

**CITY OF KENOSHA/TOWN OF SOMERS  
COOPERATIVE PLAN  
UNDER SECTION 66.0307, WISCONSIN STATUTES**

The City of Kenosha, Wisconsin, a Wisconsin municipality with offices at 625 – 52<sup>nd</sup> Street, Kenosha, Wisconsin 53140 (hereinafter “City”), and the Town of Somers, a Wisconsin municipality with offices at 7511 – 12<sup>th</sup> Street, Somers, Wisconsin 53171 (hereinafter “Town”), enter into this Cooperative Plan (hereinafter “Cooperative Plan”), subject to the approval of the State Department of Administration, under the authority of Section 66.0307 Wisconsin Statutes.

**WHEREAS**, Section 66.0307, Wisconsin Statutes, authorizes municipalities to determine the boundary lines between themselves upon approval of a Cooperative Plan by the State Department of Administration; and,

**WHEREAS**, the purpose of the Cooperative Plan is cited in Section 66.0307(3)(b), Wisconsin Statutes as follows:

(b) Purpose of Plan. The Cooperative Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory covered by the Plan which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as the efficiency and economy in the process of development.

and,

**WHEREAS**, Section 66.0307(2)(a through d) of the Wisconsin Statutes requires that Cooperative Plans be organized around “options” for future boundary changes. These options, listed below, specify how boundary changes will occur over the “boundary plan” term:

- (a) That specified boundary line changes shall occur during the planning period and the approximate date by which such changes shall occur.
- (b) That specified boundary line changes may occur during the planning period and the approximate dates on which the changes occur.
- (c) That required boundary line changes under Paragraph (a) or an option boundary line change under Paragraph (b) shall be subject to the

occurrence of conditions as set forth in the Cooperative Plan.

(d) That specified boundary lines may not be changed during the planning period.

This Cooperative Plan is organized around option "c"; and,

**WHEREAS**, annexation of Town land in the City Growth Area by City places the Town at the mercy of the annexing property owner with respect to the timing, location, provision of public services, size and shape of annexed territory; and,

**WHEREAS**, the City and the Town enter into this Cooperative Plan to determine their respective boundaries and to guide and accomplish a coordinated, adjusted, and harmonious development of the territory covered by the Cooperative Plan; and,

**WHEREAS**, the City and the Town have cooperated in the establishment of sewer and water service areas which the City and the Town understand to be a designation of orderly service and development. Agreements date back to 1974 commencing with "agreement between the City of Kenosha, City of Kenosha Water Utility, and Town of Somers for sewerage service". The agreement designated a border and established a City Growth and a Town Growth Area; and,

**WHEREAS**, various supplemental agreements have been negotiated between the Town and the City including:

1985 – Agreement between the City of Kenosha, City of Kenosha Water Utility and Town of Somers for Sanitary Sewer Service within the Town of Somers.

1988 – Agreement between the City of Kenosha Municipal Water Utility and the Town of Somers.

1988 – Agreement between the City of Kenosha, Kenosha Water Utility and Town of Somers for sanitary sewer service within the Town of Somers.

1989 – Amendment to 1985 Agreement.

1990 – Agreement between the City of Kenosha, Town of Somers and City of Kenosha Water Utility to provide for orderly land development and for sanitary sewer service within the Town of Somers.

1993 – Agreement for the construction of a portion of the Parkside Sanitary Sewer interceptor.

[All of the above, including the 1974 Agreement, hereinafter referred to as “Preexisting Intergovernmental Agreements”.

**WHEREAS**, the City and the Town enter into this Cooperative Plan for the purposes of establishing permanent boundaries, assuring orderly development, and limiting extraterritorial zoning, land division, condominium platting, and official mapping controls in the Town Growth Area outside the City Growth Area; and

**WHEREAS**, this Cooperative Plan does not adversely affect the exercise of Kenosha County zoning, platting, and the general powers of Kenosha County in the Town Growth Area which is not subject to attachment to the City; and,

**WHEREAS**, this Cooperative Plan was developed following a review of existing regional, county and local plans; and,

**WHEREAS**, the City and Town have held a joint public hearing on the Cooperative Plan noticed under Wisconsin Statutes 66.0307(4)(b) on January 18, 2005, in which comments were received and which comments are either reflected in this Cooperative Plan or addressed in Attachment “A”, which consists of an analysis of public hearing comments; and

**THEREFORE**, it is the intention of the City and the Town that this Cooperative Plan be a binding and enforceable contract.

#### **W I T N E S S E T H:**

The City of Kenosha and Town of Somers enter into this Cooperative Plan under the authority of Section 66.0307, Wisconsin Statutes and Petition of the State of Wisconsin, Department of Administration for approval, in accordance with statutory procedures and time frames.

#### **SECTION 1 PARTICIPATING MUNICIPALITIES**

This Cooperative Plan applies to the City of Kenosha and the Town of Somers located in Southeastern Wisconsin, which respective municipal boundaries on the date of approval of this Cooperative Plan by the Parties are shown on the map found in Attachment B.

## **SECTION 2 CONTACT PERSON/NOTICES**

The following person is empowered to give and receive notices and speak for their municipality respecting this Cooperative Plan: For the City of Kenosha: The City Administrator; For the Town of Somers: The Town Administrator.

## **SECTION 3 TERRITORY SUBJECT TO THE COOPERATIVE PLAN**

The Planning Area subject to this Cooperative Plan is the territorial limits of the Town shown on Attachment B, less the City Growth Area, which is described on Attachment C. (Legal Description found in C-1; Map found in C-2.)

