

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

**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**

This 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 (hereinafter referred to as this "2005 Intergovernmental Agreement" or "Agreement") is entered into by and between the City of Kenosha (hereinafter referred to as the "City"), with offices located at 625 52nd Street, Kenosha, Wisconsin 53140 and the Kenosha Water Utility (hereinafter referred to as the "Kenosha Water Utility" or "KWU"), with offices located at 4401 Green Bay Road, Kenosha, Wisconsin 53144 (the City and the Kenosha Water Utility, as their interests may appear, being hereinafter collectively referred to as the "City Entities"), and the Town of Somers (hereinafter referred to as the "Town"), with offices located at 7511 12th Street, Town of Somers, Wisconsin 53171, the Somers Water Utility (hereinafter referred to as the "Town Water Utility"), the Somers Sewer Utility District (hereinafter referred to as the "Town Sewer District"), all of which have offices at the same address as the Town (the Town, the Town Water Utility, and the Town Sewer District, as their interests may appear, being hereinafter collectively referred to as the "Town Entities", and the City Entities and the Town Entities being hereinafter collectively referred to as the "Parties" or any one of them as a "Party").

WITNESSETH:

WHEREAS, the Town and City expect to enter into a Cooperative Plan pursuant to §66.0307, Wis. Stats. (hereinafter "Cooperative Plan"); and

WHEREAS, the Cooperative Plan will contain provisions which identify the areas of growth for the City, and the Town; and

WHEREAS, the Town desires to purchase wholesale water service and sewer service from Kenosha Water Utility under certain prescribed conditions in certain identified areas which will not be in the growth area for the City, and

WHEREAS, Kenosha Water Utility is willing to provide such wholesale water service and sewer service to the Town Entities under certain prescribed conditions, and

WHEREAS, the City Entities and the Town Entities seek to establish an agreement under the provisions of §66.30, Wis. Stats., for the purpose of establishing the conditions and procedures pursuant to which Kenosha Water Utility will provide water and sewer service to certain parts of the Town, and the Town will purchase Kenosha Water Utility water and sewer service from Kenosha Water Utility;

WHEREAS, the City Entities and the Town Entities are all Parties to the 1974 Agreement Between City of Kenosha, City of Kenosha Water Utility, and Town of Somers for Sewerage Service; 1985 Agreement Between City of Kenosha, City of Kenosha Water Utility, and Town of Somers for Sewerage Service within the Town of Somers; 1988 Agreement between the City of Kenosha Municipal Water Utility and the Town of Somers; 1988 Agreement Between City of Kenosha, City of Kenosha Water Utility, and Town of Somers for Sewerage Service within the Town of Somers; 1989 Agreement Between City of Kenosha, City of Kenosha Water Utility, and Town of Somers for Sewerage Service within the Town of Somers; 1990 Agreement Between City of Kenosha, Town of Somers and City of Kenosha Water Utility to Provide for Orderly Land Development and for Sanitary Sewer Service and Water Service within the Town of Somers; and 1993 Agreement for the Construction of a Portion of the

Parkside Sanitary Sewer Interceptor (hereinafter collectively referred to as the "Cooperative Agreements and Amendments"); which deal with the provision by the City Entities of sewage conveyance and treatment service (hereinafter referred to as "KWU Sewer Service") and water supply, treatment and storage service (hereinafter referred to as "KWU Water Service") to the Town Entities; and

WHEREAS, the Parties to this Agreement recognize the probable need in the future for construction by the Kenosha Water Utility of additional and replacement sewage treatment and conveyance facilities and additional and replacement water supply, treatment, distribution and storage facilities, which will be used by the Town Entities, and the Parties wish to provide for such construction in greater detail than appears in the Cooperative Agreements and Amendments;

NOW, THEREFORE, in consideration of the mutual provisions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which the Parties to this Agreement hereby each acknowledge, the City Entities and the Town Entities each hereby agree as follows:

1. RELATIONSHIP OF THIS AGREEMENT TO THE COOPERATIVE AGREEMENTS AND AMENDMENTS

From and after the date on which this Agreement takes effect, this Agreement supersedes all provisions contained in the Cooperative Agreements and Amendments, and said Cooperative Agreements and Amendments shall be null and void.

2. DEFINITIONS

a. "Potential Town Service Area" for sanitary sewer and water service shall consist of those portions of the Town, which are outside all of the following areas depicted and referred to on the attached Exhibit "A".

(1) The "City Growth Area" as that area is depicted and referred to on the attached Exhibit "A" (hereinafter "City Growth Area");

(2) The "Racine Service Area" as that area is depicted and referred to on the attached Exhibit "A" (hereinafter "Racine Service Area").

b. "Town Service Area" shall consist of those portions of the Potential Town Service Area, which are within the Kenosha Sewer Service Area as that area is designated and authorized by the Wisconsin Department of Natural Resources ("DNR") and the Southeastern Wisconsin Regional Planning Commission ("SEWRPC"). The parties recognize that the designated Kenosha Sewer Service Area may be revised over time, and the parties affirm that it is their intention that the boundaries of the Town Service Area be automatically revised when the Kenosha Sewer Service Area boundaries are revised.

The Town may request that the Kenosha Water Utility petition SEWRPC to make additions to the "Town Service Area" from the Potential Town Service Area upon the adoption of an approved §66.0307, Wis. Stats., agreement between the Town and the City and the City Entities agree that they shall make such requests to SEWRPC, without modification or objection so long as there is sufficient capacity and/or the Town Entities agree to pay for such additional capacity, as is provided herein.

The Town shall not request and the Kenosha Water Utility shall not approve any water and/or sanitary, sewer extensions in the Town prior to an approved §66.0307, Wis. Stats.,

agreement between the Town and the City, except for those portions of the Town that are within the Kenosha Sewer Service Area as of January 1, 2004.

3. KWU SEWER SERVICE TO TOWN ENTITIES

a. Town's Purchase of Sewer Service from the Kenosha Water Utility.

(1) The Town Entities shall obtain and purchase sanitary sewer service exclusively from the Kenosha Water Utility for all wastewater generated within the Town Service Area.

