contingent upon the County's approval of the Plat, which is expected to be substantially simultaneous with the approval of this MOU. Upon receipt of the Notice to Proceed from Somerville LLC, and after receiving the Land Acquisition Cost payment (defined below) from Somerville LLC, the County shall promptly commence and timely complete the acquisition of the land delineated by the Plat (the "Real Estate Acquisition"). The County may elect to retain a real estate consultant to carry out the Real Estate Acquisition in accordance with eminent domain law. Somerville LLC will be required to pay the reasonable costs of any such consultant, which shall be included as a line item of the estimated Land Acquisition Cost in Exhibit D attached hereto. The "Land Acquisition Cost" on Exhibit E includes 120% of the expected cost of the Real Estate Acquisition.
- B. After the Final Roadway Design (as hereinafter defined) has been completed and approved by the County, and Somerville LLC has given the Notice to Proceed and paid to the County the Land Acquisition Cost payment and the Somerville LLC Payment to County (as defined in Section V.E. below), the County shall be responsible for retaining a contractor and managing and completing the construction of the Roadway Improvements, and shall promptly commence and timely complete the construction of the Roadway Improvements, subject to weather conditions and to the provisions of Section III.C., below.

The County shall be responsible for:

- Approving plans and the Plat
- Executing this MOU
- The Real Estate Acquisition for right of way
- Determining the most cost-effective time to bid the Roadway Project

- Bidding the Roadway Project
 - Managing the Roadway Project with assistance from a construction management consultant
 - Providing Somerville LLC with detailed records on the Roadway Project and Real Estate Acquisition expenses
 - Completing the Roadway Project and Real Estate Acquisition
- C. The Parties acknowledge that, after Somerville LLC has given the Notice to Proceed, and paid the Somerville LLC Payment to County, the County shall undertake all aspects of Roadway Project, including the acquisition of any property necessary to complete the Roadway Project, on a schedule which it determines, in its reasonable discretion and in conjunction with Somerville LLC, to be the most advantageous and designed to maximize efficiencies and resources consistent with this MOU.
- D. The County shall keep Somerville LLC reasonably informed of the timing and status of the Real Estate Acquisition. The County shall make good faith efforts to negotiate with the landowners for the Real Estate Acquisition, for the most efficient use of the Land Acquisition Cost payment and shall keep Somerville LLC informed of the progress of those negotiations. The County shall secure all necessary rights-of-way for the Roadway Project and Roadway Improvements.
- E. The County shall be responsible for bidding the Final Roadway Design and shall commence the bidding process after receipt of the Notice to Proceed.
- F. The County shall cause WE Energies and any other applicable utility company to relocate any utility equipment or infrastructure located in the highway right-of-way that is within the area of the Roadway Improvements, at the utility's expense, and those costs shall not be included within the definition of the Final Roadway Improvement Cost (as hereinafter defined). The County shall notify Somerville LLC of any utility facilities that are located outside the highway right-of-way as compensable relocation activities which shall be the responsibility of Somerville LLC. The County shall assign a County Project Number to this project and will issue a relocation order to WE Energies and any other applicable utility for this relocation.
- G. Somerville LLC may construct the access points and driveways, including grading thereof, for its Development prior to completion of the Roadway Project, and the County shall construct the Roadway Project to tie into such access points, driveways and grades.
- H. The County will process and approve the appropriate paperwork and budget resolution(s) to accomplish the obligations made herein, with the approval of this MOU. Specifically, the Kenosha County Board of Supervisors shall approve the Plat and the budget included as part of Exhibit D and will need to approve any material changes to the Plat or any cost increase to the Roadway Improvements above the cost permitted in Section IV.C. before the County can either accept the Somerville LLC Payment to County from Somerville LLC or spend any funds for the Roadway Project. Notwithstanding this language, at the

time the County Board of Supervisors approves the Plat and this MOU, the County shall designate the Highway Commissioner to approve minor changes to this MOU.

