

<p><b>APPROVAL</b></p> <p><i>Slw</i> </p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>8/16/2016</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Preliminary report on the Program Structure, Service Alternatives, and Risk Management Components of the Senior Travel Program</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.11.</i></p>

At the Common Council's February 16, 2016 meeting the Director of Administration was directed, relative to the Senior Travel Program, to evaluate the current program structure and service alternatives to ensure the manner in which the program is operated and the City's relationship with the program are all appropriate, including considering all risk management components.

The Director of Administration reached out to the current program operator, Basil Ryan, via email on July 27 to set up an opportunity to meet to discuss the program. Due to scheduling conflicts and availability, a meeting was not able to be arranged. As such, on August 4, the Director of Administration sent Mr. Ryan a list of questions (attached) so that they could be addressed at his convenience. On Thursday, August 11, Mr. Ryan spoke with Lisa Huening indicating that comments to the questions would be forthcoming as early as that evening. Absent receipt of that detail, this partial report is provided to meet the Council's directive.

Current Program Structure: It was previously determined by the City Attorney that the operator(s) of the Senior Travel Program are independent individuals, and they are not performing the duties as volunteers of the City. As such, much of the detail of the current program structure is dependent upon the receipt of the questions from Mr. Ryan. The result is that the program remains very low maintenance for the City. The City simply participates by funding the cost of the bus directly to Badger Tour & Travel. The City is simply a partner with the program operators because it funds the cost of the transportation. All other aspects of the program structure are internal to the program operator (Mr. Ryan) and do not involve the City.

A representative for the bus company indicates that the recent success of the program to increase participation can be attributed to Mr. Ryan. Previously, under Shirley Bird, the trips, other than those to the Fireside, were organized and arranged by the bus company. Arranging location/event tickets, meal stops, and other trip details were performed by the bus company and a final package price was presented to Shirley, which included an administrative fee retained by the bus company. This administrative fee was not itemized and could vary depending upon the effort involved and complexity of the arrangements. The bus company representative noted that since Basil has taken over, he has performed such duties and, in so doing, has brought the price point down. The bus company representative speculated that it was the reduced price that was driving the participation increase.

Service Alternatives: There are three obvious service alternatives compared to how the program operates now.

- First, the City could hire an employee to coordinate all aspects of the project, obviously this would be at a substantially greater cost to the City, which cost would either have to be absorbed by the City or passed on to participants through higher ticket prices.

- Second, the City could seek a volunteer to operate an identical City program. The key difference here would be bringing all financial aspects of the program in house. Such an action would provide greater accountability and transparency to the program; however, the service delivery has not been questioned such that an action like this is necessarily required. The City has not received complaints that the trip is not providing the promised activity. Continued participation has shown that participants are perceiving an appropriate entertainment value for the trip cost. Additionally, the anecdotal information from the transportation company suggests the current trip cost is competitive. In short, there is little evidence to suggest that using a City volunteer versus a private operator would change the service as provided. It is, however, difficult to know for sure since all aspects of the program are currently outside of the City's control except for funding of the buses, and as such, the City does not have complete information on what the program entails.
- The City could directly contract with the bus company to perform development and coordination of all trips. Based upon the information that we have so far, the only result of this step would be to increase the cost of the trip or maintain the cost at the levels generally in place under Shirley Bird. Very roughly, the representative for the bus company estimated that covering coordination and sending a representative on the trip to serve as the overseer would add 10 to 20 dollars to the cost of each ticket. Given that seniors are often considered to be living on limited, fixed incomes, increasing the ticket price could be detrimental to participation.

Risk Management: The City's liability insurer is aware that the City is a partner in this program. If an accident occurs that involves the bus or attendees, it is likely that the attorneys for the plaintiff would look to sue the deepest pockets, which would be the City and the bus company. Whether the project is coordinated by a volunteer or an independent individual, our insurance company would provide liability coverage if we are named in such a suit. If operated by a volunteer, the City would obviously be a party to any such suit. If operated by a private individual, as it appears, the City may be able to argue that other than liability that may stem from the transportation support, the City should not be party to any suit. As such, there may be some limited additional protection with the current partnership arrangement. The bottom line, however, is that the City is the deepest pocket and our liability insurance provider would likely need to step in to protect our rights and their interest in any such suit.

Risk levels could potentially be reduced by contracting with the bus company to provide the service because the service contract could shift certain liabilities to the bus company. Naturally, such a shift in risk could increase the cost, which could impact participation. It is worth noting that the program has operated successfully for years without creating any unusual risk or claims. Furthermore, the risk the City may or may not have is not impacting our liability coverage or costs; it is part of our base municipal coverage. As such, there is no overwhelming reason to pursue a different level of risk aversion at this point.

The greatest risk is probably to the participants who purchase tickets. If a ticket is paid for and the trip does not occur, that individual could be refunded by the program coordinator or be out the money. The City is not involved in that aspect of the program and, therefore, has no control. Nonetheless, some participants may argue that it is a City program and demand refunds or demand that the City pay the cost of honoring the trip. Obviously, the City would have no obligation to do so in this very hypothetical example. This point is brought up simply because a complete risk analysis should cover considering what happens if the program partner ceased operations.

As for direct financial risk, the City's costs, overall, are small and are limited to transportation costs. As such, there is limited direct financial risk to go along with the general liability risk for which the City has coverage. Given the relatively regular schedule of the trips, the City is not likely to be at a great risk of financial loss in the event the operator ceases operations as the City could discontinue the partnership if there signs of trouble. In short, the City does not have to pay for the bus if the trip does not occur, so direct financial risk is low.

The greatest risk for the City is probably in the area of publicity. The Senior Travel Program is a partnership with a private operator. If that partner does anything that embarrasses themselves or the project, that bad publicity could be projected on the City. That is why larger agencies with a lot of such arrangements (such as United Way) often have audit procedures in place. That is something the City has not done in the past with this project or with any other similar projects where a small, independent agency, individual, or group was involved. Nonetheless, the specifics of the business methods and finances of the previous and of the current operator are outside of the City's control. That creates some publicity risk that is inherent in agreeing to be in such a relationship. Please note that this is in no way intended to suggest or imply that the City is at risk with this operator. It simply notes that we are at risk with any operator. In any partnership, one garners some risk by association. Note, however, that we also get credit by association as the City is often praised for offering and supporting this valuable program.

Conclusion:

This report may be considered preliminary, pending receipt of additional information from Mr. Ryan. If that information is received prior to the meeting it will be distributed to the Aldermen to the extent possible. The Common Council may conclude that failure to adequately and thoroughly answer the questions is cause to question continuation in the partnership. However, until there is some evidence that the program is not being successful or that the program is failing to deliver on its promises or promised services, one may consider that the small investment and low risk are worth continuing the partnership in its current structure so as to preserve this beneficial program and retaining the lower service and participation costs.

UPDATE (8/12/16): Attached is a letter and email received from Mr. Ryan in response to the questions posed concerning program operations. The response was received via email at 11:59 p.m. on Thursday, August 11th. Since the letter does not address the questions submitted to Basil, I have simply attached it to the preliminary report that had been prepared prior to receipt of his communication. My response to his email is also attached.

**COUNCIL ACTION REQUESTED**

Receive and File.

## Lisa Huening

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**From:** Mark Luberda  
**Sent:** Friday, August 12, 2016 9:33 AM  
**To:** 'Basil Ryan'  
**Cc:** Lisa Huening  
**Subject:** RE: Senior Travel Program evaluation

Basil,

Thank you for the letter. I will attach it to the report I make. Your email notes that if I have any other questions that I should feel free to contact you. Well, I'm sure you recognize that your letter doesn't answer the questions I had posed before and which remain enumerated below. As such, I would respectfully ask that you provide a response to the questions.