(2) The Town Entities shall not operate or use an alternative sanitary sewer conveyance system or sewage treatment plant, and shall not contract or arrange with any other person or entity for the operation or use of an alternative public sanitary sewer, conveyance system or sewage treatment plant for any wastewater generated within the Potential Town Service Area.

b. Provision of Service; Capacity. The Kenosha Water Utility shall, in accordance with this Agreement, make available to the Town Entities sufficient capacity in Kenosha Water Utility's existing sewer conveyance facilities and sewage treatment plant, and the opportunity for sufficient capacity in future Kenosha Water Utility sewer conveyance facilities and sewage treatment plant, so as to allow for reasonable and orderly development in the Potential Town Service Area. The amount of wastewater flow accepted from the Town Service Area will be limited only by the available capacity of the Kenosha Water Utility's existing sewage treatment plant and/or conveyance facilities, and the Town Entities' reserved capacity in Kenosha Water Utility's future facilities. Existing capacity in the Kenosha Water Utility's existing sewage conveyance system and existing sewage treatment plant shall be available to the City Entities, the Town Entities, and the other municipal customers of the Kenosha Water Utility on a first-

come, first-served basis, based on then-actual usage, and the Kenosha Water Utility shall not reserve any such capacity for the City Entities, the Town Entities or any of the other customers of the Kenosha Water Utility. The Kenosha Water Utility shall annually provide to the Town Entities a copy of the Compliance Maintenance Annual Report (CMAR) required to be submitted to the WDNR.

c. Areas Served. The Kenosha Water Utility shall accept into its sewage treatment plant wastewater generated from areas within the Town Service Area and any expansions thereto.

d. Metering of Sewer Service.

(1) The Town shall prepare plans for and construct the metering and monitoring structures to be installed at the locations shown on Exhibit "A" as "Future Sewer Master Meters." The Kenosha Water Utility shall review and approve the plans for the metering and monitoring structures prior to their construction. All costs for the metering and monitoring structures shall be paid for by the Town Entities.

(2) The Kenosha Water Utility shall provide the sewage meter and monitoring equipment to be installed in the structure, or shall reimburse the Town Entities for the cost of the meter and monitoring equipment.

(3) All KWU Sewer Service provided by Kenosha Water Utility to Town Entities shall be master-metered for flow and monitored for quality of effluent.

e. Rates. The Kenosha Water Utility shall charge wholesale sewer rates as authorized by the City of Kenosha Board of Water Commissioners to the Town Entities for KWU Sewer Service provided within the Town Service Area. Such rates shall not be unreasonable or unjustly discriminatory. The Town Entities shall

pay such rates in accordance with the terms and conditions established by the Kenosha Board of Water Commissioners. Any component of the KWU Sewer Service rates charged to the Town Entities with respect to operation and maintenance of sewage treatment facilities shall consider the Kenosha Water Utility Sewage Treatment Plant, the Future Sewage Treatment Plant and any other additional sewage treatment facilities as one single integrated sewage treatment facility and shall draw no distinction based upon where or by what means particular sewage flows enter such treatment facilities.

- f. Cooperation by Town Entities. Town Entities shall cooperate with Kenosha Water Utility in all respects necessary for Kenosha Water Utility to provide sanitary sewer and water services under this Agreement, including but not limited to permits to place mains and appurtenances in the right-of-way of Town. Such permits shall not be unreasonably withheld, delayed or conditioned. Permit conditions may not include street reconstruction over and above what is necessary to restore to preexisting conditions.

4. **SEWER CONVEYANCE FACILITIES**

- a. Conveyance Dividing Lines. The lines depicted and referred to on the attached Exhibit "A" as the "Conveyance Dividing Lines" (hereinafter referred to as the "Conveyance Dividing Lines") is generally intended to determine how the sewage of the Town Entities and their customers will be conveyed from the Town Service Area sanitary sewer basins to the Kenosha Water Utility Sewage Treatment Plant.

- b. Connection to Kenosha Water Utility System. Except as is otherwise specifically provided in this Agreement, all Town Entities' sewage conveyance facilities existing on or

constructed after the effective date of this Agreement which serve areas in the Town Service Area shall connect to Kenosha Water Utility's sewer conveyance lines at locations depicted and referred to on the attached Exhibit "A" as "Existing Sewer Master Meters" and "Future Sewer Master Meters" (hereinafter referred to as "Master Sewer Meter Sites"). In the event the Town Entities desire to connect Town Entities' sewage conveyance facilities to Kenosha Water Utility sewage conveyance facilities other than through the Master Sewer Meter Sites such connection must be specially approved in writing by the General Manager of the Kenosha Water Utility (hereinafter referred to as the "Kenosha Water Utility General Manager") based upon the best interests of the Kenosha Water Utility.

The Town Entities shall be allowed up to 10 years from the effective date of this Agreement to connect all existing Town Entities' sewage conveyance facilities to the Kenosha Water Utility's sewer conveyance lines through the Master Sewer Meter Sites, as shown on Exhibit "A".

c. Sewage Conveyance Facilities in the Town. All plans and specifications for sewage conveyance facilities to be located within the Potential Town Service Area, and through which KWU Sewer Service will be provided, must be approved by the Kenosha Water Utility before construction of such facilities. The Town Entities shall not submit such plans to any State regulatory agency prior to Kenosha Water Utility approval of such plans. The Kenosha Water Utility shall only review and approve such plans that have been previously approved by the Town in writing. Kenosha Water Utility approval of plans and specifications for sanitary sewer extensions by the Town Entities shall be based upon a system-level review.

The Kenosha Water Utility shall promptly notify the Town in writing of its approval or disapproval and its reason for any disapproval. Any disapproval must be based upon lack of

downstream or plant capacity or other substantial engineering consideration related to the Town's proposed extension and shall include suggestions for corrections of such deficiencies. If the Town objects to a disapproval, it shall notify the Kenosha Water Utility in writing within 60 days of the Kenosha Water Utility's notice. Representatives of the Kenosha Water Utility and the Town shall meet within the next 14 days to attempt to resolve any disputed issues. If such representatives are not able to resolve the disputed issues, and the Kenosha Water Utility General Manager and the Town Chairperson or Designee are not able to resolve such issues after meeting at least once in the next 30 days or within such additional time as they may agree to in writing, they shall select a mutually satisfactory arbitrator within the next 30 days or within such additional period of time as they may agree to in writing. The remaining disputed issues shall then be determined by binding arbitration. The Kenosha Water Utility and the Town shall equally share in the cost of arbitration. Alternatively, the Kenosha Water Utility General Manager and the Town Chairperson 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.

d. Joint-Use Sewage Conveyance Facilities. In the event that the Kenosha Water Utility desires the Town Entities to participate in the payment for additional or replacement Kenosha Water Utility sewage conveyance facilities to be jointly used by the City Entities and the Town Entities, which shall be constructed and paid for in the first instance by the Kenosha Water Utility, the Kenosha Water Utility shall give written notice to the Town as early as practical. Such notice shall include, without limitation, appropriate information relating to the

need for additional capacity or replacement, the scope of the project, actual and projected component sewage flow rates, engineering calculations, anticipated project cost and proposed cost allocation. Any such cost allocation shall be made pro rata, and shall be fair and reasonable based upon respective then-actual usage plus respective anticipated future need. If the Town objects for any reason, it shall notify the Kenosha Water Utility in writing of the basis for its objections within 60 days of the Kenosha Water Utility's notice. The disputed issues shall be determined in the first instance by a joint report promptly prepared and issued by the engineers for the Kenosha Water Utility and the Town. If and to the extent the engineers reach agreement, the issues shall be deemed finally resolved. If the engineers are not able to resolve disputed issues, and the Kenosha Water Utility General Manager and the Town Chairperson or Designee are not able to resolve such issues after meeting at least twice within the next 60 days or such additional time as they may agree to in writing, they shall select a mutually satisfactory arbitrator within the next 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 and the Town shall equally share in the cost of arbitration. Alternatively, the Kenosha Water Utility General Manager and the Town Chairperson 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.

