

# County of Kenosha

## Board of Supervisors

### Resolution No. \_\_\_\_\_

Subject: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF KENOSHA AND THE CITY OF KENOSHA AMENDING THE HEALTH DEPARTMENT AGREEMENT, PORTIONS OF COUNTY TRUNK HIGHWAYS K AND H, CONVEYANCE OF PROPERTIES, AND REPAIR OF THE REVETMENT WALL			
Original <input checked="" type="checkbox"/>	Corrected <input type="checkbox"/>	2 <sup>nd</sup> Correction <input type="checkbox"/>	Resubmitted <input type="checkbox"/>
Date Submitted :		Date resubmitted:	
Submitted by: Public Works/Facilities Committee, Human Services Committee, and Finance and Administration Committee			
Fiscal Note Attached: <input checked="" type="checkbox"/>		Legal Note Attached: <input type="checkbox"/>	
Prepared By: Joseph M. Cardamone III, Corporation Counsel			

**WHEREAS**, The City of Kenosha and the County of Kenosha have had ongoing discussions on a number of issues of concern to both entities and their constituents; and

**WHEREAS**, Leadership of the City and the County have worked diligently to resolve these issues; and

**WHEREAS**, These issues include, but are not limited to: the future of the agreement between the City and the County on the Health Department, the future reconstruction and transfer of certain County Trunk Highways, and other conveyances of properties; and

**WHEREAS**, The discussions on these issues have resulted in an Intergovernmental Agreement believed to ultimately be to the long term benefit of both the City and the County; and

**WHEREAS**, This agreement is attached to this resolution;

**NOW THEREFORE BE IT RESOLVED,** That the Kenosha County Board of Supervisors hereby approves the attached Intergovernmental Agreement with the City of Kenosha.

Public Works/Facilities Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
<hr/> Bill Grady, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John Franco, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Laura Belsky	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Andy Berg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Zach Rodriguez	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Gabe Nudo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Dennis Pierce	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Human Services Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
_____ Laura Belsky, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Andy Berg, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Terry Rose	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Jerry Gulley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Sandra Beth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Erin Decker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Kim Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Finance/Administration Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
_____ Jeff Gentz, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Ronald Frederick, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Jeff Wamboldt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Monica Yuhas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ John Franco	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Edward Kubicki	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Sharon Pomaville	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**INTERGOVERNMENTAL AGREEMENT**

**Between**

**COUNTY OF KENOSHA, WISCONSIN**

**And**

**CITY OF KENOSHA, WISCONSIN**

**I. PARTIES, AUTHORITY, CONSIDERATION.**

**A. Parties.** The County of Kenosha is a municipal corporation and a political subdivision of the State of Wisconsin having its principle offices located at 1010 – 56<sup>th</sup> Street, Kenosha, Wisconsin. It may be referred to as “County” or “Kenosha County” hereinafter. The City of Kenosha is a municipal corporation having its principle offices located at 625 – 52<sup>nd</sup> Street, Kenosha, Wisconsin. It may be referred to as “City” hereinafter. Both parties are created and organized under the laws of the State of Wisconsin.

**B. Authority.** The parties rely upon all the laws of the State of Wisconsin for authority to enter into this agreement, particularly Section 66.0301 of the Wisconsin Statutes on Intergovernmental Cooperation contracts.

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

**D. Definitions**

**1.** “maintenance jurisdiction” means ownership of the right of way of a government associated with the roadbed and of the physical road, and includes the rights and obligations of a government to repair, replace, expand, and design the road surface, and to set speed limits, issue permits for intrusions in the right of way, and exercise powers of eminent domain with relation to property adjacent to it; the term is “maintenance jurisdiction” intended to be distinguishable from “municipal jurisdiction”, the latter term respecting the political boundaries of a municipal government.

**2.** “the 1992 Health Department Agreement” means an agreement entered into by City of Kenosha and the County of Kenosha, which was last executed on February 11, 1992, entitled “Health Department Consolidation Agreement By and Between the City of Kenosha, Wisconsin, a Wisconsin Municipal Corporation and the County of Kenosha, Wisconsin, a Wisconsin Quasi-Municipal Corporation.”