As you are aware, we are in a partnership with you for the delivery of a quality Senior Travel Program. I believe it is reasonable for us to have a good understanding as to the nature of the partnership and our partner. That is the purpose of the questions. Government is used to operating with a high level of transparency and the questions are simply trying to bring that transparency to this program. Such transparency can only help to encourage supporting additional funding, whereas completely ignoring the questions could raise concerns.

Again, I encourage you to provide answers. So that you may have further time to do so, I will submit the preliminary report that I had prepared pending the receipt of your response and will reference and attach your letter. I can then provide an updated report once I have your answers.

Regards,

### Mark Luberda

Director of Administration  
[mluberda@franklinwi.gov](mailto:mluberda@franklinwi.gov)  
414-858-1100



City of Franklin

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**From:** Basil Ryan [mailto:[aldryan@sbcglobal.net](mailto:aldryan@sbcglobal.net)]  
**Sent:** Thursday, August 11, 2016 11:59 PM  
**To:** Mark Luberda  
**Cc:** Lisa Huening  
**Subject:** RE: Senior Travel Program evaluation

Mark – Just before you went on vacation you sent me an email wanting to meet when you returned from your vacation. Unfortunately, then I was gone that week. Monday and Tuesday of this week I had the trip to Green Bay planned with the seniors. When I tried you today on the phone, you were on the phone and I told Lisa I would respond. I tried to

contact you today but you were on the phone and could not take my call. I told Lisa I would put my response in a letter to you which is attached. If you have any other questions feel free to contact me.

Basil

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**From:** Mark Luberda [mailto:MLuberda@franklinwi.gov]

**Sent:** Thursday, August 4, 2016 2:24 PM

**To:** 'aldryan@sbcglobal.net'

**Cc:** Lisa Huening

**Subject:** Senior Travel Program evaluation

Basil,

As you are aware, the Common Council has directed me to evaluate the current program structure and service alternatives to ensure the manner in which the program is operated and the City's relationship with the program are all appropriate, including considering all risk management components. I need to provide the update at their next meeting.

The program has been very successful for a long time, and I fully expect that will continue as you seem very dedicated to its success. At the time of a change in leadership (you taking over for Shirley), however, it is probably appropriate for the Common Council to ask for an evaluation since that hasn't really occurred for years. I hope that makes sense to you.

Sorry that we are not able to get together, but I understand your busy schedule. It will probably suffice if you can provide a comment or answer to the following questions. Some of the questions may seem a little obvious, but I do need to confirm some of my core understanding of the operations. (Particularly since I previously misunderstood that the program was not a city program operated by volunteers to the City.) I hope you understand. For your convenience in answering, I've incorporated my current understanding into the format of the question. As such, many are simply "yes/no" questions. I hope that is acceptable.

1. As you know, it was recently clarified to me by the City Attorney, that the Senior Travel Program is a program independent from the City, but we partner with your program (by providing bus funding and advertising) so that the trips can be possible at reasonable costs. Do you agree that this accurately describes the relationship?
2. I understand that the program does not have any formal or legal structure and that you simply provide the service and perform all of the work as a private citizen. Please confirm if the program has any formal structure or status, such as bylaws, non-profit incorporation papers, business operator's license, etc?
3. I understand that you have taken over the role of coordinator from Shirley. Is anybody other than you currently involved in a leadership role in the program, either in the pre-trip planning and administration and/or during the trip?
4. I understand from prior conversations with Shirley that ticket prices for seniors generally include a small amount to cover costs of administration of the program, such as stamps and office supplies. I imagine this varies slightly from trip to trip. Approximately what is the average "mark up" (so to speak) on a ticket to cover these administrative costs?
5. I also understand from prior conversations with Shirley that a separate bank account is maintained into which ticket revenues are deposited and from which trip expenses are paid. I presume the account holds the funds for administration, including some that has built up overtime that covers the cash flow necessary for advance reservations, etc. Is this an accurate understanding of your financial structure and what is the typical balance maintained in this account?

6. At this time, if the City requested to review monthly bank statements for the account (I don't mean on a regular, monthly basis) or to otherwise perform a financial audit (of sorts) of program activities, would the financial records be made available to the City for review?
7. I have always presumed that the ticket revenue from trip participants covers sufficient overhead such that the trip organizer, previously Shirley and now you, are able to attend and participate without separately buying a ticket, which seems reasonable. Please confirm if this is or is not the case.
8. Do you maintain any separate insurance that covers the operation of your senior travel program or that covers the participants in the program?
9. Other than helping with advertising and providing transportation funding, do you have any expectation that the City has any role in the operation of the program or in the risk management and insurance aspects of the program?
10. We understand that your program offers or schedules other trips (such as casino trips) that the City does not have any part in and for which the City does not provide transportation funding. Could you please identify approximately how many of these trips occur in the average year and give some examples of where, other than casinos, the trips have gone?
11. I understand the hard work necessary to pull off your program is all done on a volunteer basis (not to the City, but in general) for the seniors of the community. Please confirm that neither Shirley, you, or anyone else directly associated with the program receives payment or a stipend for their efforts.
12. Does your program require that you charge and collect sales tax and remit such to the State?
13. Is there any additional information that you would like to provide about which I haven't asked.
14. Do you have a contingency plan for if the coordinator (you) becomes sick or incapacitated and cannot process registrations or participate on trips for an extended period?

In the end, I expect my report will be very positive as this is a beneficial program and in the 10 years I have been working alongside it, I do not recall a complaint about it from a participant (other than hating the CDBG reporting). For your information, I will also likely talk to the bus company, just as Shirley and I did a couple of year ago, and will be talking to our insurance company about any liability issues. Is there anyone else that you can think of that I should talk to if I am trying to evaluate the current program structure?

Lastly, I would like to remind you that the Common Council increased your funding for this year to \$12,000. The letter you recently provided the Common Council for the semi-annual report noted that a December trip might not be planned due to budget constraints. Could you please give me your estimate for travel costs, by month, for the August through November trips? That will give me some idea what you believe the shortage will be.

Regards,

**Mark Luberda**

Director of Administration

[mluberda@franklinwi.gov](mailto:mluberda@franklinwi.gov)

414-858-1100



City of Franklin

August 11, 2016

Mr. Mark Luberda  
City of Franklin  
9929 West Loomis Road  
Franklin, WI 53132

Dear Mr. Luberda:

I tried touching base with you again today but you were on the phone and I told Lisa I would put some thoughts together for you. There appears to be some miscommunications in reference to the budget amount for the Franklin Senior Travel Program. When I gave my mid-year update at the July common council meeting, I showed the \$10,000 budget not \$12,000. The senior travel program was forced to eliminate a trip in March, July, October and December to stay within the \$10,000 budget. I was prepared to discuss my report at the common council meeting, but no one entertained the thought of discussing my report or asking me any questions regarding \$10,000 versus \$12,000 or why we had to eliminate several trips.

If you remember, early in the budget process, I asked for a minimum increase of \$4,000. As a result of the success of the senior travel program we have seen participation double since I assumed leadership this year. For example, our August 9, 2016 trip to Green Bay/Lambeau Field cost \$2,100 for two buses with 90 seniors. We are already surpassing 90 seniors for the September trip which will also require two buses. If the success continues into November, we will experience a deficit.

The difficulty I was trying to convey to the common council when they wanted to give us only \$2,000 is that it is difficult to simply receive money that is insufficient to take quality trips with a large number of seniors. In many cases we are competing with other people who are booking the same trips and a majority of the trips need to be planned and booked, with deposits provided up to a year in advance. Because of the smaller amount that the common council wanted to give us, we were unable to secure the trips we planned and therefore stayed with the \$10,000 budget, not \$12,000. Otherwise we would be experiencing a larger deficit than what we anticipate to experience now. For example, the November trip will cost anywhere from \$1800 to \$2100 and we only have \$1500 remaining in the budget. I would have a deficit between \$300 and \$600. If you took that shortfall from the \$2,000, that would leave me with between \$1400 to \$1700 and that is not enough for another trip. But someone could say, as they have in the past, that the program has a surplus of \$1400 to \$1700 remaining, therefore, they didn't need the \$2,000. Because of the enormous success of the Franklin Senior Travel Program we are able to include more seniors, but are taking fewer trips because of the shortfall in the budget.