In structuring the method of payment for additional and replacement sewage conveyance facilities, the Kenosha Water Utility shall not be required to subsidize the cost of that portion of such additional or replacement conveyance facilities allocated to and reserved for the Town

Entities and their sewer customers, and the Town Entities shall not be required to subsidize the cost of that portion of the additional or replacement facilities allocated to and reserved for the Kenosha Water Utility and its sewer customers other than the Town Entities.

The pro rata cost attributable to the Town Entities for additional and replacement sewage conveyance facilities shall be paid to the Kenosha Water Utility by the Town, at the option of the Town, by one of the following methods: (1) the Town Entities' allocation shall be paid to the Kenosha Water Utility as a direct cash payment after completion of the construction project, upon not less than 60 days' prior written notice of the amount due; (2) the Town Entities' pro rata share of the Kenosha Water Utility's cost or debt service relating to construction of the additional and replacement sewage conveyance facilities shall be added to and included in the wholesale rate paid by the Town Entities; or (3) some combination of (1) and (2) above.

The Town shall notify the Kenosha Water Utility in writing of the payment method selected by the Town on or before the designated project construction commencement date. The Kenosha Water Utility shall give the Town 60 days prior written notice of the designated construction commencement date and request in such notice that the Town select and notify the Kenosha Water Utility of its payment method on or before the construction commencement date. If the Town does not notify the Kenosha Water Utility of the payment method selected by it on or before the designated project construction commencement date, the Kenosha Water Utility shall determine the payment method and promptly notify the Town in writing of its determination.

The Kenosha Water Utility shall allocate to and reserve for the exclusive use of the Town Entities and their sewer customers any sewage conveyance capacity paid for by the Town

pursuant to paragraph 4 of this Agreement, except as may otherwise be approved in writing by the Town Board.

5. **KENOSHA WATER UTILITY SEWAGE TREATMENT PLANT AND FUTURE SEWAGE TREATMENT PLANT**

a. Existing Capacity. Existing capacity in the Kenosha Water Utility Sewage Treatment Plant shall be available to the City Entities, the Town Entities and the other municipal customers of the Kenosha Water Utility on a first-come, first-served basis, based on then-actual usage as demonstrated by the average daily flow, average daily biochemical oxygen demand (hereinafter referred to as "BOD"), and average daily suspended solids received by the Kenosha Water Utility Sewage Treatment Plant during the past calendar year, and the Kenosha Water Utility shall not reserve any of such treatment capacity for the City Entities, the Town Entities or any of its other customers.

b. Allocation of Future Sewer Treatment Capacity. Additional sewage treatment capacity to augment the Kenosha Water Utility Sewage Treatment Plant for flow, BOD and/or suspended solids (hereinafter referred to as the "Future Sewage Treatment Plant"), shall be constructed by the Kenosha Water Utility on an allocated-design basis, after having determined how much additional sewage treatment capacity for flow, BOD and suspended solids the City Entities, the Town Entities and each of the Kenosha Water Utility's other municipal customers, respectively, desires to have constructed and reserved for its exclusive use, at its own cost. The Kenosha Water Utility shall pay for the Future Sewage Treatment Plant and any other sewage treatment facilities, in the first instance.

c. Time to Construct Future Sewage Treatment Plant. The Kenosha Water Utility shall construct the Future Sewage Treatment Plant when needed, but it shall not commence

construction of the Future Sewage Treatment Plant until such time as the daily average flow, BOD or suspended solids received by the Kenosha Water Utility Sewage Treatment Plant for a calendar year has exceeded (1) 90% of such plant's design flow capacity of 28 million gallons per day, or (2) 90% of such plant's design BOD capacity of 29,700 pounds per day as of the effective date of this Agreement, as modified by the installation of fine-bubble aeration equipment, or (3) 90% of such plant's design suspended solids capacity of 33,750 pounds per day; all as modified by design changes or new equipment added from time to time; provided, however, that the Kenosha Water Utility may advance the construction commencement date of the Future Sewage Treatment Plant upon demonstrating to a reasonable degree of engineering probability that approved development projects tributary to the Kenosha Water Utility Sewage Treatment Plant which are under construction will push the average daily flow, BOD and/or suspended solids, as projected over a calendar year, over the 90% threshold prescribed above, or upon the written consent of the Town Board and all other municipal customers.

d. Preliminary Notification of Desired Capacity in the Future Sewage Treatment Plant. Approximately three and one half years prior to the date on which the Kenosha Water Utility believes in good faith that it will begin construction of the Future Sewage Treatment Plant, it shall request in writing that the Town notify the Kenosha Water Utility of the preliminary range of capacity in the Future Sewage Treatment Plant, for average daily flow, BOD and suspended solids, which the Town Entities anticipate they may need for themselves and their customers. The Town shall comply with this request in writing within six months.

e. Notification of Cost of the Proposed Future Sewage Treatment Plant. Approximately two years and nine months prior to the date on which the Kenosha Water Utility believes in good faith that it will begin construction of the Future Sewage Treatment Plant, it

shall give written notice to the Town. Such notice shall include preliminary information regarding the total cost of the proposed Future Sewage Treatment Plant and the Town Entities' share thereof based upon the nature of the additional sewage treatment facilities that are required and the Town Entities' preliminary estimate of needed capacity.