## **SECTION 4 ISSUES, PROBLEMS, OPPORTUNITIES**

This Cooperative Plan will address issues and problems and create opportunities as noted in the following areas below:

**4.01 Establish Permanent Boundaries Between the City and the Town, Thereby Eliminating Annexation Disputes.** Like many towns located next to incorporated municipalities, the Town has been subjected to the loss of territory to the City by multiple annexations over an extended period of time. Because of the lack of control over the annexation process, the losses of territory from the Town created, from a municipal services standpoint, an irrational boundary which was difficult for both parties to service. Not only was the border between the City and the Town irregular, the annexations had resulted in over two dozen functional "town islands" where small portions of the Town were completely surrounded by the City except for narrow connecting corridors. The permanent boundaries sought by this Cooperative Plan will recognize the need of the City of Kenosha to grow and the need of the Town of Somers to maintain secure boundaries and to engage in meaningful planning. A permanent border will allow both municipalities to engage in land use planning and for both to avoid disputes, as well as for both to properly plan for infrastructure improvements for sewer, water and other urban amenities. The permanent boundary to be established by this Cooperative Plan is shown on Attachment C.

**4.02 Assure Orderly Development of the City Within the City Growth Area and of the Town Within the Town Growth Area.** Capital infrastructure improvements require a planning horizon which may be from one to five years in length. Under normal annexation dynamics, annexations may occur well in advance of the planning for infrastructure improvements. Because of the capital infrastructure improvement planning horizons, the infrastructure may not be extended into the annexed territory for one to five years. The orderly phasing of growth and development will be enhanced by this Cooperative Plan.

**4.03 Provide Town With City Water and Sanitary Sewer Service in Town Growth Area.** The City and the Town have entered into the 2005 Intergovernmental Agreement for Orderly Development by and between City of Kenosha and Kenosha Water Utility, and Town of Somers, Somers Water Utility and Somers Sewer Utility District respecting sanitary sewer and water service within the City Growth Area and Town Growth Area, a copy of which is attached hereto as Attachment "D", and incorporated herein (hereinafter "2005 Intergovernmental Agreement"). The 2005 Intergovernmental Agreement will only become effective upon the State of Wisconsin, Department of Administration approving this Cooperative Plan. In the event this Cooperative Plan does not become effective, the Preexisting Intergovernmental Agreements which are in effect shall remain in full force and effect.

**4.04 Control Urban Sprawl.** Absent the urban services of municipal sewer and water, new building in the Town could result in non-compact and "leap frog" development. The Town believes that the economics and public health enhancement resulting from the provision of municipal sewer and water will greatly reduce the prospect of "urban sprawl" and allow for continued sound long range planning within the Town.

**4.05 Increase the Level of Public Safety Services Available to Areas of the Town Attached to the City.** Public safety amenities of urban living will enhance the quality of life within the City Growth Area. The provision of sanitary sewer and water service in the Town Growth Area, outside the City Growth Area will similarly enhance public health quality and the protection of ground and surface waters. This Cooperative Plan will also enhance transportation planning through predictable and controlled growth.

## **SECTION 5 CITY GROWTH AREA/BOUNDARY ADJUSTMENT AREA OF TOWN**

The area of the Town subject to boundary adjustments over the term of this Cooperative Plan and reserved for City Growth (hereinafter "City Growth Area"), is legally described and shown on the scale map on Attachment C.

## **SECTION 6 CURRENT LAND USE AND PHYSIOGRAPHIC CONDITIONS OF THE CITY GROWTH AREA TERRITORY INCLUDED IN COOPERATIVE PLAN**

The current land use and physiographic conditions of the City Growth Area territory included in the Cooperative Plan are identified on Attachment E.

## **SECTION 7 TERM OF THE BOUNDARY ADJUSTMENT PERIOD**

The term of this Cooperative Plan shall be permanent. The term of the boundary adjustment period shall be thirty (30) years (following approval of the governing bodies

of the City and the Town) from the date of approval of the State Department of Administration. Notwithstanding the term of the boundary adjustment period, the boundaries between the City and the Town specified in this Cooperative Plan shall be permanent.

The basis for the thirty (30) year boundary adjustment period is that such a time period is anticipated to be the time required for the City to assimilate the territory in the City Growth Area in an orderly basis and in a cost effective manner.

## **SECTION 8**

### **CITY GROWTH AREA AS PERMANENT BOUNDARY BETWEEN THE CITY OF KENOSHA AND THE TOWN OF SOMERS**

The limits of the City bordering the Town as expanded through the attachment of the City Growth Area under this Cooperative Plan, as depicted on Attachment C, shall constitute the permanent boundary line between the City and the Town. The City may attach areas within the City Growth Area as provided by this Cooperative Plan, but will not attach and hereby forever waives its right to attach portions of the Town outside the City Growth Area. The City shall not accept any annexation petition nor pass any ordinance of annexation which annexes property in the Town to the City which lies outside the City Growth Area without Town approval. The City and Town may amend the permanent boundary by mutual consent, but only upon approval of any affected property owner and the State of Wisconsin Department of Administration. The City Common Council and Town Board of Supervisors shall act only upon the publication of a Class III Notice and the holding of a public hearing.

The City and the Town have determined that the permanent boundary established by this Cooperative Plan best promotes public health, safety, order, convenience, prosperity and general welfare, as well as efficiency and economy of development between the City and the Town.