**3.** “the 2012 Highway Agreement” means an agreement entered into by City of Kenosha and the County of Kenosha, which was entered into on March 28, 2012, entitled “Intergovernmental Agreement Jurisdictional Transfer of Roadways Between County of Kenosha, Wisconsin and City of Kenosha, Wisconsin For Sequentially Improved Segments of County Trunk Highways 'K' and 'G' and for a

Jurisdictional Transfer of the Intersection of County Trunk Highway ‘L’ with 39th Avenue.”

**E. Partial Purpose of the Agreement.** The Agreement amends “the 1992 Health Department Agreement” and supersedes portions of the “the 2012 Highway Agreement” with respect to the rights and obligations associated with County Trunk Highway K. For the avoidance of doubt, the responsibilities in the 2012 Highway Agreement with respect to Kenosha County Trunk Highway "G" that was identified in the 2012 Highway Agreement, remain in effect.

## **II. CTH K.**

**A. Description.** Kenosha County Trunk Highway “K”, located between its juncture with the Union Pacific Railroad Crossing (“UPRR Crossing”) westward to its juncture with 128<sup>th</sup> Avenue and expressly excluding the intersections with the East and West Frontage Roads, as they are under state maintenance jurisdiction, and further excluding any other portions of the roadway that are under state maintenance jurisdiction; this highway may be referred to as “Transferred Highway K.” Transferred Highway “K” is a recorded highway, as that term is used in Section 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 50 years prior to entry into this Intergovernmental Agreement. Transferred Highway “K” includes all lawful interest in the right of way acquired by Kenosha County through express dedications of roadway, and by deeds and by prescription. The description of the current roadbed, which is in part subject to acquisition in the right of way through prescription, is more particularly described in Exhibit 1 attached hereto and made a part hereof. During the time the County has worked the Transferred Highway “K”, 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. For the avoidance of doubt, the Transferred Highway “K” will also include all right of way associated adjacent to the roadbed that is acquired by the County prior to the transfer to the City.

### **B. Obligations of the County of Kenosha.**

**1.** The County of Kenosha will be responsible for the supervision and payment for the right of way acquisition, the engineering, environmental studies and the reconstruction of said CTH “K” to a four-lane road with an urban cross-section, between its juncture with UPRR Crossing 31 westward to its juncture with the 128<sup>th</sup> Avenue. For the avoidance of doubt, the obligations of the County under this Subsection B extend to portions of the highway that may be under the maintenance jurisdiction of the state of Wisconsin. Such reconstruction by the County must meet the current minimum City of Kenosha design standards for its streets, including roadbed and site preparation, concrete or asphalt pavement, curb and gutter, landscaping limited to grading and grass seeding. Kenosha County is also responsible at the County's cost for the installation of storm sewer mains, catch basins, inlets and other related structures but only to the extent necessary to handle roadway needs and current improvements existing outside of the right of way, but said installation at the County's cost does not include accommodations for future

development or concerns. The previous sentence notwithstanding, should the City desire up-grade modifications to the storm sewer mains, catch basins, inlets and/or other related structures, the County must install the up-grade modifications provided that the City pay the difference between the actual cost of installation paid to third-party construction contractors and the projected cost to install the storm sewer mains, catch basins, inlets and other related structures that would have been the responsibility of the County. To the extent practicable, the County will have the obligation of causing the “actual cost of installation” to be determined prior to the award of contract by the County through the bidding process by means of a request to bidders for alternate proposals, the alternate to the County's construction obligation being a proposal from bidders for additional work subject to the City's specifications for desired upgrades. Dependent on the cost for installation, it is the City's intent that the road be of concrete pavement. The County will provide the low bid alternative of concrete or asphalt pavement, but if after review of the bid alternatives by the City, concrete pavement is required by the City and the bid for concrete exceeds the bid for asphalt, the County will pay for the concrete pavement up to \$50,000 above the bid cost for asphalt pavement and the City will pay costs for concrete pavement which exceed such County payment. In addition, the County will install electrical conduit for street lighting lights. Pedestrian accommodations will be installed if such installation is required of the adjacent property owner by City ordinance. The cost for the pedestrian accommodations will be included as a cost of the County only if such accommodations are a requirement of any outside funding sources. Otherwise, the cost will be that of the City subject to assessment to the adjacent property owner. County work will not include other “incidental improvements.”