IV. Responsibilities and Rights of Somerville LLC.

- A. Somerville LLC shall be responsible for funding the Real Estate Acquisition, including any expense of adjudicating any acquisition for compensation paid to a condemnee as caused through mediation or trial where the process of eminent domain was applied to take title to property or interests therein when title is taken by award of damages. Somerville LLC shall reserve land for future public roadway purposes from its Property abutting County Roads EA and E by Certified Survey Map, (the "CSM") to meet the new right of way requirement for the Project. The County will provide assistance with the CSM approval process with the Village of Somers if required. Somerville LLC shall record the CSM upon the approval of this MOU by the Parties. The CSM is attached hereto and made a part hereof as Exhibit F.
- B. Somerville LLC shall be responsible for funding the design and construction of the Roadway Improvements. After the initial design is complete, the design consultant shall provide an Engineer's Opinion of Probable Cost ("EOPC") for the Roadway Improvements as shown in EXHIBIT E. The EOPC shall be used for establishing the budget for the Roadway Improvements and the County obtaining bids for the same.
- C. After Somerville LLC has completed the work in the immediately preceding paragraph, the Parties shall timely review the Roadway Improvement design and EOPC, and the County's bids for the same, and approve the same if the bids for the Roadway Improvements are not more than 120% of the EOPC for the same and if the design appropriately carries out the Roadway Improvements. Upon such approval, Somerville LLC shall promptly commence and complete the final design drawings of the Roadway Improvements, sufficient for construction (the "Final Roadway Design"), and a final EOPC (the "Final EOPC").
- D. After Somerville LLC has completed the work for the Final Roadway Design and the Final EOPC, the Parties shall timely review the Final Roadway Design and the Final EOPC and approve it if the Final EOPC is not more than 120% of the estimate shown on Exhibit E and if the design appropriately carries out the Roadway Improvements. If the Final EOPC is greater than 120% of the estimate on Exhibit E, then the Parties shall work in good faith to revise the Final Roadway Design to meet that cost, either by value engineering or other method, or agree to the higher cost. See Section V. for payment information.
- E. After completion of the Final Roadway Design and Final EOPC, the County shall obtain final bids for the Roadway Project. After the Roadway Project is bid, Somerville LLC shall remit to the County, to be escrowed with the County and used to pay the applicable contractors directly, the lesser of (i) 120% of the Final EOPC or (ii) 120% of the actual bids. If the selected bid (to be agreed upon by the Parties) is more than 120% of the Final EOPC, then the Parties shall review the bids and determine the best course of action such

as rebidding the Roadway Project or Somerville LLC providing the additional funds to complete the Roadway Project. All draws from said escrow shall be subject to Somerville LLC review and approval, not to be unreasonably withheld.

- F. Somerville LLC is the entity which currently owns the Property. If Somerville LLC assigns or conveys its right in the Property, or any part thereof, to an affiliated entity, Somerville LLC shall have the right to assign its rights and obligations under this MOU to the entity which is taking title to the Property or any part thereof. The County hereby agrees that Somerville LLC may collaterally assign this MOU to its lenders and the County shall acknowledge and consent to the same on terms and conditions reasonably acceptable to the County, provided further such lenders may require that the County provide notice and an opportunity to cure any Somerville LLC defaults hereunder.
- G. Notwithstanding any dedication or acquisition of right of way to the County, Somerville LLC shall have rights to enter into all County owned rights of way, and to install all utilities in a County owned right of way needed for its Development, with only the receipt of a County permit for the same. Somerville LLC's final design drawings for the Development will include all such utilities. If the pavement of current roads in County owned right of way will be widened, the County agrees to cooperate with the Village of Somers and Somerville LLC for the relocation of any existing utilities, and to modify or terminate historic easements, and replace them with easements for the actual location of utility lines and pipes.
- H. The County will not unreasonably withhold the approval and issuance of any approvals associated with the Development, if any, or any of the Roadway Improvements.
- I. A County certified real estate agent shall provide a conceptual estimated cost of the proposed right-of-way to be acquired. Somerville LLC shall give the Notice to Proceed and make the Land Acquisition Cost payment before the County initiates the Real Estate Acquisition process. The CSM shall be recorded prior to the issuance of any occupancy permits by the Village of Somers for any building on the Property. As used herein, "Notice to Proceed" means written notice from Somerville LLC to the County to proceed with the Real Estate Acquisition.
- J. Somerville LLC shall be allowed to fully develop, use, lease, and operate the Property and the Development, including without limitation, its driveways, curb cuts, entrances and related access improvements, without timing considerations of the commencement or completion of any portion of the Roadway Improvements.
- K. Responsibilities of Somerville LLC:
 - 1. Fund the Real Estate Acquisition and design and construction of all Roadway Improvements; and
 - 2. Responsible for any utility relocation cost for all utilities located outside the right of way.