## **SECTION 9**

### **SANITARY SEWER AND WATER SERVICE**

The City and the Town have entered into the Preexisting Intergovernmental Agreements, some of which were in effect upon the date of approval of this Cooperative Plan by the Parties. The City and the Town have operated and will continue to operate under the terms and conditions of those agreements which are in effect until such time as this Cooperative Plan is approved by the State of Wisconsin, Department of Administration. Following the approval of the State of Wisconsin, Department of Administration, the 2005 Intergovernmental Agreement shall become effective between the Parties and supersede all the Preexisting Intergovernmental Agreements. The 2005 Intergovernmental Agreement will become a part of this Cooperative Plan. However, the 2005 Intergovernmental Agreement may be amended from time to time by mutual agreement of the parties outside of the Cooperative Plan review and approval process.

Section 11.1 of this Cooperative Plan addresses existing annexation agreements by property owners in the City Growth Area.

**SECTION 10**  
**SANITARY SEWER AND WELL PERMITS,**  
**BUILDING PERMITS, LAND USE REVIEWS AND PERMITS,**  
**REZONINGS, LAND DIVISIONS,**  
**SANITARY SEWER AND WATER MAIN CONNECTIONS,**  
**SPECIAL ASSESSMENTS AND CHARGES,**  
**PARCELS OF LAND LOCATED IN BOTH CITY AND TOWN GROWTH AREAS,**  
**NONCONFORMING USES, AND AIRPORT APPROACH PROTECTION**  
**WITHIN THE CITY GROWTH AREA**

**10.01 Restrictions On Exercise of Town Authority.** In the City Growth Area, the Town will not have or exercise any power or authority to accept, process, review or recommend applications, or approve any of the following:

- 10.011** Sanitary Sewer and Well Permits for new buildings and structures.
- 10.012** Building Permits for new buildings and structures, except as permitted in Sections 10.021 through 10.023 of this Cooperative Plan.
- 10.013** Land use reviews and any other development permits for new buildings and structures.
- 10.014** Land Divisions, as defined in Chapter 17 of the City Code of General Ordinances.
- 10.015** Rezoning.
- 10.016** Connections to Kenosha Water Utility sanitary sewer and water mains.

**10.02 Exercise of Town Authority.** In the City Growth Area, the Town shall have the power and authority to accept, process, review, recommend and approve the following applications subject to written notice to and advance written approval by the City. The City shall have twenty-one (21) business days following receipt of such notice to approve or disapprove. A dispute arising from disapproval shall be subject to the dispute resolution provision of Section 30.02 of this Cooperative Plan.

**10.021** Building Permits for additions to existing single and two family residential buildings, not in excess of twenty (20%) percent of the size of the existing building, or five hundred (500) square feet, whichever is greater.

**10.022** Building Permits for accessory buildings for single, two family residential and agricultural buildings which do not have sanitary sewer or water service.

**10.023** Building Permits for single, two family residential and agricultural buildings of equivalent size to buildings that were destroyed by catastrophe or act of God.

**10.024** Temporary uses permitted under the County Zoning Ordinance.

**10.025** Variances authorized under the County Zoning Ordinance.

**10.03 Attachment To City Required.** The City requires property in the City Growth Area to be attached to the City as a pre-condition to City exercising its

power and authority to accept, process, review, recommend and approve any of the following:

**10.031** Building Permits for new buildings and structures, and additions thereto, except as provided in Sections 10.021 through 10.023.

**10.032** Site Plan and Conditional Use reviews and approvals for new buildings and structures, except as provided in Sections 10.021 through 10.023.

**10.033** Land Divisions, as defined in Chapter 17 of the City Code of General Ordinances.

**10.034** Rezoning.

**10.035** Connections to Kenosha Water Utility sanitary sewer and water mains.

**10.04 Parcels in Both City and Town Growth Areas.** Parcels of land in both the City and Town Growth Areas, upon attachment, shall have both a City and Town parcel number.

**10.05 NonConforming Uses.** Parcels of land attached to the City shall have and/or retain any nonconforming use status available to such parcels under State Law as established by Section 62.23(7), Wisconsin Statutes, and Section 7 of the City Zoning Ordinance, subject to amendments and court interpretations thereof.

**10.06 Airport Approach Protection.** This Cooperative Plan shall have no effect upon City rights to Airport Approach Protection under State Law.

## **SECTION 11**

### **ATTACHMENT OF TERRITORY IN CITY GROWTH AREA OF TOWN TO CITY**

Territory in the City Growth Area of the Town shall be attached to the City during the thirty (30) year boundary adjustment period of this Cooperative Plan as follows:

#### **11.01 Initial Attachment of City Land To Town.**

**11.011 Public Right-of-Way.** At any time following the Effective Date, the City owned public right-of-way on boundary streets shown on Attachment C shall be included within and made a part of the limits of the Town without further action by the Parties.

**11.012 Parcels of Land.** At any time following the Effective Date, parcels of land numbered 08-222-34-201-055, 08-222-34-201-060, and 08-222-34-201-065 shown on Attachment C shall be included in and made part of the Town without further action of the Parties.

**11.013 Procedure For Attachment.** The City shall give ten (10) days advance, written notice to the Town Clerk/Treasurer, and without review and recommendation by the City Plan Commission or any other subunit of the City, and without further review and approval of the Town, adopt ordinances from time to time attaching the territory constituting the Initial Attachment. The City Clerk/Treasurer shall file immediately with the Secretary of State a certified copy of the Attachment Ordinance, certificate and plat, and shall send one (1) copy to each company that provides any utility service to the



area that is attached. The Attachment Ordinance that is filed or sent shall describe the attached territory and the associate population. The City Clerk/Treasurer shall record the Attachment Ordinance with the Kenosha County Register of Deeds and file a signed copy of the Attachment Ordinance with the Clerk of any affected school district. The Attachment Ordinance that is filed, recorded or sent shall describe the attached territory and the associated population. Failure to file, record or send shall not invalidate the attachment and the duty to file, record or send shall be a continuing one.