Sincerely,

Basil Ryan  
Franklin Senior Travel Program

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<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;"><b>08/16/2016</b></p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;">CONVEY A LIMITED TERM CONSERVATION EASEMENT TO MILWAUKEE METROPOLITAN SEWERAGE DISTRICT (MMSD) FOR FRANKLIN WOODS PARK (3723 W PUETZ RD)</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.12.</i></p>

**BACKGROUND**

The construction of Kayla's Playground at Franklin Woods (3723 W Puetz Rd) is complete. The project included green infrastructure eligible for reimbursement by Milwaukee Metropolitan Sewerage District (MMSD). Staff has completed the needed reports and the remaining requirement for reimbursement of the green infrastructure is to sign a limited term conservation easement to MMSD to preserve the conservation methods for a period of ten years.

**ANALYSIS**

The attached report details; design, installation, and function of porous pavers used on the patio located on the property.

The Milwaukee Metropolitan Sewerage District Green Solution Program agreed to a reimbursement of \$87,355.00 as itemized:

\$48,000.00	Pavers (6,000 Sq. Ft.)
\$ 6,394.50	Stone
\$ 500.00	Underdrain System
\$ 2,222.33	Filter Fabric
\$ 6,240.00	Concrete Curbing to Contain Pavers
\$18,998.00	Sidewalk to Contain Pavers
<u>\$ 5,000.00</u>	City DPW Labor
\$87,354.83	Project Total

**OPTIONS**

Take no action. Or  
 Authorize signing the limited term conservation easement to MMSD

**FISCAL NOTES**

The limited term conservation easement to MMSD is required for reimbursement to the City in the amount of \$87,354.83.

**RECOMMENDATIONS**

Authorize signing the limited term easement to MMSD at 3723 W Puetz Rd.

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## LIMITED TERM CONSERVATION EASEMENT

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This LIMITED TERM CONSERVATION EASEMENT FOR GREEN INFRASTRUCTURE is granted on the 1<sup>st</sup> day of September 2016 by the City of Franklin (Landowner) to the Milwaukee Metropolitan Sewerage District, a special-purpose municipal corporation established under Wis. Stat. § 200.21 *et seq.* (Easement Holder).

### RECITALS

**A. Property.** The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the Property). The property is at 3723 Puetz Road, Franklin, Wisconsin 53132.

This Limited Term Conservation Easement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (Green Infrastructure). Exhibit C shows the areas within the property that are subject to this Limited Term Conservation Easement.

**B. Conservation Values.** In its present state, the Property has conservation value because it has 6,000 square feet of permeable pavers. This Green Infrastructure provides a total retention capacity of 18,000 gallons.

**C. Baseline Documentation.** The condition of the Property, and specifically the Green Infrastructure, is further documented in an inventory of relevant features, characteristics, and Conservation Values, which is on file at the office of the Easement Holder and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs and other documentation that both parties agree provides an accurate representation of the condition of the Property at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

Recording Area

Name and Return Address:

Milwaukee Metropolitan  
Sewerage District  
Attention: Delbert Dettmann  
260 West Seeboth Street  
Milwaukee, Wisconsin 53204

Part of Tax Key Number: 854-9936-000

**D. Public Policies.** The preservation of the Conservation Values of the Property will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.

**E. Qualified Organization.** The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.

**F. Conservation Intent.** The Landowner and Easement Holder share the common purpose of preserving the Conservation Values for a period of ten years. The Landowner intends to place restrictions on the use of the Property to protect those Conservation Values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.

**G. Funding Provided by Easement Holder.** The Easement Holder has provided funding to the Landowner for the installation of the Green Infrastructure. The Landowner acknowledges the receipt and sufficiency of this funding.

#### GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily conveys to the Easement Holder a Conservation Easement (the Easement) for a period of ten years over, in, and to the Property. This Easement consists of the following terms, rights and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the Landowner to keep, preserve, and maintain the Green Infrastructure installed on the Property, which consists of 6,000 square feet of permeable pavers, which provides a retention capacity of 18,000 gallons.
- 2. Effective Dates.** This Easement becomes effective on September 1, 2016, and terminates on August 31, 2026.
- 3. Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.
- 4. Operation and Maintenance.** The Landowner will operate and maintain the Green Infrastructure so that it remains functional for the entire term of this Easement. The Landowner is solely responsible for operation, maintenance, and evaluating performance.

**5. Additional Reserved Rights of the Landowner.** The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the purpose of the Easement. However, the Landowner may not exercise these rights in a manner that would adversely impact the Conservation Values of the Property.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the Property, provided that:

- 5.1 The encumbrance or conveyance is subject to the terms of this Easement.
- 5.2 The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the Property.
- 5.3 The Landowner notifies the Easement Holder of any conveyance in writing within fifteen days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement or limit its enforceability in any way.

**6. Easement Holders Rights and Remedies.** To accomplish the purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies:

- 6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the Conservation Values of the Property.
- 6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of areas or features of the Property that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 6.3 Enter the Property. The Easement Holder has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder will: provide prior notice to the Landowner before entering the Property, comply with all of the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's activities.

**7. Remedies for Violations.** The Easement Holder has the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

- 7.1 Notice of Problems. If the Easement Holder identifies problems with the Green Infrastructure, then the Easement Holder will initially attempt to resolve the problems collaboratively. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.
- 7.2 Notice of Violation and Corrective Action. If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened, the Easement Holder will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the Landowner fails to respond, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Property or if good faith efforts to notify the Landowner are unsuccessful.
- 7.3 Remedies. When enforcing this Easement, the Remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the Green Infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the Conservation Values of the Property.
- 7.4 Non-Waiver. A delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.
- 7.5 Waiver of Certain Defenses. The Landowner hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.
- 7.6 Acts Beyond Landowner's Control. The Easement Holder may not bring any action against the Landowner for any injury or change in the Property resulting from causes beyond Landowner's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from such causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of the Easement.

## **8. General Provisions.**

- 8.1 Amendment. The Landowner and Easement Holder may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment shall be allowed if, in the judgment of the Easement Holder, it:

- a. diminishes the Conservation Values of the Property,
- b. is inconsistent with the purpose of the Easement,
- c. affects the duration of the Easement, or
- d. affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign or transfer its interests in this Easement to a unit of federal, state or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement. Ambiguities in this Easement shall be construed in a manner that best effectuates the purpose of the Easement and protection of the Conservation Values of the Property.

8.5 Counterparts. The Landowner and Easement Holder may execute this Easement in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

8.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

8.7 Extinguishment. This Easement may be terminated or extinguished prior to the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (b) the Landowner and Easement Holder agree that a subsequent,

unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Joint Obligation. The obligations imposed by this Easement upon the Landowner are joint and several.

8.9 Ownership Responsibilities, Costs and Liabilities. The Landowner retains all responsibilities and will bear all costs and liabilities related to the ownership of the Property, including, but not limited to, the following:

- a. *Operation, upkeep and maintenance*. The Landowner is responsible for the operation, upkeep and maintenance of the Property.
- b. *Control*. In the absence of a judicial decree, nothing in this Easement establishes any right or ability in the Easement Holder to:
  - (i) exercise physical or managerial control over the day-to-day operations of the Property;
  - (ii) become involved in the management decisions of the Landowner regarding the generation, handling or disposal of hazardous substances; or
  - (iii) otherwise become an operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.
- c. *Permits*. The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction, other activity, or use shall be undertaken in accordance with applicable federal, state and local laws, regulations and requirements.
- d. *Indemnification*. The Landowner releases and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

- (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the Property;
- (iii) the presence or release in, on, from, or about the Property, at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes.* Before delinquency, the Landowner shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred as a result of this Easement, and shall furnish the Easement Holder with satisfactory evidence of payment upon request.