2. On January 1, 2035, the County of Kenosha agrees to give, devise, grant and transfer ownership, control, authority and jurisdiction of that portion of Kenosha County Trunk Highway “K” described in Section II. A. above, to the City of Kenosha and its successors and assigns forever. This transfer includes all of the legal interests of the County in such land and roadway, herein referred to as the “Transferred Highway K,” as those rights exist on the date of such jurisdictional transfer. Such transfer will include all rights of any kind relating to such transferred highway, all traffic signals and controls as long as the City approves the type of equipment for purposes of compatibility with City traffic signal equipment current as of the time of installation or better if agreed to by the City, 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 will be given in its then current condition, “as is, with all faults,” except that the County remains responsible to the City to enforce any warranty given to the County, whether implied or expressed by such contractors as chosen by the County with respect to workmanship and suitability for purpose of the road reconstruction of Transferred Highway “K” and any other exception as specifically set forth in this agreement. Such transfer will specifically include the maintenance of the traffic control signals at the intersection of “transferred Highway K” with Kenosha County Trunk Highway “H”. City will pay for any upgrades or custom control features over normal traffics signals cost, such as for installation of “signal interrupters” for emergency vehicles at the time of installation.

**3.** The County of Kenosha will issue municipal notes or bonds, if necessary, to finance the obligations made herein. The County will determine the best method and timing of its financial arrangements. The County of Kenosha will pass the necessary resolutions to accomplish the obligations made herein.

**4.** The construction or reconstruction obligations of the County herein includes roadbed and site preparation, concrete pavement, curb and gutter, landscaping limited to grading and grass seeding, storm sewer mains, catch basins, inlets and other related structures but only to the extent necessary to handle roadway needs and current improvements existing outside of the right of way, but said installation at the County's cost does not include accommodations for future development or concerns. The previous sentence notwithstanding, should the City desire up-grade modifications to the storm sewer mains, catch basins, inlets and/or other related structures, the County must install the up-grade modifications provided that the City pay the difference between the actual cost of installation paid to third-party construction contractors and the projected cost to install the storm sewer mains, catch basins, inlets and other related structures that would have been the responsibility of the County. Pedestrian accommodations will be installed if such installation is required of the adjacent property owner by City ordinance. The cost for the pedestrian accommodations will be included as a cost of the County only if such accommodations are a requirement of any outside funding sources, otherwise, the cost will be that of the City subject to assessment to the adjacent property owner. County work will not include any responsibility for incidental improvements. "Incidental improvements" means installation of lighting, water mains and laterals or sanitary sewer lines, manhole covers, grates and other sanitary sewer items, pedestrian accommodations if such accommodations are not a requirement of any outside funding sources unless the City requests the County in writing that such items be installed, and City agrees to pay all costs associated with such installations. The County must reasonably cooperate with the City to install, or allow the City to install, any such incidental improvements desired, during such reconstruction project, bearing in mind deadlines and project schedules.

**5.** The County delegates authority to sign all necessary Wis. Dept. of Transportation transfer of road jurisdiction documents to Highway Commissioner Clement Abongwa, PE, or his successor.

**6.** The County warrants at the time of entry into this Agreement that it has no notice or knowledge of any conditions of the Transferred Highway "K" that would subject the City to liability, specifically including, but not limited to, adverse environmental conditions.

**7.** That in 2034, prior to the transfer, the Kenosha County Board County must adopt a resolution that (1) memorializes that the Transferred Highway "K" is a recorded highway, as that term is used in Subsection 82.01(8) of the Wisconsin Statutes, (2) the Transferred Highway "K" has been worked by the County as public highway in its current roadbed continuously for over 50 years and (3) the County at the time of the transfer warrants that it has no notice or knowledge of any conditions of the Transferred Highway

“K” that would subject the City to liability, specifically including, but not limited to, adverse environmental conditions.

**C. Obligations of the City of Kenosha.**

**1.** After execution of this Agreement, the City will release to the County \$60,000 held, which must only be expended by the County for the construction of a multi-use path associated with the Transferred Highway “K”, between the Union Pacific Railroad tracks and the Canadian Pacific Railroad tracks.