**11.02 Intermediate Attachments.** There may be intermediate attachments of the territory of the City Growth Area of the Town to the City until the final attachment hereinafter provided has become effective. The City has sole discretion as to the time Intermediate Attachments will be attached to the City. The procedure for intermediate attachments recognizes a political compromise respecting the desire of single and two family zoned or lawfully used residential properties which are occupied by the owners: ("Residential Property") in the City Growth Area to remain Town residents for the term of this Cooperative Plan subject to the required Final Attachment in thirty (30) years. Real Estate sales statistics show that very few Residential Property owners retain title to a given parcel of real estate for more than thirty (30) years. This means that the Residential Property owners who do attach to the City will likely be those who bought their property knowing that attachment to the City is required. This limitation, in effect, grandfatheres Residential Property owners as Town residents for a period which could extend for thirty (30) years unless those property owners petition the City for earlier attachment. This limitation further permits the sale from one owner to another of Residential Property, without attachment, until the Final Attachment is required. Notwithstanding the above, property owners who, prior to the effective date of this Cooperative Plan, have entered into Annexation Agreements with the City and/or the Kenosha Water Utility to annex their property to the City upon the occurrence of condition precedents, shall abide by those agreements. The City shall attach said properties in accordance with said Annexation Agreements. No Residential Property shall be attached to the City as an Intermediate Attachment without the consent of the owner(s).

**11.03 Final Attachment.** There shall be a final attachment of territory in the City Growth Area of the Town to the City, including all territory remaining in the City Growth Area of the Town, irrespective of the occupancy, use or any other factors, effective on the Thirtieth (30) Anniversary of the effective date of this Cooperative Plan.

**11.04 Parcels of Land To Be Attached.** Except for the Final Attachment, and except for parcels of land which are located in both the City Growth Area and Town Growth Area as identified in Attachment C, only entire parcels of land in the City Growth Area of the Town will be attached to the City.

## **SECTION 12 PROCEDURE FOR ATTACHMENT**

### **12.01 Procedure for Intermediate Attachments.**

- (a) Upon written petition for attachment filed with the City Clerk/Treasurer on City forms by the owners of one-half of the land petitioned to be attached, in either area or assessed value, the City Common Council shall, within ten (10) days, give advance, written notice to the Town Clerk and without review and recommendation by the City Plan Commission or any other subunit of the City, and without further review and approval of the Town, adopt ordinances from time to time attaching the territory constituting the Intermediate Attachment. Attachments based upon non-unanimous petitions for attachment shall not be accepted by the City unless the parcels of land being attached are contiguous to each other, but not necessarily to the City. The City Clerk/Treasurer shall file immediately with the Secretary of State a certified copy of the Attachment Ordinance, certificate and plat, and shall send one (1) copy to each company that provides any utility service to the area that is attached. The Attachment Ordinance that is filed or sent shall describe the attached territory and the associated population. The City Clerk/Treasurer shall record the attachment ordinance with the Kenosha County Register of Deeds and file a signed copy of the attachment ordinance with the Clerk of any affected school district. The attachment ordinance that is filed, recorded or sent shall describe the attached territory and the associated population. Failure to file, record or send shall not invalidate the attachment and the duty to file, record or send shall be a continuing one.
- (b) Notwithstanding Subsection 12.01(a), no Residential Property shall be attached to the City as an Intermediate Attachment without the consent of the owner(s).
- (c) Notwithstanding Section 12.01(a), no parcel of land may be divided so as to be part in the City and part in the Town by an Intermediate Attachment without the consent of the owner(s), except where the Cooperative Plan permanent boundary line, shown on Attachment C, divides a parcel of land.
- (d) Where a petition for attachment involves Residential Property occupied by electors other than the owner(s) (or land contract vendee), only the owner(s) have the right to consent to the attachment.
- (e) Territory may be attached to the City, under this Cooperative Plan, subject to all of the provisions of this Section 12.01, irrespective of size, shape, or contiguousness of the territory covered by the petition. The City, however, may reject any petition to attach territory which is either not contiguous, or not configured in a manner which will enable City to provide adequate and timely service until such time as the City and the Kenosha Water Utility are able to provide adequate and timely service, or until the Final Attachment. Sanitary sewer and water service shall be made available to Intermediate Attachments within two (2) years of attachment as provided in the 2005

Intergovernmental Agreement. The City is authorized to confer with land owners interested in a petition for attachment to recommend the size, shape and contiguity of the territory to be covered by the petition.

(f) Any territory not attached to the City as an Intermediate Attachment shall be attached to the City as a final attachment in accordance with the time frames and procedures governing final attachments.

**12.02 Procedure for Final Attachment.** The final attachment shall be effective as provided in Section 11.03 without further notice, hearing or action. The Common Council may adopt an attachment ordinance for the purpose of memorializing the attachment. The City Clerk/Treasurer shall file, record or send the attachment ordinances in the same manner as described under Subsection 12.01.