8.10 Recording. The Easement Holder shall record this Easement in the Office of the Register of Deeds for the county in which the Property is located, and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement shall remain valid and binding.

8.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running with the Property for the term of the Easement.

8.13 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in their place, mean either masculine or feminine, singular or plural, and include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.14 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner and the Property comply with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;

- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders; and
- c. The person signing this Easement has authority to grant this Conservation Easement to the Easement Holder.

GRANT OF INTEREST TO EASEMENT HOLDER

As the Mayor of the City of Franklin, I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this \_\_\_\_\_ day of \_\_\_\_\_, 2016

By: \_\_\_\_\_  
 Stephen R. Olson  
 Mayor

STATE OF WISCONSIN  
 MILWAUKEE COUNTY

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the person known as \_\_\_\_\_ came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
 Signature of Notary Public  
 Notary Public, State of \_\_\_\_\_  
 My Commission expires \_\_\_\_\_.

ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Limited Term Conservation Easement is accepted by the Milwaukee Metropolitan Sewerage District on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By: \_\_\_\_\_  
Kevin L. Shafer, P.E.  
Executive Director

Approved as to Form: \_\_\_\_\_  
Attorney for the District

STATE OF WISCONSIN  
MILWAUKEE COUNTY

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the person known as \_\_\_\_\_ came before me and executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, State of \_\_\_\_\_

My Commission is expires \_\_\_\_\_.

Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this conservation easement.

- ATTACHMENTS
- EXHIBIT A Description of the Property
  - EXHIBIT B Property Map
  - EXHIBIT C Area of the Limited Term Conservation Easement within the Property

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Legal Description: N Half of N Half of NW 24 5 21 EXC N 33 ft for STR CONT, City of  
Franklin, County of Milwaukee, State of Wisconsin

Tax Key: 854-9936-000

Address: 3723 Puetz Road, Franklin, Wisconsin 53132

EXHIBIT B  
PROPERTY MAP



Note that air photo was taken prior to construction of current project.

EXHIBIT C  
AREA OF THE LIMITED TERM CONSERVATION EASEMENT WITH THE PROPERTY



Note that air photo was taken prior to construction of current project.

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APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 8/16/2016
Reports & Recommendations	A RESOLUTION AWARDDING CONTRACT TO THE LOW BIDDER, MUSSON BROTHERS, INC. IN THE AMOUNT OF \$99,999.99 FOR THE ROBINWOOD TRAIL AND AUTHORIZING THE PROJECT AND REDESIGNATING OTHER PARK-RELATED CAPITAL IMPROVEMENT FUND APPROPRIATIONS	ITEM NO. <i>6.13.</i>

**BACKGROUND**

On August 9, 2016 bids were received for the Robinwood Trail. This asphalt trail extending from W. St. Martins Road to W. Allwood Drive in easement.

The bids received were the following:

Musson Brothers, Inc.	\$ 99,999.99
Genesis Excavators	\$107,381.95
Blaze Landscape	\$145,356.50
Zignego Company	\$153,126.10*
All-Ways Contractors	\$153,884.30
Johnsons and Sons	\$159,819.88
Poblocki Paving	\$183,512.00

\*Corrected bid amount.

**ANALYSIS**

Staff recommends award to Musson Brothers, Inc.

Musson Brothers, Inc. has a history of doing acceptable work and is qualified to coordinate with a paving contractor to complete this work this fall, consistent with plans and specifications.

The Engineer's Estimate performed prior to design was \$70,000. Necessary cost items were found during full construction design.

**OPTIONS**

Approve the award.

Deny the award.

**FISCAL NOTE**

This project is 62 percent funded through park impact fees. The 2016 Capital Improvement Fund has appropriated \$84,100. (Note: the budget document identifies the project as the "Southbrook Church Trail.") Approximately \$5,000 is required for stake out and approximately \$10,000 for contingency items. This \$15,000 added to this contract amount results in an anticipated project cost of \$115,000. The balance of approximately \$30,900 will need a transfer of funds from a Capital Project or contingency. Staff believes a portion of an unused \$100,000 appropriation for the Market Square Bathroom could be repurposed for this project. Note that City policy requires a change in appropriations within the Capital Improvement Fund to be approved in the manner of a budget modification (4 affirmative votes).

## RECOMMENDATION

2 MOTIONS ARE RECOMMENDED:

Motion to designate the Robinwood Trail Project within the Capital Improvement Fund as an approved project and to repurpose \$30,900 of appropriations from the Market Square bathroom project to this project. [4 affirmative votes required]

Motion to adopt Resolution 2016 - \_\_\_\_\_, a resolution awarding contract to the low bidder, Musson Brothers, Inc. in the amount of \$99,999.99 for the Robinwood Trail. [a simple majority of affirmative votes required]

Department of Engineering: RJR/sg  
L:\Engdocs\CA\Award Contract for Robinwood Trail 2016