**2.** On January 1, 2035, subject to and conditional on completion of the county’s obligations in section II. B., the City of Kenosha will accept the transfer of ownership, control, authority and jurisdiction of the highway described above as Transferred Highway “K”, from the County of Kenosha. Transferred Highway “K” will be accepted on an “as is, with all faults” basis, except as specifically set forth in this agreement. The City will accept all appurtenant rights, legal interests and responsibilities related to the Transferred Highway “K”. Subject to satisfaction of the conditions for transfer above, the City will sign the jurisdictional transfer documents for this roadway.

**3.** The City will, after jurisdictional transfer, perform all necessary maintenance and roadway improvements on the Transferred Highway “K” in the future. The City will, after jurisdictional transfer, 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 “K”.

**4.** To lessen the financial burden of the projects described herein, the County and the City will cooperate in any grant application forms or similar process of either party. The City will contribute \$500,000 funded from the Tax Incremental Financing District 26 to the replacement of the portion of Transferred Highway “K” between the Union Pacific Railroad tracks and the Canadian Pacific Railroad tracks, on a reimbursement basis. After replacement is complete, the County will provide to the City an invoice for the \$500,000 reimbursement. It is expected that this replacement will be completed by July 2023. The City must pay the invoice within 180 days of receipt. This \$500,000 contribution by the City shall not be used to reduce any payments due from the City due to requested upgrades as described above.

The first segment of Transferred Highway K (from the UPRR to 94th Court) is partially funded with STP-Urban Funds secured in WisDOT 2020 grant cycle when the City and County agreed to use the entire Kenosha STP-Urban allocation to fund this project segment. For the second segment of Transferred Highway K (from 94th Court to 115th Avenue), the County is pursuing WisDOT 2022 grant cycle BIL-STP funds. If unsuccessful, the County will pursue BIL-STP funds for this same project in the 2024 grant cycle. The County’s pursuit of BIL-STP funding will not limit the City’s ability to pursue 2022 or 2024 grant cycle STP-Urban or BIL-STP funding. For the third segment (from 115th Avenue to 128th Avenue) the County

will pursue STP-Urban funding in one of the 2026, 2028, 2030, or 2032 grant cycles. The City and County will mutually work to select the grant cycle year and initiate a joint application for this segment.

5. The City will pass the necessary budget resolution, if any, or other resolutions to accomplish the obligations made herein.

6. As soon as practical after execution of this Agreement, the City will accept from the County, maintenance jurisdiction of portions of highway K east of the Transferred Highway “K”, to wit, the portions of Highway K from 60<sup>th</sup> Avenue to the Union Pacific Rail Road crossing, excluding roadways subject to state of Wisconsin maintenance jurisdiction. The County asserts that the portion of Highway K subject of this paragraph is a recorded highway, as that term is used in Section 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 50 years prior to entry into this Agreement. The portion of Highway K subject of this paragraph includes all lawful interest in the right of way acquired by Kenosha County through express dedications of roadway, and by deeds and by prescription by action of law. During the time the County has worked the portion of Highway K subject of this paragraph, 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, and will inure to the benefit of the City.

7. The City delegates authority to sign all necessary Wis. Dept. of Transportation transfer of road jurisdiction documents to the City’s Public Works Director.

### **III. COUNTY TRUNK HIGHWAY H.**

**A. Description.** The segment of Kenosha County Trunk Highway “H” subject to this Agreement is located between its juncture with 52<sup>nd</sup> Street northward to its juncture with County Trunk Highway “S”, expressly excluding the intersection with County Trunk Highway “S”; this highway may be referred to as “Transferred Highway ‘H’.” Transferred Highway “H” is a recorded highway, as that term is used in Section 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 50 years prior to entry into this Intergovernmental Agreement. Transferred Highway “H” includes all lawful interest in the right of way acquired by Kenosha County through express dedications of roadway, and by deeds and by prescription by action of law. The description of the current roadbed, which is in part subject to acquisition in the right of way through prescription by action of law, is more particularly described in Exhibit 2 attached hereto and made a part hereof. During the time the County has worked the Transferred Highway “H”, 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. For the avoidance of doubt, the Transferred Highway “H” will also include all right of way associated adjacent to the roadbed that is acquired by the County prior to the transfer to the City.