The Kenosha Water Utility shall cooperate fully with the Town Entities to facilitate a decision by the Town Entities of the amount of treatment capacity for flow, BOD and suspended solids which the Town Entities desire the Kenosha Water Utility to construct for them, and to refine as much as practical, information relating to the anticipated cost of such capacity and the Kenosha Water Utility's anticipated debt service with respect to such capacity.

f. Notification of Actual Treatment Capacity Desired. Within three months after the Kenosha Water Utility's preliminary cost notice, the Town shall notify the Kenosha Water Utility in writing of the amount of treatment capacity in terms of average daily flow, BOD and suspended solids that it desires the Kenosha Water Utility to construct and reserve for the exclusive use of the Town Entities and their customers.

g. Notification of Design Capacity of Future Sewage Treatment Plant and Allocated Share of Cost. Upon completion of a final design of the Future Sewage Treatment Plant, the Kenosha Water Utility shall give written notice to the Town of the design capacity of such plant for average daily flow, BOD and suspended solids, the amount of such capacity allocated to and reserved for the exclusive use of the Kenosha Water Utility, the Town Entities (which shall be the capacity identified by the Town pursuant to the immediately preceding subparagraph) and each other municipal customer of the Kenosha Water Utility, the estimated total cost of such facility and the share of such estimated cost allocated to the Kenosha Water Utility, the Town Entities and each of the Kenosha Water Utility's other municipal customers. The Kenosha Water

Utility shall promptly give the Town written notice of any significant refinements of such estimated costs. The cost allocated to the Town Entities shall be fair and reasonable based on the capacity allocated to and reserved for the exclusive use of the Town Entities and their customers. If and to the extent that any state, federal or other grants are awarded to the Kenosha Water Utility to pay for all or a portion of the cost of constructing the Future Sewage Treatment Plant, such grants shall be credited to the entities participating in the cost of such facility in proportion to their financial participation.

h. Construction Due to Regulation or Public Health or Safety. Nothing in this Agreement shall be construed as prohibiting the Kenosha Water Utility from constructing new or replacement facilities or improvements to existing facilities that may from time to time be required by regulatory agencies or as the Board of Water Commissioners deems to be necessary for the health and safety of its customers, when based upon a reasonable exercise of discretionary powers.

i. No Subsidization of Cost of the Future Sewage Treatment Plant. In structuring the method of payment for the Future Sewage Treatment Plant, the Kenosha Water Utility shall not be required to subsidize the cost of that portion of such plant allocated to and reserved for the Town Entities and their sewer customers, and the Town Entities shall not be required to subsidize the cost of that portion of such plant allocated to and reserved for the Kenosha Water Utility and its sewer customers other than the Town Entities.

j. Pro Rata Share of the Cost of the Future Sewage Treatment Plant. The Town Entities' pro rata share of the cost of the Future Sewage Treatment Plant, based on allocated and reserved capacity, shall be paid to the Kenosha Water Utility by the Town, at the option of the Town, by one of the following methods: (1) the Town Entities' pro rata share shall be paid to the

Kenosha Water Utility as a direct cash payment after completion of the construction project upon not less than 60 days' prior written notice of the amount due; (2) the Town Entities' pro rata share of the Kenosha Water Utility's cost or debt service relating to construction of the Future Sewage Treatment Plant shall be added to and included in the wholesale rate paid by the Town Entities; or (3) some combination of (1) and (2) above.

k. Time for Payment and Payment Method. The Town shall notify the Kenosha Water Utility in writing of the payment method selected by the Town on or before the designated project construction commencement date. The Kenosha Water Utility shall give the Town 60 days prior written notice of the designated construction commencement date and request in such notice that the Town select and notify the Kenosha Water Utility of its payment method on or before the construction commencement date. If the Town does not notify the Kenosha Water Utility of the payment method selected by it on or before the designated project construction commencement date, the Kenosha Water Utility shall determine the payment method and promptly notify the Town in writing of its determination.

l. Payment if Limits on Rates. If for any reason, any state or federal regulatory agency refuses to allow the Town Entities' allocated cost to be included in the Town's wholesale rate, the allocated cost shall then be paid to the Kenosha Water Utility as a direct cash payment after completion of construction of the project, upon not less than 60 days' prior written notice of the amount due.

m. Rights to Buy or Sell Capacity in the Future Sewage Treatment Plant. The City Entities, the Town Entities and any other municipal customer of the Kenosha Water Utility may buy or sell capacity in the Future Sewage Treatment Plant on such terms as they deem

appropriate, upon written notice to all such other participants. No Party shall be obligated to sell any capacity in the Future Sewage Treatment Plant.

n. Permitting and Construction of the Future Sewage Treatment Plant. The Kenosha Water Utility shall use its best efforts to obtain all necessary federal, state and local permits and approvals required to construct the Future Sewage Treatment Plant, and shall use its best efforts to commence and complete the construction of such treatment plant prior to the Kenosha Water Utility Sewage Treatment Plant reaching capacity. The Kenosha Water Utility shall keep the Town Entities informed of all significant new developments, as they occur, relating to the permitting and construction of the Future Sewage Treatment Plant.

o. Additional Sewer Connections. The Town Entities shall not, directly or indirectly, allow any additional sewer connections to its sewage conveyance facilities:

(1) If the Town Entities do not request additional sewage treatment capacity in the Future Sewage Treatment Plant and the existing KWU Sewage Treatment Plant has reached 100% of such plant's design flow capacity, or design BOD capacity (as increased by installation of the fine-bubble aeration equipment), or design suspended solids capacity, all as modified from time to time; or

(2) If the Town Entities have received notice from the Kenosha Water Utility that they have exhausted their allocation-design capacity in the Future Sewage Treatment Plant; unless the Town Entities are able to purchase additional capacity in the Future Sewage Treatment Plant or to take such actions as to reduce their annual average flow and/or loadings below their allocated design capacity.

p. Town Allocated Capacity in Future Treatment Plant. The Kenosha Water Utility agrees to reserve and not use, consume or allow others to use or consume any unused portion of capacity in Future Treatment Plant(s) allocated to the Town Entities.

q. Additional Sewage Treatment Capacity Beyond Future Sewage Treatment Plant. Issues relating to the need for construction of additional sewage treatment capacity after construction of the Future Sewage Treatment Plant shall be negotiated by the Parties to this Agreement as and when the need arises.

r. Cost of Replacement Sewage Treatment Facilities. The cost of any replacement sewage treatment facilities which the Kenosha Water Utility needs to install or construct shall be recovered by the Kenosha Water Utility through its rates.