2016 ROBINWOOD TRAIL

ITEM NO.	BID QUANTITY	UNIT DESCRIPTION	Engineer's Estimate		Poblocki Paving		Genesis Excavators		Mursion Brothers		Blaze Landscape		Zirnego Company		All-Ways Contractors		Johnson and Sons		AVG UNIT PRICE
			UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	
1	2	LS Tracking Pad	\$2,500.00	\$5,000.00	\$2,000.00	\$4,000.00	\$1,830.00	\$3,660.00	\$3,500.00	\$7,000.00	\$2,900.00	\$4,000.00	\$2,000.00	\$4,000.00	\$2,500.00	\$5,000.00	\$3,720.00	\$7,440.00	\$2,507.14
2	1	LS Cleaning and Grubbing	\$2,000.00	\$2,000.00	\$8,400.00	\$8,400.00	\$5,980.00	\$5,980.00	\$11,447.58	\$11,447.58	\$10,000.00	\$10,000.00	\$2,000.00	\$2,000.00	\$21,500.00	\$21,500.00	\$17,298.00	\$17,298.00	\$15,232.25
3	1,399	CY Earth Excavation	\$7.50	\$10,492.50	\$48.00	\$67,152.00	\$14.00	\$19,586.00	\$15.00	\$20,985.00	\$20.00	\$27,980.00	\$40.00	\$55,960.00	\$38.00	\$53,162.00	\$19.86	\$27,784.14	\$27.84
4	97	CY Excavation Below Subgrade	\$36.00	\$3,492.00	\$80.00	\$7,760.00	\$47.00	\$4,559.00	\$15.00	\$1,455.00	\$55.00	\$5,335.00	\$40.00	\$3,880.00	\$55.00	\$5,335.00	\$60.00	\$5,820.00	\$50.29
5	425	CY Base Aggregate 1 1/4"	\$25.00	\$10,625.00	\$76.00	\$32,300.00	\$43.00	\$18,275.00	\$45.00	\$19,125.00	\$65.00	\$27,625.00	\$32.00	\$13,600.00	\$19.70	\$22,372.50	\$102.00	\$43,350.00	\$60.39
6	95	TON Asphaltic Concrete Binder Course	\$75.00	\$7,125.00	\$152.00	\$14,440.00	\$107.00	\$10,165.00	\$95.00	\$9,025.00	\$100.00	\$9,500.00	\$93.00	\$8,835.00	\$93.00	\$8,835.00	\$156.00	\$14,820.00	\$113.71
7	70	TON Asphaltic Concrete Surface Course	\$75.00	\$5,250.00	\$152.00	\$10,640.00	\$107.00	\$7,499.00	\$95.00	\$6,650.00	\$100.00	\$7,000.00	\$93.00	\$6,510.00	\$93.00	\$6,510.00	\$156.00	\$10,920.00	\$113.71
8	6	Each Apron Endwall for Culvert Pipe Metal 12"	\$120.00	\$720.00	\$300.00	\$1,800.00	\$150.00	\$900.00	\$425.00	\$2,550.00	\$150.00	\$900.00	\$250.00	\$1,500.00	\$225.00	\$1,350.00	\$260.00	\$1,560.00	\$250.00
9	77	LF Culvert Pipe Corrugated Metal 12"	\$30.00	\$2,310.00	\$77.00	\$5,929.00	\$46.00	\$3,542.00	\$85.00	\$6,545.00	\$25.00	\$1,925.00	\$150.00	\$11,550.00	\$58.00	\$4,466.00	\$52.00	\$4,004.00	\$70.43
10	5	CY Riprap Medium	\$35.00	\$175.00	\$300.00	\$1,500.00	\$98.00	\$4,900.00	\$85.90	\$4,295.50	\$55.00	\$275.00	\$100.00	\$500.00	\$150.00	\$750.00	\$100.00	\$500.00	\$126.99
11	40	Each Erosion Bales	\$10.00	\$400.00	\$50.00	\$500.00	\$25.00	\$250.00	\$20.20	\$202.00	\$55.00	\$550.00	\$10.00	\$100.00	\$20.00	\$200.00	\$17.66	\$176.60	\$27.98
12	1,100	LF Silt Fence	\$1.50	\$1,650.00	\$2.00	\$2,200.00	\$2.00	\$2,200.00	\$1.75	\$1,925.00	\$3.00	\$3,300.00	\$1.75	\$1,925.00	\$2.20	\$2,420.00	\$2.61	\$2,871.00	\$2.19
13	830	SY Erosion Matting	\$9.50	\$7,885.00	\$3.50	\$2,905.00	\$1.85	\$1,535.50	\$1.70	\$1,411.00	\$14.00	\$11,620.00	\$1.10	\$913.00	\$1.90	\$1,577.00	\$3.72	\$3,087.60	\$3.97
14	2	Each Inlet Protection Type C	\$150.00	\$300.00	\$50.00	\$100.00	\$76.00	\$152.00	\$65.70	\$131.40	\$50.00	\$100.00	\$50.00	\$100.00	\$60.00	\$120.00	\$40.00	\$80.00	\$55.95
15	7	Each Posts Wood 4x4 Inch x 10 Ft	\$50.00	\$350.00	\$350.00	\$2,450.00	\$87.00	\$609.00	\$75.80	\$530.60	\$50.00	\$350.00	\$65.00	\$455.00	\$90.00	\$630.00	\$150.00	\$1,050.00	\$123.87
16	22	SF Signs Type II Reflective H	\$18.00	\$396.00	\$50.00	\$1,100.00	\$45.00	\$990.00	\$39.40	\$866.80	\$160.00	\$3,520.00	\$25.00	\$550.00	\$35.00	\$770.00	\$40.00	\$880.00	\$56.34
17	2,312	SY Topsoil	\$4.50	\$10,404.00	\$7.00	\$16,184.00	\$10.90	\$25,200.80	\$5.50	\$8,092.00	\$8.00	\$18,496.00	\$3.00	\$6,936.00	\$5.90	\$13,640.80	\$6.20	\$14,394.40	\$6.36
18	2,312	SY Mulching	\$4.00	\$9,248.00	\$1.00	\$2,312.00	\$0.50	\$1,156.00	\$0.45	\$1,040.40	\$5.00	\$11,560.00	\$0.80	\$1,849.60	\$0.50	\$1,156.00	\$0.99	\$2,150.16	\$1.31
19	1.45	CWT Fertilizer, Type A	\$0.00	\$0.00	\$400.00	\$580.00	\$87.00	\$126.15	\$75.80	\$109.91	\$650.00	\$942.50	\$50.00	\$72.50	\$100.00	\$145.00	\$186.00	\$269.70	\$221.26
20	63	LBS Seeding Mixture No. 20	\$0.00	\$0.00	\$20.00	\$1,260.00	\$8.50	\$535.50	\$7.60	\$478.80	\$6.00	\$378.00	\$30.00	\$1,890.00	\$15.00	\$945.00	\$23.56	\$1,484.28	\$15.81
TOTAL BASE BID (Items 1 through 20)				\$72,445.50		\$1,683,512.00		\$1,071,381.85		\$991,999.99		\$2,445,356.50		\$1,531,126.10		\$1,153,884.90		\$1,591,819.88	

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2016 - \_\_\_\_\_

A RESOLUTION AWARDDING CONTRACT TO THE  
LOW BIDDER, MUSSON BROTHERS, INC. IN THE AMOUNT OF \$99,999.99  
FOR THE ROBINWOOD TRAIL

---

WHEREAS, the City of Franklin advertised and solicited bids for the construction of the Robinwood Trail; and

WHEREAS, seven (7) bids were received; and

WHEREAS, the low bidder was Musson Brothers, Inc., with a bid of \$99,999.99; and

WHEREAS, Musson Brothers, Inc. is a qualified public works contractor; and

WHEREAS, it is in the best interest of the City as recommended by the City's staff to award the contract at the total base bid of \$99,999.99 to Musson Brothers, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that Musson Brothers, Inc. be awarded the contract for the Robinwood Trail.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized and directed to execute a contract with Musson Brothers, Inc. on behalf of the City.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

RJR/sg

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 8/16/2016
Reports & Recommendations	AN ORDINANCE TO CREATE §183-44K OF THE MUNICIPAL CODE, "ENGINE COMPRESSION BRAKING PROHIBITED" IN ACCORDANCE WITH WIS. STAT. § 62.11(5)	ITEM NO. <i>G.14.</i>

**BACKGROUND**

A recent complaint on W. Rawson Avenue between S. 27<sup>th</sup> Street and S. 31<sup>st</sup> Street regarding prohibition of engine compression braking systems (aka Jake Brakes) caused Staff to examine City of Franklin Ordinances regarding the subject. It was discovered that the current ordinances do not address the issue, even though there are at least two signs posted in the City that read "NO ENGINE BRAKING EXCEPT IN EMERGENCY FRANKLIN ORDINANCE 183-40".

These existing signs are posted on westbound Ryan Road near S. 35<sup>th</sup> Street and on the stop sign for the western exit of the Quarry on W. Rawson Avenue. In addition the quarry has posted "Attention Drivers" signs at both exists with 5 bullet points- the last of which reads "Do not use Jake Brakes"

**ANALYSIS**

The Franklin Police Chief recommended finding a solution that does not require the police department to measure the noise level to determine violations. There are several potential problems with this type of enforcement.

The signs are non-enforceable per Ordinance 183-40; the City Attorney office researched the issue and has proposed the attached Ordinance for consideration.

The City Attorney's office has the opinion to only erect signs where there has been a verified problem, rather than preemptively putting them up all over the City. It is proposed that DPW will have an internal policy to post these signs in the future on collector and arterial roads as requested by Police or elected officials.

This proposal was presented at the August 9, 2016 Board of Public Works Meeting and they did not take action on the item but voiced six concerns (reworded for clarity from draft minutes):

1. The ordinance could consider hours of violation in harmony with the rest of 183-40 (i.e. 9 PM to 7 AM)
2. Trucking is an important industry to the City and input from local trucking companies should be considered.
3. It is unknown if implementing an ordinance is a complaint targeting specific individuals.
4. It is unknown the number of complaints that prompted the initiation of this ordinance.
5. Input from industries that use trucking should be considered.
6. Information from policies of neighboring communities should be considered.