**B. Obligations of the County of Kenosha.**

**1.** The County of Kenosha will be responsible for the maintenance of Transferred Highway “H” until such time as the maintenance jurisdiction of the highway is transferred to the City pursuant to the provisions of this Agreement. Any reconstruction by the County necessary to raise the condition of the road to a PASER rating of 6 for the entire roadbed of the Transferred Highway “H”, must meet the current minimum City of Kenosha design standards for its streets, including roadbed and site preparation, concrete or asphalt pavement, curb and gutter, landscaping limited to grading and grass seeding. The PASER scale is a 1-10 rating system for road pavement condition developed by the University of Wisconsin-Madison Transportation Information Center, that is used to evaluate pavement surface conditions, and the rating for this road will be determined by a third-party engineering firm that has been accepted by both parties, upon 30-day written correspondence between them. If by April 2034, the parties have not reached an agreement on a third-party engineering firm, the parties will request of the Wisconsin Department of Transportation a list of five engineering firms capable of making the PASER determination; from that list of five engineering firms, the County will strike two and the City will strike two leaving the final firm to conduct the determination. If any portion of Transferred Highway “H” is reconstructed, Kenosha County is responsible at the County's cost for the installation of storm sewer mains, catch basins, inlets and other related structures but only to the extent necessary to handle roadway needs and current improvements existing outside of the right of way, but said installation at the County's cost does not include accommodations for future development or concerns.

**2.** On January 1, 2035, the County of Kenosha agrees to give, devise, grant and transfer ownership, control, authority and jurisdiction of that portion of Kenosha County Trunk Highway "H" described above, to the City of Kenosha and its successors and assigns forever. This transfer includes all of the legal interests of the County in such land and roadway, herein referred to as the “Transferred Highway H,” as those rights exist on the date of such jurisdictional transfer. Such transfer will include all rights of any kind relating to such transferred highway, all traffic signals and controls as long as the City approves the type of equipment for purposes of compatibility with City traffic signal equipment current as of the time of installation or better if agreed to by the City, 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 “H”, whether the County obtained such rights by statute, regulation, permit, easement, deed, contract, permission or otherwise. In all other respects, the Transferred Highway “H” will be given in its then current condition, “as is, with all faults,” except that the County remains responsible to the City to enforce any warranty given to the County, whether implied or expressed by such contractors as chosen by the County with respect to workmanship and suitability for purpose of the road reconstruction of Transferred Highway "H" and any other exception as specifically set forth in this agreement.

**3.** The construction or reconstruction obligations of the County herein include roadbed and site preparation, concrete or asphalt pavement, curb and gutter, landscaping limited to grading and grass seeding, storm sewer mains, catch basins, inlets and other related structures but only to the extent necessary to handle roadway needs and

current improvements existing outside of the right of way, but said installation at the County's cost does not include accommodations for future development or concerns. Dependent on the cost for installation, it is the City's intent that the road be of concrete pavement. The County will provide the low bid alternative of concrete or asphalt pavement, but if after review of the bid alternatives by the City, concrete pavement is required by the City and the bid for concrete exceeds the bid for asphalt, the County will pay for the concrete pavement up to \$50,000 above the bid cost for asphalt pavement and the City will pay costs for concrete pavement which exceed such County payment.

4. The County delegates authority to sign all necessary Wis. Dept. of Transportation transfer of road jurisdiction documents to Highway Commissioner Clement Abongwa, PE, or his successor.

5. The County warrants at the time of entry into this Agreement that it has no notice or knowledge of any conditions of the Transferred Highway "H" that would subject the City to liability, specifically including, but not limited to, adverse environmental conditions.

6. That in 2034, prior to the transfer, the Kenosha County Board must adopt a resolution that (1) memorializes that the Transferred Highway "H" is a recorded highway, as that term is used in Subsection 82.01(8) of the Wisconsin Statutes, (2) the Transferred Highway "H" has been worked by the County as public highway in its current roadbed continuously for over 50 years and (3) the County at the time of the transfer warrants that it has no notice or knowledge of any conditions of the Transferred Highway "H" that would subject the City to liability, specifically including, but not limited to, adverse environmental conditions.