6. **PROVISION OF KENOSHA WATER UTILITY WATER SERVICE TO TOWN ENTITIES**

a. Town's Purchase of Water from the Kenosha Water Utility. The Town Entities shall obtain and purchase water exclusively from the Kenosha Water Utility for all properties within the Potential Town Service Area. The Town Entities shall not operate or use alternative public water supply source or alternative public water treatment plant, and shall not contract or arrange with any other person or entity for the operation or use of an alternative public water supply source or alternative water treatment plant to provide water to the properties located within Potential Town Service Area.

b. Provision of Service; Capacity. The Kenosha Water Utility shall, in accordance with this Agreement, supply to the Town Entities all of the water that the Town Entities require to serve their customers who are located in the Potential Town Service Area, provided that the Town Entities and those customers have the ability to take such water, subject to the possibility

of a utility-wide water moratorium imposed by the Kenosha Water Utility, because of insufficient water conveyance or treatment capacity. The amount of water provided to the Potential Town Service Area will be limited only by the available capacity of the Kenosha Water Utility's water treatment plant and/or conveyance facilities. Existing capacity in the Kenosha Water Utility's existing water conveyance system and existing water treatment plant shall be available to the City Entities, the Town Entities, and the other municipal customers of the Kenosha Water Utility on a first-come, first-served basis, based on then-actual usage, and the Kenosha Water Utility shall not reserve any such capacity for the City Entities, the Town Entities or any of the other customers of the Kenosha Water Utility.

c. Sewer Service As a Condition for Water Service. Notwithstanding any other provision of this Agreement, the Town Entities shall not supply Kenosha Water Utility water to any property or area, west of the sub-continental divide, unless the wastewater from that property or area is connected to and treated by the Kenosha Water Utility sewer system.

d. Rates. The KWU shall charge wholesale water rates as authorized by the Wisconsin Public Service Commission (hereinafter "PSC") and approved by the City of Kenosha Board of Water Commissioners to the Town Entities for KWU Water Service within the Potential Town Service Area. The Town shall pay such rates in accordance with the terms and condition established by the Kenosha Board of Water Commissioners.

e. KWU Water Service to the Town Entities. The Kenosha Water Utility shall provide KWU Water Service to the Town Entities for use and/or provision to their customers in the Potential Town Service Area, at locations depicted and referred to on the attached Exhibit "A" as "Existing Water Master Meters" (hereinafter referred to as "Water Master Meter Sites") or at any other location that is mutually agreed upon in writing by the Kenosha Water Utility

General Manager and the Town Chairperson or his or her designee, to the extent permitted by the capacity of the Kenosha Water Utility's water distribution and storage facilities.

f. Approval of Plans and Specifications for Water Distribution and Storage Facilities. All plans and specifications for water distribution and storage facilities to be located within the Potential Town Service Area, and through which KWU Water Service will be provided, must be approved by the Kenosha Water Utility before construction of such facilities. The Town Entities shall not submit such plans to any State regulatory agency prior to Kenosha Water Utility approval of such plans. The Kenosha Water Utility shall only review and approve such plans that have been previously approved by the Town in writing. Kenosha Water Utility approval of plans and specifications for water main extensions in the Potential Town Service Area shall be based upon a system-level review. No such plans will be rejected unless such rejection is based upon valid and material engineering considerations related to the Town's proposed extension and any such rejection shall include a suggested remedy for such engineering concerns.

The Kenosha Water Utility shall promptly notify the Town in writing of its approval or disapproval and its reason for any disapproval. If the Town objects to a disapproval, it shall notify the Kenosha Water Utility in writing within 60 days of the Kenosha Water Utility's notice.

Representatives of the Kenosha Water Utility and the Town shall meet within the next 14 days to attempt to resolve any disputed issues. If such representatives are not able to resolve the disputed issues, and the Kenosha Water Utility General Manager and the Town Chairperson or Designee are not able to resolve such issues after meeting at least once in the next 30 days or within such additional time as they may agree to in writing, they shall select a mutually satisfactory arbitrator within the next 30 days or within such additional period of time as they

may agree to in writing. The remaining disputed issues shall then be determined by binding arbitration. The Kenosha Water Utility and the Town shall equally share in the cost of arbitration. Alternatively, the Kenosha Water Utility General Manager and the Town Chairperson 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.

g. Additional Facilities. If additional capacity in such water distribution and storage facilities is needed by the Town Entities, it shall be provided and paid for in the first instance by the Kenosha Water Utility. Any such additional capacity shall be provided as soon as practical in the most fair, reasonable and cost effective manner possible, to be determined in the first instance by a joint report promptly prepared and issued by the engineers for the Kenosha Water Utility and the Town. (It is understood and agreed that an appropriate issue to be determined by the joint engineering report may be whether additional Town water distribution or storage facilities should be provided by the Town Entities rather than by the Kenosha Water Utility.) If and to the extent that the engineers reach agreement, the issues shall be deemed resolved. If the engineers are not able to resolve disputed issues, and the Kenosha Water Utility General Manager and the Town Chairperson or Designee are not able to resolve such issues after meeting at least twice within the next 60 days or within such additional time as they may agree to in writing, they shall select a mutually satisfactory arbitrator within the next 30 days or within such additional time as they may agree to in writing. As an alternative, the parties may mutually agree to jointly request that the Wisconsin Public Service Commission provide or assign a mediator. The remaining disputed issues shall then be determined by binding arbitration. The Kenosha

Water Utility and the Town shall equally share in the cost of arbitration. Alternatively, the Kenosha Water Utility General Manager and the Town Chairperson 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.

It is understood and agreed that providing additional water distribution or storage capacity will be a major project, completion of which is likely to require three years from the date of request for such additional capacity from the Town Entities. It is further understood and agreed that the Kenosha Water Utility will need to obtain state regulatory approvals prior to constructing such additional capacity, and the Kenosha Water Utility shall use its best efforts to obtain such approvals in a timely fashion.

The Kenosha Water Utility shall recover the cost of constructing additional water distribution or storage facilities through its rate structure, as approved by the PSC.

h. Reliance on PSC regarding KWU Water Service Provisions. The Parties to this Agreement acknowledge that the provisions of this Agreement relating to KWU Water Service are abbreviated in reliance on the regulatory role played by the PSC as of the effective date of this Agreement, in ensuring that adequate KWU Water Service is provided to the Town Entities in a reasonable and fair manner and at a reasonable and fair price. In the event that the responsibilities or methodology of the PSC with respect to such matters changes materially, or in the event that the level of the PSC involvement in such matters changes materially as a result of funding, cuts or otherwise, or in the event that the PSC ceases to exist without its responsibilities with respect to such matters being transferred to a successor agency, the Parties to this

Agreement shall negotiate amendments to the provisions of this Agreement relating to KWU Water Service to provide an equivalent level of assurance to the Town Entities that adequate KWU water Service shall be provided by the Kenosha Water Utility, in a fair and reasonable manner and at a fair and reasonable price. In the event that the Parties are unable to reach agreement on such mutually satisfactory amendments to this Agreement, the Kenosha Water Utility General Manager and the Town Chairperson or Designee or his or her successor shall select a mutually satisfactory arbitrator within the next 30 days or such additional period of time as they may agree to in writing, and the disputed issues shall be determined by binding arbitration. The Kenosha Water Utility and the Town shall share equally in the cost of arbitration.