To address the concerns of the Board of Public Works, Staff did additional research as follows:

1. Assistant City Attorney has prepared an optional clause for Common Council to consider in the new ordinance (note italicized and underlined text in Section 1 of Ordinance Draft)  
*"from 6:00PM to 9:00AM"*

2. Staff contacted:
  - a. Payne and Dolan- Their opinion is that most municipalities have similar ordinances and the new models of diesel trucks no longer have Jake brakes but brake using the transmission. An ordinance should not bother them or the companies that do business at their quarry or asphalt plant.
  - b. Waste Management (10712 s 124<sup>th</sup> St). Their vehicles have Jake brakes but their drivers do not use them so an ordinance would not bother them.
  - c. Conway (10601 S 27th St). They have disabled their Jake brakes on all of their vehicles and commented that it is not uncommon for municipalities to prohibit Jake brakes.
3. The Alderwoman of the District will provide information as needed at the Common Council Meeting.
4. The Alderwoman of the District will provide information as needed at the Common Council Meeting.
5. Staff contacted:
  - a. Baptistas (4625 W Oakwood Park Dr) They receive about 100 large trucks per day and sampled a few drivers...
  - b. Krones (9600 S 58th St) They receive shipments 10 per day and most enter off of W. Ryan Road. They sampled a few drivers and reported back that they would have no problem with an ordinance restricting Jake brakes.
6. Staff contacted:
  - a. City of Greenfield- Attached is a copy of Greenfield's ordinance section 8.27 that prohibits compression brakes.
  - b. City of Milwaukee- left voice mail with Fleet Manager. He will be back from Vacation on 8/15/2016. Will report information at Common Council meeting, if available.
  - c. City of Muskego- Attached is a copy of Muskego's ordinance section 7.16 that prohibits compression brakes.
  - d. City of Oak Creek- Attached is a copy of Oak Creek's ordinance section 10.51 that prohibits compression brakes.

If an ordinance is adopted, Staff will place future signs at the request of the Police Department or Elected Officials. The first signs will be on W. Rawson Avenue in the vicinity of S. 31<sup>st</sup> Street.

#### **OPTIONS**

1. The attached Ordinance be adopted as drafted by the City Attorney's office with or without the additional text referencing times; or
2. Table

#### **FISCAL NOTE**

Signs may be installed and/or modified with current DPW budget.

#### **RECOMMENDATION**

Motion to adopt Ordinance No. 2016 - \_\_\_\_\_ an ordinance to create §183-44k of the Municipal Code, "Engine Compression Braking Prohibited" in accordance with Wis. Stat. § 62.11(5)

8.27 - Unnecessary motor vehicle compression braking. (Cr. #2590)

- (1) *Definition.* A compression brake, engine brake or dynamic braking device, means a device primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of or in addition to wheel brakes.
- (2) *Use prohibited.* No person shall use a motor vehicle within the City limits where the compression brakes are in any way engaged or activated on such motor vehicle or any unit a part thereof, except in cases of emergency.
- (3) *[Unnecessary or annoying noises.]* No person shall make any unnecessary or annoying noises with a motor vehicle by the squealing of tires, the use of motor vehicle brakes which are in any way activated or operated by the compression of the engine or similar device that converts a power producing engine into a power absorbing retarding mechanism.

# MUSKEGO

- (5) Change of Ownership. In case of change of ownership of a registered bicycle, the new owner shall apply for registration as required in this section. A license once issued cannot be transferred to a different bicycle by the same owner, excepting that the transfer of license plates from one bicycle to another shall be permitted in the event that the first bicycle so registered is either sold or junked.
- (6) Revocation of License. The Chief of Police may cancel the registration of and remove the identification tag from any bicycle operating in an unsafe manner, or in violation of any provision of this Code, and such cancellation of registration shall be in addition to other penalties provided therefore.
- (7) Responsibility of Parent or Guardian for Violation of Bicycle Registration Ordinance. No parent or guardian of any child shall authorize or knowingly permit such child to violate any of the provisions of Municipal Code 7.13. Ord #346; 7-11-78

## 7.14 ACCELERATING VEHICLES (Cr. #154)

No driver of any vehicle shall cause, by excessive and/or unnecessary acceleration, the tires of such vehicle to spin and emit loud noises or to unnecessarily throw stones or gravel; nor shall such driver cause to be made by excessive and/or unnecessary acceleration any loud noise such as would disturb the public peace.

## 7.15 FLASHING LIGHTS: SCHOOL BUSES (Cr. #191)

In addition to activating the flashing red warning lights as required by Section 346.48 Wis. Stats. the operator of a school bus equipped with such lights shall activate such lights under the following circumstances:

In a residential or business district when pupils or other authorized passengers are to be loaded or unloaded at a location at which there are no crosswalks or traffic signals and such persons must cross the street or highways before being loaded or after being unloaded.

## 7.16 COMPRESSION BRAKING PROHIBITED (Ord. #1177 - 08-05-2004)

No operator of a motor vehicle shall use brakes which are in any way activated or operated by the compression of the engine of the motor vehicle or any unit or part thereof (commonly referred to as "Jake brakes," "Jacob's brakes," "engine brakes," or "compression brakes") on any State Trunk Highway as defined by Section 84.02, Wis. Statutes, nor any County Trunk Highway as defined by Section 83.025, Wis. Statutes, or Local Street except in cases of emergency. For purposes of this section, "cases of emergency" are defined as circumstances which present an immediate danger to life or property.

Emergency Vehicle Exceptions. The prohibition set forth in this subsection shall not apply to "authorized emergency vehicles" as that term is defined by Section 340.01(3), Wis. Statutes when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm.

the vehicle is stored in a public storage garage or rental facility, customary charges for such storage shall be paid. Upon payment, a receipt shall be issued to the owner of the vehicle for the towing or storage charge.

**SEC. 10.49 TRAFFIC AND PARKING REGULATIONS ON SCHOOL DISTRICT GROUNDS.**

Pursuant to the provisions of Sec. 118.105, Wis. Stats., the following regulations shall apply to the grounds of the School District located within the City:

- (a) **Applicability.** This Section shall apply to all off-highway school premises, school drives and parking lots of the School District premises (hereinafter referred to as "school premises"). This Section shall not apply to motor vehicle traffic on other public or private streets or highways in the City.
- (b) **Speed Limit.** No person shall operate a motor vehicle on school premises where motor vehicle traffic is permitted at a speed in excess of fifteen (15) miles per hour.
- (c) **State Traffic Forfeiture Laws Adopted.** All provisions of Chapters 340 to 349 of the Wisconsin Statutes describing and defining regulations regarding reckless or disorderly conduct with a motor vehicle and operating under the influence of an intoxicant for which the penalty is a forfeiture only, including penalties to be imposed and procedures for prosecution, are hereby adopted and by reference made a part of this Section as if fully set forth herein. Such statutory sections shall be designated as part of this Code by adding the prefix "10.49-" to each state statute section number. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Section.
- (d) **Miscellaneous Rules.**
  - (1) No person shall operate a motor vehicle on such school premises at a rapid or sudden acceleration with the intent of squealing tires or leaving tire marks.
  - (2) No person shall operate a motor vehicle on such premises across parking lot islands or parking lot dividers.

**SEC. 10.50 NON-MOTORIZED VEHICLE PARKING.**

- (a) It shall be unlawful for any person to park a trailer, boat, vehicle accessory or attachment which is not self-propelled upon any street in the City of Oak Creek for any continuous period of time in excess of twenty-four (24) hours. Each day in violation shall be a separate offense.