#### C. Obligations of the City of Kenosha.

1. Conditioned on the Transferred Highway "H" having a PASER rating of 6 on January 1, 2035, and subject to and conditional on completion of the county's obligations in section III. B., then on January 1, 2035, the City of Kenosha will accept the transfer of ownership, control, authority and jurisdiction of the highways described in Section III. A. above as Transferred Highway "H", from the County of Kenosha. Such transferred roadway will be accepted on an "as is, with all faults" basis, except as specifically set forth in this agreement. The City will accept all appurtenant rights, legal interests and responsibilities related to the described highway transferred by the County. The City will sign the jurisdictional transfer documents for this roadway.

2. The City will, after jurisdictional transfer, perform all necessary maintenance and roadway improvements on the transferred roadway in the future. The City will, after jurisdictional transfer, 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 highways.

#### **IV. AMENDING THE 1992 HEALTH DEPARTMENT AGREEMENT**

The 1992 Health Department Agreement is amended as follows:

**A. Services**

The regarding health-related services to be provided by the County to the City pursuant to Section D of the 1992 Health Department Agreement and listed in Exhibit C therein, are modified to rescind from Exhibit C:

**VI. CHARTER #26 ENFORCEMENT**

Garbage, debris and refuse control consists of the investigation and abatement of actual or potential rodent, insect, litter, odor or eye-sore nuisances, due to improper storage or disposal of waste.

**VII. NOISE CONTROL**

Enforcement of Chapter XXIII, of the Code of General Ordinances, relating to noise nuisances. Investigations consist of identification, measurement and abatement of noise violations and enforcement of code regulations.

**B. Funding**

Section G of the 1992 Health Department Agreement is rescinded and replaced with the following:

G. Funding. From February 1, 1992, through December 31, 2020, the consolidation and provision of health related services herein specified shall be funded in accordance with Exhibit “F”, which is attached hereto and incorporated herein. Notwithstanding any contrary provision in the 1992 Health Department Agreement, for the budget years 2023 through 2029, the City will pay to the County the following:

2023	\$700,000
2024	\$600,000
2025	\$500,000
2026	\$400,000
2027	\$300,000
2028	\$200,000
2029	\$100,000.

After December 31, 2029, the 1992 Health Department Agreement is terminated. For the avoidance of doubt, the fees that were otherwise attributable in the 1992 Health Department Agreement for the services provided in 2021 and 2022, are subsumed and included in the above payment schedule above.

The City may prepay any or all of the fees above. If not prepaid, the payments must be made at least annually by the 15<sup>th</sup> of September of the budget year. Prepayments made under this Subsection IV. B. will not alter any other obligations under this Agreement.

## **V. REVETMENT WALL CONTRIBUTION**

The City will repair the revetment wall along the lake shore adjacent to 1st Avenue that is located roughly between 71st Street and 75th Street. The County will contribute \$500,000 to the repair of the revetment wall on a reimbursement basis. After repair, the City will provide to the County an invoice for the \$500,000 reimbursement, and provide documentation that the engineering specifications used to determine the repair estimate have been met. The County must pay the invoice within 180 days of receipt, provided that the list of parcels owned by the County more particularly described in Exhibit 3 attached hereto have been conveyed to and received by the City.

## **VI. BIKE PATH**

To the extent that the City retains possessory rights in portions of parcel 12-223-31-177-014 and parcel 12-223-31-177-001 along the waters of Lake Michigan, the City will grant an easement to the County for the establishment of a bicycle path for the public use of the community. For the avoidance of doubt, the rights granted herein are subordinate to any interest in this land granted prior to entry into this Agreement. Moreover, the City does not warrant that the County's purposes to establish a continuous bicycle path can be accomplished through entry into this easement.

The portions of parcel 12-223-31-177-014 subject to this easement are more particularly described in Exhibit 4 attached hereto. The easement is subject to the following: (1) the County will work jointly with "Route of the Badger" consultants/staff to design and construct a safe bicycle path within the easement; prior to construction of the safe bicycle path, the design, which must include plans and specifications, must first have the approval of the City Engineer. The design submitted for approval must: (1) be compliant with the Wisconsin Department of Transportation Bicycle Facilities Design Handbook; (2) be compliant with all federal and state laws; and (3) bear the stamp of a licensed, professional engineer. The County will take no action to cause or allow any environmental damage.