V. Project Costs and Payments

- A. Outlined below is a breakdown of the overall total project cost
- | | |
|----------------------------|--------------------------------|
| 1. Real Estate Acquisition | = \$210,264.00 |
| 2. Roadway Improvements | = \$1,099,990.83 |
| 3. Construction Management | = \$ 96,161.45 |
| <u>TOTAL</u> | <u>= \$1,406,416.28</u> |
- B. The estimated costs of the Roadway Improvements as shown on Exhibit E are \$1,099,990.83. This cost does not include project design or engineering.
- C. All reasonable project design and engineering costs will be contracted for and paid directly by Sommerville LLC. Sommerville LLC shall provide evidence that these amounts have been paid upon reasonable request by the County.
- D. The County will coordinate the right of way acquisition process and will coordinate the same with Somerville LLC. Any expenses associated with acquiring right of way are included in the "Land Acquisition Cost" included in Exhibit D.
- E. Any utility relocation costs for utilities outside of the right of way, if applicable, shall be paid by Somerville LLC, and are included as a line item in Exhibit E.
- F. Following delivery of the Notice to Proceed, and after the bidding process has concluded, and the Parties have approved the bids and the bids for the Roadway Improvements are equal to or less than 120% of the estimated cost as shown in Exhibit E ($\$1,099,990.83 \times 120\% = \$1,319,989.00$), Somerville LLC shall pay the total amount of the approved Roadway Improvement bids to the County (the "Somerville LLC Payment to County"), to be held in escrow and disbursed directly to the contractors completing the Roadway Project.
- G. Upon accepting a bid for the construction of the Final Roadway Design at not more than 120% of the estimated Roadway Improvements Cost as shown in Exhibit E, and the receipt of the Somerville LLC Payment to County, then the County shall promptly undertake construction of the Roadway Improvements as shown in the Final Roadway Design.
- H. If the Roadway Improvement Cost, as bid, is more than 120% of the estimate shown on Exhibit E, the County shall not start construction, or accept the bids, until Somerville LLC and the County have in good faith, arrived at a Final Roadway Improvement Cost that is either acceptable to the Parties or no greater than 120% of the costs on Exhibit E, and until Somerville LLC has deposited with the County the Final Roadway Improvement Cost (less amounts previously paid).
- I. The County shall provide an accounting of spending for the Roadway Improvements and provide this information to Somerville LLC on a regular basis. If any portion of the Final Roadway Improvement Cost, as bid and paid by Somerville LLC, is not needed for the

Roadway Improvements, the excess shall be promptly returned to Somerville LLC. The Somerville LLC Payment to County shall be held by the County in a separate escrow account.

- J. The County will promptly notify Somerville LLC of any potential or unforeseen situations that may arise during the course of the project that may affect the cost of the Roadway Improvements or Real Estate Acquisition or the construction schedule therefor. The Parties agree to discuss these situations in good faith to arrive at a solution agreeable to the Parties.

VI. Obey All Laws; Savings Clause.

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

VII. Duplicate Originals; Amendments in Writing.

Duplicate originals shall be signed and an original shall be delivered to each party. Any amendments to this MOU shall be in writing and signed with the same formality as the original MOU.

Each individual signing below confirms this document has been properly authorized by that party, and the individual signing below has the authority to bind that party. All exhibits referenced herein are incorporated by reference.

(signatures on following page)

KENOSHA COUNTY

By: _____

Name: _____

Its: _____

Date: _____

CCM-SOMERVILLE, LLC

By: _____

Name: _____

Its: _____

Date: _____