**12.03 Public Right-of-Ways.** Public right-of-way attachments in the City Growth Area will occur as identified on Attachment C. Upon the Effective Date, the right-of-way of any boundary street identified in Attachment C which was in the City prior to the Effective Date, shall become part of the Town Growth Area.

Where Intermediate Attachments abut a public right-of-way, the City shall have discretion as to whether or not to attach said public right-of-way to the City at any time prior to the Final Attachment or at the Final Attachment.

**12.04 Effective Date of Attachment.** The Town territory in the City Growth Area constituting an Intermediate Attachment shall be attached to the City effective on the date after the day of publication of the Attachment Ordinance unless another date is provided in the Attachment Ordinance. The Final Attachment shall be effective as provided in Section 12.03.

**12.05 Zoning of Attached Parcels.** Attached parcels shall come into the City under the most restrictive classification in the City Zoning Ordinance, subject to the provisions of Section 10.05 of this Cooperative Plan respecting nonconforming use.

**12.06 I-94 Right-of-Way.** The right-of-way for I-94 in the City Growth Area, at the option of the City, shall be attached to the City under 12.01 or 12.02 of this Cooperative Plan.

## **SECTION 13 LOCAL ORDINANCES AFFECTING CITY GROWTH AREA**

The City Growth Area, during the term of this Cooperative Plan, shall be governed by City, County, and Town General Ordinances, and by City and County (as applicable) Zoning Ordinances as hereinafter provided.

**13.01 Attached Territory.** The Town territory, upon attachment to the City under this Cooperative Plan, shall become City territory subject to the City Zoning and

Code of General Ordinances, subject to the provisions of Section 10.05 of this Cooperative Plan respecting nonconforming uses.

**13.02 Town Territory in The City Growth Area.** Town territory in the City Growth Area, prior to attachment, shall be subject to the County Zoning Ordinances, and the restrictions set forth in Section 10 of this Cooperative Plan.

#### **SECTION 14 LOCAL ORDINANCES, COUNTY ORDINANCES AND MUTUAL AGREEMENTS AFFECTING TOWN AREAS OUTSIDE CITY GROWTH AREA**

The Town territory not included in the City Growth Area shall continue to be governed by the General Ordinances of the Town and the County of Kenosha relating to zoning.

The Town has not enacted zoning regulations and has relied upon the County to provide for said zoning regulations pursuant to 59.69, Wisconsin Statutes. The County regulations and the enforcement thereof are to remain with the County subject to change only in accordance with the provisions of the statute or incorporation to a village or city.

#### **SECTION 15 POLICE, FIRE AND RESCUE SERVICE**

**15.01 University of Wisconsin-Parkside.** The University of Wisconsin – Parkside property and facilities shall remain in the Town. The Town agrees, and certification will be provided to the State of Wisconsin by the Town, that the City shall provide police, fire and rescue services to the University of Wisconsin – Parkside.

The City shall be entitled to all State aid payable for municipal police, fire and rescue services under Section 70.119, Wisconsin Statutes, which are relevant to the University of Wisconsin – Parkside. All such funds shall be payable directly by the State to the City through the office of the City Clerk/Treasurer. If for some reason this cannot be done by the State, the Town shall receive such payments and immediately pay said entire amount to the City through the office of the City Clerk/Treasurer.

The Town shall provide back-up fire and rescue services in this regard for the City and for such assistance, City will pay Town, through the office of Town Clerk, ten percent (10%) of the payment for municipal services received by the City from the State. The City shall make such payment to the Town within thirty (30) days of its receipt thereof.

In the event that said State payments for police, fire and rescue services are eliminated in full or in part by the State and in the event the Town does not receive a direct disbursement of such funds and therefore cannot pay them to the City, the City has the option of discontinuing such service upon giving the Town sixty (60) days written notice

thereof. The Town would then be responsible for providing fire and rescue services to the University of Wisconsin – Parkside and the Sheriff's Department would resume the provision of police services.

The Town, should it receive an alternate form of direct cash payment for providing any such services, shall pay such amount to the City for so long as the City provides this service.

In accordance with Section 66.30 and Section 66.305, Wisconsin Statutes, the City Police Department is authorized to exercise police powers at the University of Wisconsin – Parkside, it being understood that the City Ordinances are not enforceable upon said non-City property.

Due to the fact that the Town is not supervising said City services, and due to the fact that the City is being compensated by the State for said services, it is understood that the Town, and officers, and employees thereof, shall not be liable for any act or omission of the City in providing said services or for Worker's Compensation payments to any City employee making a Worker's Compensation claim arising out of the provision of such services.

The City agrees to defend, indemnify and hold harmless the Town and officers and employees thereof from and against any and all claims, liabilities, cost, expenses, judgments, or attorney fees which any of them may incur or be required to pay, should any person or party suffer or sustain death, personal injury or property loss or damage arising out of any act, error or omission of the City providing, police, fire or rescue services to the University of Wisconsin – Parkside. The City, however, shall not defend, indemnify or hold harmless the Town, or officers or employees thereof, from and against an act, error or omission of any officer, employee or agent of the Town.

The City also agrees that no person receiving fire rescue services upon University of Wisconsin – Parkside property shall be charged any non-resident fee therefor which may otherwise be applicable.

**15.02 City/Town Cooperation.** The City and Town agree to meet from time to time, to discuss police, fire and rescue services for the purpose of considering ways and means of enhancing response time and providing cost effective services.