**SEC. 10.51 COMPRESSION BRAKE USE PROHIBITED.**

- (a) No operator of a motor vehicle shall use brakes which are in any way activated operated by the compression of the engine of the motor vehicle or any unit or part thereof such as Jacobs Engine Brake™ or similar hydraulically operated devices that converts a power producing diesel engine into a power-absorbing retarding mechanism (commonly known as "Jake Brakes," "engine brakes" or "compression brakes") on any highway within the City of Oak Creek.
- (b) It shall be an affirmative defense to prosecution under this section that Jake Brakes, engine brakes or compression brakes were applied in an emergency and were necessary to prevent immediate danger to life or property.
- (c) The terms of this ordinance shall not apply to any "authorized emergency vehicles" as that term is defined in Wis. Stats. Section 340.01(3).
- (d) This prohibition shall apply throughout the City of Oak Creek and the City streets shall be posted accordingly.

*Ordinance 2403, A 5/2/06, Sec. 10.51*

ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE TO CREATE §183-44K OF THE MUNICIPAL CODE, "ENGINE COMPRESSION BRAKING PROHIBITED" IN ACCORDANCE WITH WIS. STAT. § 62.11(5)

WHEREAS, Wis. Stat. § 62.11(5) authorizes the Common Council to act for the government and good order of the City for the health, safety and welfare of the public; and

WHEREAS, the prohibition of the use of engine brakes, also known as "jake brakes" on motor vehicles in certain areas of the City is necessary to preserve the quiet enjoyment of property and prevent unnecessary noise.

WHEREAS, the Common Council having found and determined that creation of such an ordinance is necessary to protect the public health, safety and welfare.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §183-44K. of the Municipal Code of the City of Franklin, Wisconsin, is hereby created to read as follows:

"K. Engine Braking Prohibited.

(a) Where signs are erected, it shall be unlawful, from 6:00PM to 9:00AM, for any vehicle equipped with a compression braking device (commonly known as a "jake brake") to use this device to contain the engine's compression, thus rapidly slowing the engine's revolutions per minute and the vehicle's speed, except in cases of extreme emergency. Municipal emergency vehicles are exempt from the provisions of this Section.

(b) Any person who violates this provision shall be subject to a penalty as provided in § 183-79 of this chapter.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

ORDINANCE NO. 2016-\_\_\_\_

Page 2

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 8/16/16
REPORTS & RECOMMENDATIONS	Resolution Awarding Contract To The Lowest Bidder For The 2016 Pavement Marking Program In The City Of Franklin	ITEM NUMBER <i>G.15.</i>

**BACKGROUND**

Pavement marking is completed on a yearly basis. Streets showing severe paint deterioration are selected. Typically streets are striped every other year.

**ANALYSIS**

Contract documents were prepared by staff, the project advertised and bids opened August 16, 2016. Two bids were received as follows:

Crowley Construction Corporation	\$34,170.00 (\$.102 per lin ft)
Century Fence Company	\$46,230.00 (\$.138 per lin ft)

The bids were found to be in order.

In 2015 Crowley Construction completed our pavement marking program. Their cost per linear foot in 2015 was 0.102. At minimum Crowley Construction has been the successful bidder and completed the pavement marking program 14 of the past 15 years.

Staff recommends to award the contract to the lowest bidder, Crowley Construction Corporation, for \$34,170.00. Crowley Construction has always done an exceptional job and has worked well with city staff in the past. Staff recommends to award the contract to Crowley Construction.

**FISCAL NOTE**

Sufficient funds are available through the Public Works Department 2016 Operating Budget (pavement marking).

**RECOMMENDATION**

Motion to adopt Resolution No. 2016-\_\_\_\_\_, awarding contract to the lowest bidder, Crowley Construction Corporation, in the amount of \$34,170.00, for the 2016 Pavement Marking Program in the City of Franklin.

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2016- \_\_\_\_\_

A RESOLUTION AWARDDING CONTRACT TO THE LOWEST BIDDER FOR THE 2015  
PAVEMENT MARKING PROGRAM IN THE CITY OF FRANKLIN

-----  
WHEREAS, the City of Franklin advertised and solicited bids for the 2016 Pavement Marking Program in the City of Franklin, and

WHEREAS, two bids were received as follows:

Crowley Construction Corporation	\$34,170.00 (\$.102 per lin ft)
Century Fence Company	\$46,230.00 (\$.138 per lin ft)

WHEREAS, the low bidder is Crowley Construction Corporation, with a bid in the amount of \$34,170.00, and

WHEREAS, Crowley Construction Corporation is a pre-qualified public works contractor, and

WHEREAS, it is in the best interest of the City, as recommended by the City's staff, to award the contract at the total base bid of \$34,170.00 to Crowley Construction Corporation.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that Crowley Construction Corporation be awarded the contract for the 2016 Pavement Marking Program in the City of Franklin for the sum of \$34,170.00 in accordance with bid specifications.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized and directed to execute a contract with Crowley Construction Corporation on behalf of the City.

INTRODUCED at a regular meeting of the Common Council of the City of Franklin on this 8th day of August, 2016 by Alderman \_\_\_\_\_.

PASSED AND ADOPTED at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;"><b>08/16/2016</b></p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;">A RESOLUTION TO ACCEPT JURISDICTIONAL TRANSFER OF S. NORTH CAPE ROAD (CTH OO) FROM MILWAUKEE COUNTY FROM 870 FEET NORTH OF HI-VIEW DRIVE TO W. FOREST HOME AVENUE</p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.16</i></p>

**BACKGROUND**

In 2013, the City and the County entered into a Jurisdictional Transfer Agreement for S. N. Cape Road (CTH J) from 870 feet north of Hi-View Drive (in the City of Muskego) to W. Forest Home Avenue (CTH OO). Milwaukee County has recently completed the road improvements. City DPW and Engineering reviewed the constructed improvements and find them approvable for consideration of acceptance by Common Council.

**ANALYSIS**

This project has been previously discussed at Common Council and Board of Public Works. It is believed that Milwaukee County performed the project as agreed and the City should accept the jurisdictional transfer of this road.

**OPTIONS**

Approve or Deny (will need specific justification if denied).

**FISCAL NOTES**

**REMMENDATIONS**

Motion to adopt Resolution 2016 - \_\_\_\_\_, a resolution to accept jurisdictional transfer of S. North Cape Road (CTH OO) from Milwaukee County from 870 feet north of Hi-View Drive to W. Forest Home Ave.



DEPARTMENT OF TRANSPORTATION  
*Milwaukee County*

**Brian Dranzik** • Director  
• Highway Commissioner

August 5, 2016

Glen Morrow, P.E.  
City Engineer/Director of Public Works  
City of Franklin  
9229 W. Loomis Rd.  
Franklin, WI 53132

**Subject: Acceptance and Jurisdictional Transfer**  
Milwaukee County Project No. WH020152 (Phase 1 and 2)  
S. North Cape Road (CTH J)  
Hi-View Drive to S. Carroll Circle  
City of Franklin  
Milwaukee County

Milwaukee County Department of Transportation (MCDOT) has received letters of acceptance for both Phase 1 and Phase 2 of the S. North Cape Rd. (CTH J) construction project dated November 11, 2015 and June 14, 2016 respectively. According to the Jurisdictional Transfer Agreement executed on November 25, 2013, the City of Franklin Common Council is to pass a resolution to accept the transfer of jurisdiction of S. North Cape Rd. in its entirety. MCDOT would expect that the resolution be placed on the agenda for the next City of Franklin Common Council meeting in August 16, 2016.

Once the resolution has been passed by the City of Franklin Common Council, the City of Franklin is to notify the Southeastern Regional Planning Commission (SEWRPC), the Wisconsin Department of Transportation (WISDOT) and the property owners along S. North Cape Rd. that a transfer has occurred and inform them of the proper City of Franklin officials and/or departments to contact for roadway maintenance and other inquiries.

We appreciate the City of Franklin's support and cooperation throughout the entire jurisdictional transfer process.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dranzik".