In structuring the amendments contemplated by this paragraph, the Kenosha Water Utility shall not be required to subsidize the cost of improvements to serve the Town Entities or their customers, or the cost of operating and maintaining facilities to serve the Town Entities or their customers; and the Town Entities shall not be required to subsidize the cost of improvements to serve the Kenosha Water Utility or its customers other than the Town Entities, or the cost of operating and maintaining facilities to serve the Kenosha Water Utility or its customers other than the Town Entities.

i. Participation in or Challenging PSC Decisions. Nothing in this Agreement shall prevent any of the Parties to this Agreement from participating in any PSC proceedings relating to KWU Water Service or from challenging any decision of the PSC relating to KWU Water Service.

j. KWU Retail Customers within the Town. KWU retail customers within the Town on the effective date of this Agreement shall remain such unless agreed otherwise by the

KWU General Manager and no additional customers located within the Town shall become KWU retail customers unless agreed otherwise by KWU General Manager and Town Water Utility.

7. KENOSHA WATER UTILITY WATER TREATMENT FACILITIES

The Kenosha Water Utility, when necessary, shall be responsible for constructing water supply and treatment facilities, and shall pay for such facilities in the first instance. The cost shall be recovered through rates, in a manner approved by the PSC.

8. CITY GROWTH AREA

- a. No Sanitary Sewer or Well Permits. No on-site sanitary sewer permits or well permits shall be issued or approved by the Town for any land within the City Growth Area.
- b. KWU Water Service. The Kenosha Water Utility shall only provide retail water service to properties within the City Growth Area that have been annexed or otherwise attached to the City. Customers within the City Growth Area which obtain retail water service directly from the Kenosha Water Utility shall be charged and pay the retail rates of the Kenosha Water Utility as authorized by the PSC and approved by the City of Kenosha Board of Water Commissioners.
- c. KWU Sewer Service. The Kenosha Water Utility shall only provide retail sewer service to properties within the City Growth Area that have been annexed or otherwise attached to the City. Customers within the City Growth Area shall obtain sewer service directly from the Kenosha Water Utility and shall be charged and pay the retail rates of the Kenosha Water Utility as authorized by the City of Kenosha Board of Water Commissioners.
- d. Transfer of Conveyance Facilities. All Town sewage conveyance facilities existing on the effective date of this Agreement, which serve the City Growth

Area, shall, upon attachment to the City and acceptance by KWU General Manager be transferred to the Kenosha Water Utility.

- e. Adequate and Timely Sanitary Sewer and Water Service. The Kenosha Water Utility shall provide adequate and timely sanitary sewer and water service in the City Growth Area to attached parcels ("Adequate Service"). Adequate Service shall mean sanitary sewer and water service available to Intermediate Attachments (as defined in Section 11 of the Cooperative Plan) within two (2) years of the attachment, unless otherwise agreed by the owner of the attached parcel of land.

9. LIMITATION ON LIABILITY OF THE KENOSHA WATER UTILITY

The Kenosha Water Utility shall not be liable for lost revenue of the Town Entities resulting from the Kenosha Water Utility's inability to provide Kenosha Water Utility Sewer Service or Kenosha Water Utility Water Service due to any Act of God or any breakdown or malfunction of facilities; provided, however, that the Kenosha Water Utility shall have the duty to reasonably maintain its facilities and in emergencies to restore Kenosha Water Utility Water Service and Kenosha Water Utility Sewer Service as rapidly as possible.

10. PERIODIC CONFERENCES AND LONG RANGE PLANNING

- a. Periodic Conferences. Town Entities and the Kenosha Water Utility shall confer from time to time, but at least once each 6 months, to review and discuss concerns relating to sewer service, water service, and other matters of mutual concern. The Town Entities shall be responsible for scheduling and holding a spring meeting and the Kenosha Water Utility shall be responsible for scheduling and holding a fall meeting. Kenosha will allow a representative of the Town Utility to attend Board of Water Commissioner meeting and speak on any issue which is

Town related.

b. Long Range Planning. As an aid to long-range planning by the Kenosha Water Utility, the Town Entities shall by January 1, 2006 provide the Kenosha Water Utility at Town Entities' sole cost and expense, a water and sewer facilities plan for the Potential Town Service Area to allow the Kenosha Water Utility to plan for the extension of KWU Sewer Service and KWU Water Service. The engineering plan shall cover a 20-year planning period and shall be updated with respect to growth, flows and loadings by the Town Entities at its sole cost and expense at 5-year intervals beginning on January 1, 2006.

11. EXTENSION OF KENOSHA SEWER SERVICE AREA BOUNDARY

Once a §66.0307, Wis. Stats., agreement has been approved between the Town and the City, the City Entities shall fully support and cooperate in good faith with the Town Entities in extending the Kenosha Sewer Service Area boundary to include the Potential Town Service Area as the Town Entities may choose to provide with KWU Sewer Service.

Once a §66.0307, Wis. Stats., agreement has been approved between the Town and the City, the Town Entities shall fully support and cooperate in good faith with the City Entities in extending the Kenosha Sewer Service Area boundary to include the City Growth Area.

12. LAWS, RULES AND REGULATIONS

The Town Entities shall provide KWU Water Service and KWU Sewer Service to their customers in conformance with applicable Federal and State laws, rules and regulations as they now exist and as they may be amended from time to time, and shall provide KWU Sewer Service in accordance with Section 32.08 of the City of Kenosha Code of General Ordinances, as it now exists and as it may be amended from time to time. The Kenosha Water Utility shall give prompt

written notice to the Town of any amendment of Section 32.08 of the City of Kenosha Code of General Ordinances and of any amendment to applicable Federal and State laws, rules and regulations as appropriate. The Town shall adopt and enforce an ordinance regulating KWU Sewer Service within the Town in substantial conformity with Section 32.08 of the City of Kenosha Code of General Ordinances, as it now exists and as it may be amended from time to time. The Town shall provide the Kenosha Water Utility with a certified copy of its ordinance.

13. LIMITATION ON TOWN ACTIONS REGARDING CITY ANNEXATIONS

The Town Entities shall not contest, challenge or oppose annexations by the City, or other transfers of territory to the City, from within the City Growth Area. The City shall oppose any proposed annexations of property in the Town which is not included in the City Growth Area.