## **SECTION 16 STORM WATER MANAGEMENT AND CONTROL**

The Town and the City Growth Areas subject to this Cooperative Plan are located within two drainage basins known as the Pike Creek/Pike River Basin/Lake Michigan watershed and the Kilbourn Ditch/DesPlaines River Basin. The parties understand that as development occurs it will be necessary to implement storm/surface water controls in the future through mutual cooperation which may include the creation of a utility with authority over multiple jurisdictions including jurisdictions not party to this

## Cooperative Plan.

Town shall be responsible for maintenance and repair of facilities related to storm water management and control in City Growth Area prior to attachment of Town territory to City. Town shall apply City standards, as they may exist from time to time, to the construction and installation of new storm water control and conveyance facilities within such area. Town shall also apply City standards, as they may exist from time to time, to construction and installation of new storm water control and conveyance facilities in Town territory outside the City Growth Area which, when developed, will discharge storm water into the City Growth Area.

The City and Town agree to negotiate in good faith for the creation, management and cost allocations for a drainage district within the City Growth Area and Town Growth Area through a separate Section 66.0301 Cooperative Agreement.

### **SECTION 17 DESIGN AND CONSTRUCTION OF PUBLIC STREETS, SIDEWALKS, IMPROVEMENTS AND PLACEMENT OF PUBLIC UTILITIES IN STREET RIGHT-OF-WAY IN CITY GROWTH AREA PRIOR TO ATTACHMENT OF TOWN TERRITORY TO THE CITY**

The Town, within sixty (60) days of the Effective Date, shall adopt and apply City standards in the City Growth Area with respect to the design and construction of public streets, sidewalks, improvements generally placed in right-of-ways (trees, signs, etc.), and the placement of public utilities (including, but not limited to; sanitary sewers, water, electric, gas, telephone, and cable television) in the street right-of-way.

Within the City Growth Area prior to attachment of Town territory to the City, when a party to this Cooperative Plan having jurisdiction over a street or highway which is situated on a City/Town boundary line improves such street or highway, or when either the Kenosha Water Utility or the Town install sanitary sewers or water mains within such boundary street or highway, and the territory of the other party is benefited by such improvements, the benefited party at the request of the party installing such improvements shall pay for its pro rata share of the cost of such improvement based upon the benefits received. Where the benefits received are specially assessable benefits to individual property owners, the parties mutually agree to assist in the levy and collection of said special assessments as provided by Wisconsin Statutes.

The party intending to perform such work in or upon a boundary street right-of-way is required to give notice to the other party not less than sixty (60) days before commencement of the work.

Any dispute regarding the appropriate allocation of costs shall be determined by a joint report promptly prepared and issued by the engineers for the Kenosha Water Utility or City (as to street improvements), as appropriate, and the Town. If and to the extent the engineers reach agreement, the issues shall be deemed to be finally

resolved. If the engineers are not able to resolve disputed issues, and the Kenosha Water Utility General Manager or the City Administrator (as to street improvements), as appropriate, and the Town Administrator or Designee are not able to resolve such issues after meeting at least twice within thirty (30) days following the issuance of the engineers' joint report or within such additional time as they may agree to in writing, a mutually satisfactory arbitrator shall be selected by the General Manager of Kenosha Water Utility or the City Administrator (as to street improvements), as appropriate, and the Town Administrator or Designee within the next thirty (30) days or within such additional time as they may agree to in writing. The remaining disputed issues shall then be determined by binding arbitration. The Kenosha Water Utility or City, as appropriate, and the Town shall equally share in the costs of arbitration. Alternatively, the Kenosha Water Utility General Manager or the City Administrator (as to street improvements), as appropriate, and the Town Administrator or Designee may agree in writing to litigate such issues in court, and such issues shall be litigated in court if they fail to reach timely agreement on the selection of an arbitrator. In either of which events the prevailing party shall have the right to recover from the other party its reasonable litigation expenses, including reasonable attorneys' fees.

#### **SECTION 18 TOWN INCORPORATION AND AFFECT OF TOWN INCORPORATION ON CITY GROWTH AREA**

It is further understood that at some time in the future a portion or all of the Town outside the City Growth Area may be the subject of a petition to the State for incorporation into a village or city. The City agrees that it shall not oppose any future incorporation petition filed by the Town or residents thereof under the standards for incorporation in Sections 66.0201 through 66.0211, Wisconsin Statutes, as said statutes exist on the effective date of this Cooperative Plan. A copy of said statutes are attached hereto as Attachment F.

The consolidation of the Town with a bordering Town, or the incorporation of the Town as a City or Village, will not affect the implementation of this Cooperative Plan, the boundary changes provided for, or the obligations of the Town and the City under this Cooperative Plan. In the event of consolidation or incorporation of the Town, the ordinance for consolidation or order for incorporation shall include a provision obligating the surviving municipality to implement this Cooperative Plan, the boundary changes provided for, and to otherwise carry out the obligations of the Town and City under this Cooperative Plan.

#### **SECTION 19 ENVIRONMENTAL EVALUATION OF THE COOPERATIVE PLAN**

The City and the Town have evaluated the environmental consequences of this Cooperative Plan, including air and water pollution impacts, energy use, and effect on urban sprawl and expect minimum impacts. This Cooperative Plan facilitates consistent and coherent Town planning for infrastructure and other development in the Town

territory. This Cooperative Plan is consistent with all applicable state and federal laws, municipal regulations, shore land zoning ordinances and administrative rules.

Because intensive manufacturing development is not anticipated by this Cooperative Plan, there are no potential adverse environmental consequences (including air and water pollution) related to manufacturing development. The Master Plan for the City Growth Area reduces the potential impact of urban sprawl by providing for open space while concentrating the location of residential and commercial development. The reservation of all natural areas, wetlands, floodplains and upland woods will allow for the continuation of natural vegetation absorbing air pollutants and preventing soil erosion.