The County or its agents has the right to enter and use of the City's land with full right of ingress and egress over and across the easement area and adjacent lands of City for construction of the path. The City retains all other rights and responsibilities.

In consideration of the foregoing grant, it is understood that during the time that the County maintains the easement pursuant to this grant, the County will indemnify, save, and hold harmless the City, its successors and assigns, from any and all claims, liabilities, losses, costs, damages or expenses for injury or death of any person and any damages to property arising out of the County's exercise of any of its rights under this easement; excepting, however, (1) any claims, liabilities, losses, costs, damages or expenses arising out of

negligence or willful acts on the part of the City, its successors and assigns, employees, agents and invitees; (2) any special, consequential or indirect damages, including but not limited to, loss of profit or revenue, and diminution in value; and (3) any environmental claims, liabilities, losses, costs, damages or expenses not directly caused by the construction or operation of said facilities.

At the termination of this easement, the County agrees to restore or cause to have restored City's land, as nearly as is reasonably possible, to the condition existing prior to such entry by the County or its agents.

All terms and conditions in this easement, including the benefits and burdens, run with the land and are binding upon, inure to the benefit of, and are enforceable by the City and the County and their respective successors and assigns. The party named as the City in this easement and any successor or assign to the City as fee simple owner of the easement area cease to have any liability under this easement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the easement area.

This easement remains in place until such time as it is terminated. It may be terminated at will by either party, upon notice to the other party. If the County has installed any portion of a bicycle path on the easement, the City may not take steps not terminate this easement during the first ten years after entry into this Agreement.

The City has and retains all other rights not expressly granted to the County to the use and occupancy of the easement area.

## **VII. QUIT CLAIM DEED TO RETENTION BASIN**

The County is owner of a retention basin and real estate appurtenant thereto located at approximately in the 5600 block of 65<sup>th</sup> Street, in Kenosha County, State of Wisconsin, more particularly described in Exhibit 5 attached hereto, which together with the rents, profits, fixtures and other appurtenant interests is hereinafter "Property". The real estate associated with the Property has Parcel #02-122-02-255-010.

The County quit claims to the City the Property, and all rights and interests thereto.

## **VIII. OBEY ALL LAWS; SAVINGS CLAUSE.**

Subject to full compliance with the provisions herein by the other party, each party agrees to be bound to its respective obligations. 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 other than Article IV is deemed to be void or unenforceable by a court of competent jurisdiction, such part is deemed to be severable from the remaining terms of the agreement and will 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; if Article IV is deemed to be void or unenforceable by a court of competent jurisdiction, this Agreement *in toto* is void.

**IX. DUPLICATE ORIGINALS; ADDENDA AND AMENDMENTS IN WRITING.**

Duplicate originals must be signed and an original will be delivered to each party. Any amendments or Addenda to this agreement must be in writing and signed with same formality as the original agreement, and will be deemed to be integrated into and be part of this agreement.

Entered at Kenosha, Wisconsin this \_\_\_\_ day of \_\_\_\_\_, 2022.

By:

\_\_\_\_\_  
JIM KREUSER, Kenosha County Executive

\_\_\_\_\_  
REGI BACHOCHIN, Kenosha County Clerk

\_\_\_\_\_  
CLEMMENT ABONGWA, PE, County Highway  
Commissioner

Entered at Kenosha, Wisconsin this \_\_\_\_ day of \_\_\_\_\_, 2022.

By:

\_\_\_\_\_

JOHN M. ANTARAMIAN, Mayor for the City of Kenosha

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DEBRA L. GIMLER, Interim City Clerk

Jointly drafted by  
Edward R. Antaramian, City Attorney for the City of Kenosha, and  
Joseph M. Cardamone III, Kenosha County Corporation Counsel

Exhibit 1

Exhibit 2

Exhibit 3

The East fifteen feet (15') of the South 396.5 feet and the east sixty feet (60') of the remainder of Parcel No. 12 - 223 - 31 - 177 - 014; and the East 50 feet of Parcel No. 12 - 223 - 31 - 177 - 001.

Exhibit 4