14. NEW CITY ENTITIES OR TOWN ENTITIES

In the event that any of the City Entities or the Town Entities create new or different entities for the purpose of providing or administering municipal sewer service or municipal water service within the City corporate limits or within the Town, respectively, they shall make the necessary internal arrangements to subject such new or different entities to this Agreement, and such new or different entities, to the extent that they are geographically included in the scope of this Agreement and, if only partially included, to the extent of such inclusion, shall thereafter be automatically included within the "City Entities" or the "Town Entities" as defined by this Agreement, respectively, and shall be subject to this Agreement. Specifically, for example only, if the Town creates a new sewer utility district, such new sewer district shall be included in the "Town Entities" and shall be subject to this Agreement. In the event that functions relating to the provision or administration of municipal sewage service or municipal water service within the

City corporate limits or within the Town, respectively, are transferred by any of the City Entities or any of the Town Entities to new or different entities, they shall make the necessary internal arrangements to subject such new or different entities to this Agreement, and such new or different entities shall thereafter be automatically included within in the "City Entities" or the "Town Entities" as defined by this Agreement, respectively, and shall be subject to this Agreement. Specifically, for example only, if the City ever assumes from the Kenosha Water Utility responsibility for the provision or administration of KWU Sewer Service, the City shall thereafter be bound by all of the provisions of this Agreement relating to the provision of KWU Sewer Service by the Kenosha Water Utility. Any Party to this Agreement which creates a new or different entity or transfers any functions within the contemplation of this paragraph shall promptly give written notice of such creation or transfer to the other Parties to this Agreement.

15. NO CHALLENGES TO THIS AGREEMENT

The City Entities and the Town Entities hereby waive any right each may have to commence or maintain any civil action or other proceeding to contest or challenge the adoption or the validity of this Agreement. This paragraph shall not be construed to prevent a Party to this Agreement from commencing a declaratory judgment action regarding the interpretation of this Agreement.

16. NO THIRD-PARTY BENEFICIARY

This Agreement is intended to be solely between and for the benefit of the City Entities and the Town Entities. Nothing in this Agreement shall be interpreted as giving to any person or entity not a Party to this Agreement any legal or equitable rights whatsoever.

17. ADMINISTRATION OF THIS AGREEMENT

This Agreement shall be administered on behalf of the Town Entities by the Town Chairman or designee, on behalf of City by the City Administrator or designee, and on behalf of the Kenosha Water Utility by the Kenosha Water Utility General Manager or designee. The other Parties to this Agreement shall be promptly notified in writing of the appointment of any designee pursuant to this paragraph.

18. ENFORCEMENT

a. Remedies. This Agreement is intended to provide each Party with the right and standing to challenge in court any act or omission of any other Party which violates this Agreement. This Agreement is intended to provide each Party with the right and standing to seek any available legal or equitable remedy to enforce this Agreement and to seek damages for the breach of this Agreement.

b. Notice of Breach/Dispute Resolution. If a Party to this Agreement believes that any other Party is in breach of this Agreement, the aggrieved Party shall promptly serve written notice of said breach upon the other Party. Representatives of 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 City Administrator or the Kenosha Water Utility General Manager and the Town Chairperson or designee shall meet within 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 Agreement. This subparagraph is intended by the Parties to this Agreement to waive their respective statutory right to any further notice §893.80(1) (a), Wis. Stats., to the extent such subsection is applicable.

c. Limitation on Commencement of Civil Action. No civil action regarding a breach of this Agreement may be commenced until after 30 days from the effective date of written notice required by this paragraph, except that a Party to this Agreement may commence an action seeking specific performance or injunctive relief in less than 30 days if, in that Party's good faith judgment, such an action is necessary to protect the public health, safety or welfare.

d. Recovery of Attorneys' Fees and Litigation Expenses. Except as otherwise provided in this Agreement, the prevailing Party in any court action concerning an alleged breach of this Agreement, or the interpretation of this Agreement, or any action which is commenced as an alternative to arbitration or as a result of the failure to select a mutually satisfactory arbitrator, shall be entitled to recover from the other Party its reasonable litigation expenses, including reasonable attorneys' fees.

19. **COMPLETE AGREEMENT**

This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading up to this Agreement.

20. **TERM**

The term of this Agreement is indefinite and permanent. No breach or violation of any of the terms of this Agreement by any Party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the Parties that the provisions of this Agreement shall be subject to specific performance, that injunctive relief shall be provided to cure any breaches prospectively, and that damages shall be awarded to redress any harm occasioned by a breach; provided, however, that if a Party cannot or will not conform to the

requirements of this Agreement, as evidenced by a pattern of violations, and if such violations pose a serious threat to the public health, safety or welfare, this restriction on termination of this Agreement shall be deemed to be terminated.

21. AMENDMENT

This Agreement may be amended by mutual agreement approved by the governing bodies of the Parties to this Agreement and signed by appropriate and duly authorized officers of the Parties. Except as is specifically provided to the contrary in this Agreement, any Party to this Agreement may withhold its consent to any amendment for any reason.

22. GOOD FAITH

The Parties to this Agreement hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing.

23. SEVERABILITY

The provisions of this Agreement, and the individual parts of each such provision, shall be severable. In the event that any provision of this Agreement, or any part thereof, is held by a court of competent jurisdiction to be invalid or ineffective, the balance of this Agreement shall survive. In such event, the Parties shall promptly meet to discuss how they might satisfy the intent of this Agreement by alternative means. The Parties shall use their best efforts to find, design and implement a means of successfully accomplishing the intent of this Agreement. If necessary, the Parties shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Agreement. In the event the Parties are not able to reach agreement in such situation, any party may, by 90 day written notice to the others, require submission of such dispute to an impartial arbitrator, to be mutually selected by the General Manager of Kenosha Water Utility and the

Town Chairperson or Designee during such 90 day period, for binding arbitration. The Kenosha Water Utility or the City, as appropriate, and the Town shall equally share in the cost of arbitration.

24. INVALID OR INEFFECTIVE ORDINANCE OR DECISION

In the event that any ordinance which the Town is required to enact and/or enforce by this Agreement is adjudged by any court of competent jurisdiction to be invalid or ineffective, in whole or in part, the Parties shall promptly meet to discuss how the Town might satisfy the intent of this Agreement by alternative means, including, without limitation, enacting another ordinance designed to satisfy the court's objections. The Town shall use its best efforts to find, design and implement a means of successfully accomplishing the intent of this Agreement. If necessary, the Parties shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Agreement. In the event the Parties are not able to reach agreement in such situation, either Party may, by 90 day written notice to the other, require submission of such dispute to a arbitrator, to be mutually selected by the City Administrator or Kenosha Water Utility General Manager, as applicable, and the Town Chairperson or Designee during such 90 day period, for binding arbitration. The City or the Kenosha Water Utility, as appropriate, and the Town shall share equally in the cost of arbitration.