On the Effective Date, the Kenosha Water Production Plant and the Wastewater Treatment Plant have adequate capacity to serve the City Growth Area and the Town Service Area existing on the Effective Date.

Construction site maintenance and erosion control for new construction shall be regulated in the City Growth Area by Chapter XXXIII of the City's Code of General Ordinances.

Section 16 of this Plan provides for storm water management and control in the City Growth Area and in the Town as it relates to the development of storm water management plans and cooperative efforts to manage storm water.

The development of the City Growth Area will be in compliance with State and Federal environmental laws and regulations. Sanitary sewer and water extensions will be subject to the Department of Natural Resources approvals. No major development is expected in the City Growth Area which would require Federal or State air pollution control permits or waivers. Private wells upon premises served by City water service in the City Growth Area must be maintained under a permit or abandoned under Chapter XXXII of the City Code of General Ordinances.

The Cooperative Plan and the 2005 Intergovernmental Agreement provide for Kenosha Water Utility sanitary sewer and water service to the Town Growth Area. This service will provide for compact development and minimize urban sprawl in the Town Growth Area.

The City Growth Area will be served by City transit services following the attachment and density of population sufficient to support such service. This service will reduce vehicle congestion and improve air quality.

Based upon plans developed at the regional, county and local levels of government for the surrounding communities, the impact of the boundary changes and the development within the City Growth Area affected by this Cooperative Plan will be compatible with, and will have no negative impacts on, the surrounding communities. All surrounding villages and towns are subject to zoning ordinances and land division



control ordinances.

## **SECTION 20 REVENUES – BOUNDARY EXCHANGE**

The City and the Town acknowledge that the City Growth Area will become part of the City, thereby generating municipal revenues to the benefit of the City. However, it is understood and agreed that there shall be no sharing of revenue which Town derives from the City Growth Area up to and until the time that the area is attached to the City either by intermediate or Final Attachment. The City understands the potential for revenues from development within the Town's Growth Area and in lieu of a formulated revenue sharing plan the Town will make a contribution to benefit the City and the Kenosha County communities.

The Town, in recognition of the long term development in the Town Growth Area resulting from the sharing of services, and in lieu of revenue sharing, shall make a one time payment to the City of Kenosha Public Museum in the sum of five million dollars (\$5,000,000.00). In recognition of the need of the Town to fund the payment and alleviate the fiscal impact to the taxpayers through new development in the Town, resulting from this Cooperative Plan, the payment shall not become due until three (3) years from the date of the final approval of this Cooperative Plan by all parties involved, and the State of Wisconsin Department of Administration.

The City, on its part, shall allow Town residents to participate in any museum activity or program at such rates as may be paid by City residents, in the event that there is a disparity between rates or fees paid by City versus non-City residents.

## **SECTION 21 HOUSING NEEDS**

The City prepared The 2005-2009 Consolidated Plan for the Community Development Block Grant and Home Programs. Pages 16 and 17, attached as Attachment G, identify the Acquisition, Rehabilitation, New Construction, Home Buyer Assistance, Rental Assistance, Section 8, Existing, Homeless Assistance and Homeless Prevention Programs in operation in the City. These programs will apply to the City Growth Area of Town. Page 26 of this report, also found in Attachment G, concludes as follows respecting the City's housing goals:

The current public policies relating to housing and, in particular, affordable housing, do not appear to be excessive, exclusionary, or discriminatory nor do they duplicate any other policies. However, the City will continue to monitor those relevant public policies to ensure they do not change in such manner as to constitute a barrier to affordable housing. The City will also continue its pro-active position, regarding affordable housing, by continuing to

provide both financial and technical assistance to affordable housing activities and projects.

The City has continued to maintain neo-traditional development standards for land use planning, neighborhood planning, zoning and subdividing. Neo-traditional standards encourage a variety of sites and housing choices which include affordable housing, and encourage the heterogeneous population distribution pattern by income, race, and ethnic background.

## **SECTION 22 PERIODIC CONFERENCES AND LONG-RANGE PLANNING**

Town and City shall confer from time to time, to review and discuss concerns relating to land use, stormwater management and drainage, boundary streets, capital improvement projects, and other matters of mutual concern.

## **SECTION 23 LAND DEVELOPMENT WITHIN THE CITY GROWTH AREA**

The City regulates land development by requiring, under ordinance, that developers execute land development agreements which require developers to provide, at their own cost and expense, all infrastructure required to serve their developments.

To the extent that there are certain infrastructure costs which must be borne by the City, the City budgets for such expenditures under a five (5) year Capital Improvements Plan funded through borrowing and bonding. At the present time the City has only exercised 67.20 percent of its borrowing capacity, demonstrating that the City has the financial resources to serve the City Growth Area.

## **SECTION 24 EXTRATERRITORIAL ZONING, LAND DIVISION, CONDOMINIUM PLATTING, AND OFFICIAL MAPPING CONTROLS IN TOWN OUTSIDE THE CITY GROWTH AREA**

The City will not exercise any extraterritorial zoning, land division, condominium platting, or official mapping controls in the Town outside the City Growth Area.

## **SECTION 25 MASTER PLANNING**

**25.01 Master Plans.** City adopted Master Plans for the City Growth Area shall govern land development until repealed, amended or superseded in accordance with State law governing Master Planning.

**25.02 Mutual Approval.** City has no objection to duly adopted Town Master Plans applicable to Town territory outside the City Growth Area. Town has no objection

to duly adopted City Master Plans applicable to the City Growth Area.

**25.03 New Master Plans and Amendments To Existing Master Plans.** City, at any time, may adopt or amend any master plan for the City Growth Area or any part thereof.

**SECTION 26**  
**AUTHORIZING RESOLUTIONS, ATTEST BY AFFIDAVIT,**  
**COOPERATIVE PLAN ADOPTION RESOLUTIONS, AND**  
**RECORD OF PUBLIC PARTICIPATION**

**26.01 Initial Authorizing Resolutions.** Section 66.0307(4)(a) of the Wisconsin Statutes, requires that initial authorizing resolutions for the preparation of a Cooperative Plan must be approved by each participating municipality (that is, the City and the Town) before Cooperative Plan preparation may commence. Authorizing resolutions must be dated and signed by the chief elected official and attested by the municipal clerk of each municipality participating in the Cooperative Plan. Copies of the City and Town initial authorizing resolutions are found in Attachment H.

**26.02 Attest By Affidavit.** Section 66.0307(4)(a)(1-4) of the Wisconsin Statutes regarding the Cooperative Plan requires an attest by affidavit that authorizing resolutions described under Section 26.01 above were sent to: The Department of Administration, Department of Natural Resources (DNR), Department of Agriculture, Trade, and Consumer Protection (DATCP), and Department of Transportation (DOT); the clerks of any municipality, school district, vocational technical and adult education district, sewer or sanitary district which has any part of its territory within five (5) miles of a participating municipality; the clerk of each county in which a participating municipality is located; and, any county zoning agency or regional planning commission whose jurisdiction includes a participating municipality. The "Attests by Affidavit" is found in Attachment I.

**26.03 Resolutions Indicating Adoption and Authorizing Transmittal of the Cooperative Plan to the State.** Copies of resolutions indicating adoption and authorizing transmittal of the Cooperative Plan to the Wisconsin Department of Administration for review, dated and signed by the chief elected official and attested by the clerk from each participating municipality – the City and the Town – are found in Attachment J.

**26.04 Record of Public Participation and Comment.** The public comment and hearing requirements in Section 66.0307(4)(b) and (c) of the Wisconsin Statutes were met. The public hearing comments are found in Attachment A.

**SECTION 27**  
**NO THIRD PARTY BENEFICIARY**

This Cooperative Plan is intended to be solely between the City of Kenosha and

the Town of Somers. Nothing in this Cooperative Plan shall be interpreted as giving to any person or entity not party to this Cooperative Plan any legal or equitable rights whatsoever.

## **SECTION 28 ADMINISTRATION OF THIS COOPERATIVE PLAN**

This Cooperative Plan shall be administered on behalf of the Town by the Town Administrator or designee, and on behalf of the City, by the City Administrator or designee. The appointment of a designee must be in writing, and the other party to this Cooperative Plan must be notified in writing of the appointment.

## **SECTION 29 ENFORCEMENT**

**29.01 Remedies.** This Cooperative Plan is intended to provide each party with the right and standing to challenge in Court any act or omission which violates this Cooperative Plan. This Cooperative Plan is intended to provide each party with the right and standing to seek any available legal or equitable remedy to enforce this Cooperative Plan and to seek damages for the breach of this Cooperative Plan.

**29.02 Notice of Breach/Dispute Resolution.** If a party to this Cooperative Plan believes that the other party is in breach of this Cooperative Plan, the aggrieved party shall promptly serve written notice of said breach upon the other party. The parties shall meet promptly thereafter and shall endeavor in good faith to resolve any dispute amicably. If the initial meeting fails to resolve the dispute, the parties shall meet again within thirty (30) days after service of the written notice. Failure or refusal of a party to meet promptly and attempt in good faith to resolve any dispute shall be deemed a waiver by such party of any right to recover any litigation expenses or attorney fees other than statutory costs; provided, however, that good faith shall not require an amendment of this Cooperative Plan. This subparagraph is intended by the parties to waive their respective statutory right to any further notice under Subsection 893.80(1)(a), Wisconsin Statutes, to the extent such subsection is applicable.

**29.03 Limitation on Commencement of Civil Action.** No civil action may be commenced until after thirty (30) days from the effective date of written notice required by this Cooperative Plan, except that a party may commence an action seeking specific performance or injunctive relief in less than thirty (30) days if, in that party's good faith judgment, such an action is necessary to protect the public health, safety or welfare. Except as otherwise provided in this Cooperative Plan, the prevailing party in any action concerning an alleged breach of this Cooperative Plan shall be entitled to recover from the other party its reasonable costs and expenses of litigation, including reasonable actual attorney's fees.

## **SECTION 30 NO CHALLENGES TO THIS COOPERATIVE PLAN**

KAY E. GOERGEN, Clerk/Treasurer

Date: 3-4-05

STATE OF WISCONSIN )

:SS.

COUNTY OF KENOSHA)

Personally came before me this 4 day of March, 2005, **CAROL FISCHER, Chairperson,** and **KAY E. GOERGEN, Clerk/Treasurer,** of the **TOWN OF SOMERS, WISCONSIN,** to me known to be such Chairperson and Clerk/Treasurer of said Township, and acknowledged that they executed the foregoing instrument as such officers as the agreement of said Township, by its authority.

Helen Siferd

Helen Siferd

Notary Public, Kenosha County, WI.

My Commission expires/is: April 9, 2006