25. SUCCESSORS

This Agreement shall benefit and be binding upon the successors of the Town Entities and the City Entities.

26. IMPLEMENTATION

The Town Entities and the City Entities shall each take such actions as may be necessary or desirable to implement and effectuate the provisions and intent of this Agreement.

27. REFERENCES

Any references in this Agreement to any particular agency, organization or official shall be interpreted as applying to any successor agency, organization or official or to any other agency, organization or official to which contemplated functions are transferred by statute or ordinance. Any references in this Agreement to any particular statute or ordinance shall be interpreted as applying to such statute or ordinance as amended from time to time.

28. PARAGRAPH TITLES

Paragraph titles in this Agreement are provided for convenience only and shall not be used in interpreting this Agreement.

29. INTERPRETATION

This Agreement shall be interpreted as though jointly drafted by the Parties.

30. NOTICES

All notices required by or relating to this Agreement shall be in writing. Each notice shall specifically refer to this Agreement by name (a reference to the "2005 Intergovernmental Agreement" is sufficient) and shall refer specifically to the number of the paragraph(s) or subparagraph(s) to which the notice relates. Any such notice shall be delivered in person during normal business hours to the person(s) authorized by this Agreement to receive notice for a Party to this Agreement, or to the person apparently in charge of the such person's office during normal business hours, or shall be mailed to such person(s) by certified mail, return receipt requested, or shall be transmitted by facsimile to such person(s) during normal business hours (and whenever a notice is transmitted by facsimile it shall also be mailed by first class mail on the same day).

Each notice to the Town (notice to the Town shall be notice to all of the Town Entities) shall be addressed as follows: Town Chairperson or Designee, Town of Somers, 7511 12th Street, Somers, Wisconsin 53171, with a copy to the Town Clerk/Treasurer at the same address, fax number (262) 859-2331. Each notice to the City shall be addressed as follows: City Administrator, City of Kenosha, 625 52nd Street, Kenosha, Wisconsin 53140, with a copy to the City Clerk at the same address, fax number (262) 653-4023. Each notice to the Kenosha Water Utility shall be addressed as follows: General Manager, Kenosha Water Utility, 4401 Green Bay Road, Kenosha, Wisconsin 53144, fax number (262) 653-4303. Each Party may change its address (or add addresses for electronic mail or other communications media), for purposes of this Agreement, by written notice to the other Parties pursuant to this paragraph. Each notice shall be effective upon delivery in person during normal business hours (or at the beginning of the next normal business day if after normal business hours, or three days after mailing, or upon confirmed transmission by facsimile during normal business hours (or at the beginning of the next normal business day if after normal business hours), or upon actual receipt without regard to the method of delivery whichever occurs first.

31. EFFECTIVE DATE/APPROVAL

Contemporaneous with the execution of this Agreement, the Town and the City have entered into a Cooperative Plan under §66.0307, Wis. Stats., which will be submitted to the State of Wisconsin Department of Administration for approval. The Cooperative Plan is incorporated into this Agreement by reference. This Agreement shall not become effective unless and until the Cooperative Plan is approved by said Department of Administration. In the event that the Cooperative Plan is not approved by the State of Wisconsin Department of Administration and the Cooperative Plan and this Agreement

do not become effective, then the Cooperative Agreements and Amendments which are in effect shall remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties to this Agreement hereby certifies that this Agreement has been duly approved by its respective governing body on the date stated below in accordance with State and local laws, rules and regulations, and that such Party has caused its duly authorized officers to execute this Agreement on the dates written below their respective signatures.

For the City, approved by its Common Council on the 14th day March, 2005.

For the Kenosha Water Utility, approved by its Board of Water Commissioners on the 25th day February, 2005.

For the Town, approved by its Town Board on the 22nd day Feb., 2005.

For Town Water Utility, approved by its Board of Water Commissioners on the 22nd day Feb., 2005.

For the Town Sewer District, approved by its Board of Sewer Commissioners on the 22nd day Feb., 2005.

CITY OF KENOSHA

By: 

John M. Antaramian, Mayor

Date: March 10, 2005

Attest: 

Jean A. Morgan, Clerk

Date: March 10, 2005

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

The foregoing Agreement was acknowledged before me this 16th day of March, 2005,
by John M. Antaramian, Mayor and Jean A. Morgan, Clerk, of the City of Kenosha.

Dileen J. Salas

Notary Public; State of Wisconsin

My commission expires: 5-13-07

KENOSHA WATER UTILITY

By: Charles W. Bradley
Charles W. Bradley, Chairman
Board of Water Commissioners
Date: 2-28-05

Attest: Edward St. Peter
Edward St. Peter, Clerk and General Manager
Date: 2/28/05

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

The foregoing Agreement was acknowledged before me this 28th day of February, 2005,
by Charles W. Bradley, Chairman, Board of Water Commissioners, and Edward St. Peter, Clerk
and General Manager of the City of Kenosha Water Utility.

Sandra A. Masterson
Notary Public; State of Wisconsin
My commission expires: April 13, 2008

TOWN OF SOMERS

By: Carol J. Fischer
Carol Fischer, Chairperson
Date: 2/28/05

Attest: Kay E. Goergen
Kay E. Goergen, Clerk/Treasurer
Date: 2/28/05

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

The foregoing Agreement was acknowledged before me this 28 day of Feb, 2005,
by Carol Fischer, Chairperson and Kay E. Goergen, Clerk/Treasurer, of the Town of Somers.

Helen Siferd
Notary Public; State of Wisconsin
My commission expires: April 9 2006

SOMERS WATER UTILITY

By: Carol J. Fischer
Carol Fischer, Chairperson
Date: 2/28/05

Attest: Kay E. Goergen
Kay E. Goergen, Clerk/Treasurer
Date: 2/28/05

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

The foregoing Agreement was acknowledged before me this 28 day of Feb, 2005,
by Carol Fischer, Chairperson and Kay E. Goergen, Clerk/Treasurer, of the Somers Water
Utility.

Helen Sifuel
Notary Public; State of Wisconsin
My commission expires: April 9 2006

SOMERS SEWER UTILITY DISTRICT

By: Carol J. Fischer
Carol Fischer, Chairperson
Date: 2/28/05

Attest: Kay E. Goergen
Kay E. Goergen, Clerk/Treasurer
Date: 2/28/05

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

The foregoing Agreement was acknowledged before me this 28 day of Feb, 2005,
by Carol Fischer, Chairperson and Kay E. Goergen, Clerk/Treasurer, of the Somers Sewer Utility
District.

Helen Siford
Notary Public; State of Wisconsin
My commission expires: April 9 2006