Brian Dranzik,  
MCDOT Director

Attachments: S. North Cape Rd. (CTH J) Acceptance Letters (2)  
Executed Jurisdictional Transfer Agreement

cc: James Martin, Milwaukee County  
Andrea Weddle-Henning, Milwaukee County  
Aziz Aleiow, Milwaukee County  
Paul Kuglitsch, Milwaukee County  
Greg Heisel, Milwaukee County  
Keith Kent, Milwaukee County



November 11, 2015

Aziz Aleiow, P.E.  
Managing Engineer  
Milwaukee County Department of Transportation  
10437 Innovation Drive  
Wauwatosa, WI 53226

Re: S. North Cape Rd. (CTH J)-Phase 1

Dear Mr. Aleiow,

The City of Franklin Engineering Department has reviewed the reconstruction of S. North Cape Rd. from W. Scherrei Drive to S. Carroll Circle.

The construction and associated landscaping is hereby approved for consideration by the City of Franklin Common Council for a jurisdictional transfer from the Milwaukee County to the City of Franklin.

Please feel free to contact me to discuss further.

Sincerely,

A handwritten signature in black ink that reads "Glen E. Morrow".

Glen E. Morrow, P.E.  
City Engineer

cc: Mayor Olson  
Assistant City Engineer Romeis  
Highway Superintendent Schaefer



June 14, 2016

Aziz Aleiow, P.E.  
Managing Engineer  
Milwaukee County Department of Transportation  
10437 Innovation Drive  
Wauwatosa, WI 53226

Re: S. North Cape Rd. (CTH J)-Phase 2

Dear Mr. Aleiow,

The City of Franklin Engineering Department has reviewed the reconstruction of S. North Cape Rd. from W. Scherrei Drive to W. Forest Home Avenue. There are some landscaping and other minor issues that are considered under warranty work and will be reevaluated for necessary correction this fall.

Regardless, the construction and associated landscaping is hereby approved for consideration by the City of Franklin Common Council for a jurisdictional transfer from the Milwaukee County to the City of Franklin.

Note that the City is still awaiting an acceptance letter from Milwaukee County for not only this project, but S. North Cape Rd. (CTH J)-Phase 1. Upon receipt, I will ask the Common Council to pass a resolution for accepting this entire road segment.

Please feel free to contact me to discuss further.

Sincerely,

A handwritten signature in black ink that reads "Glen E. Morrow".

Glen E. Morrow, P.E.  
City Engineer

cc: Mayor Olson  
Alderman Mayer  
Assistant City Engineer Romeis  
Highway Superintendent Schaefer

2013 OCT 25 P 1:24

**JURISDICTIONAL TRANSFER AGREEMENT  
BETWEEN  
MILWAUKEE COUNTY  
AND  
CITY OF FRANKLIN**

This JURISDICTIONAL TRANSFER AGREEMENT (the "Agreement"), is made and entered into effective this 3<sup>rd</sup> day of October, 2013, by and between MILWAUKEE COUNTY (the "County") and the CITY OF FRANKLIN (the "City").

**WITNESSETH:**

**WHEREAS**, the authority to make changes to the County Trunk Highway System is granted to the County by Section 83.025 Wis. Stats.; and

**WHEREAS**, the County has jurisdiction over (i) CTH A (S. 68th St.) from STH 100 (W. Ryan Rd.) to 1285 feet south of W. Puetz Rd., (ii) CTH J (S. North Cape Rd.) from 870 feet north of Hi-View Dr. to CTH OO (W. Forest Home Ave.) for the full width of the right of way and (iii) CTH J (S. North Cape Rd.) from W. High-View Dr. to 870 feet north of Hi-View Dr. for the east half of the right of way; and

**WHEREAS**, the County has requested of the City a jurisdictional transfer of those portions of County Trunk Highway above-referenced and the County and the City agree that such transfer would be of benefit to the public; and

**WHEREAS**, These jurisdictional transfers conform to, are consistent with and serve to implement the recommendations contained within the Southeast Regional Transportation System Plan under the County Jurisdictional Highway System Plan; and

**WHEREAS**, the State Department of Transportation has reviewed the two jurisdictional transfers and has approved both by letters attached.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is agreed as follows:

**PROVISIONS:**

1. The County agrees, upon approval of this Agreement, and approval by the Milwaukee County Board of Supervisors of an appropriate resolution, to transfer jurisdiction of (i) CTH A (S. 68th St.) from STH 100 (W. Ryan Rd.) to 1285 feet south of W. Puetz Rd. and (ii) CTH J (S. North Cape Rd.) from 870 feet north of Hi-View Dr. to CTH OO (W. Forest Home Ave.) for the full width of the right of way and (iii) CTH J (S. North Cape Rd.) from W. High-View Dr. to 870 feet north of Hi-View Dr. for the east half of the right of way to the City.

2. The City agrees, upon approval of this Agreement, and approval by the City Common Council of an appropriate resolution, to accept transfer of jurisdiction of those portions of County Trunk Highway above-referenced.
3. The City agrees that upon acceptance it will assume all costs related to the maintenance of said roadways including, but not limited to, driving surface, shoulders, stormwater, snow and ice control, traffic engineering (signs, signals, pavement markings) and structures (bridges and culverts), if any.
4. The City agrees that upon acceptance it will assume responsibility for all permits for work within the roadway right-of-way including driveway and utilities.
5. The County agrees to indemnify and hold the City harmless from any and all claims that may arise out of the County's ownership, operation and maintenance of those portions of CTH A and CTH J above-referenced for the period of time prior to the transfer.
6. The County and the City understand, acknowledge and agree that as a condition of this Agreement the County will fund a project to improve those portions of CTH A and CTH J above-referenced as mutually agreed on by both the County and the City.
7. In furtherance of future project terms mutual agreement, the City and the County agree that the City shall enter into a professional engineering consulting agreement with the County's current consulting professional engineer for the subject roadway improvement project to provide the preliminary engineering thereof, that the City shall provide initial funding for such consulting agreement and that the County shall reimburse or credit the cost thereof to the City upon completion of the contemplated improvement project or as part of the cost allocation provisions thereof to be agreed upon.
8. The City agrees that upon completion of the improvements contemplated above, the City shall accept transfer of jurisdiction by resolution of its governing body.
9. The City agrees that as the recipient agency, it will notify the Southeastern Regional Planning Commission, the State Department of Transportation and the property owners along each roadway that a transfer of jurisdiction has occurred and informing the property owners which City officials or departments to contact for issues related to roadway maintenance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year first above written.

**CITY OF FRANKLIN**

**MILWAUKEE COUNTY**

By: *[Signature]* Date: 10/03/2013  
Name:

By: *[Signature]* Date: 11/25/13  
Name:

Title:

By: *Anna F. Westcott* Date: 10/03/2013

Name:  
Title:

Title:

By: *Ellen DeArce* Date: 11/19/13

Name: ELLEN DEARCE  
Title: DIR of TRANSPORTATION

By: *Colin A. Patterson* Date: 10/23/2013

Name: COLIN A PATTERSON  
Title: DIRECTOR of FINANCE & TREASURY

By: *Clara* Date: 11/25/13

Name:  
Title:

Approved as to form and independent status

By: *Paul M. Hirt* Date: 10/14/13  
City Engineer

By: *Paul Kyjta* Date: 10/29/13  
Corporation Counsel

By: *J.M.* Date: 10/16/13  
City Attorney

SEAL

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY  
RESOLUTION NO. 2016-

A RESOLUTION TO ACCEPT JURISDICTIONAL TRANSFER OF S. NORTH CAPE ROAD  
(CTH OO) FROM MILWAUKEE COUNTY FROM 870 FEET NORTH OF HI-VIEW DRIVE  
TO W. FOREST HOME AVENUE

---

WHEREAS, the City of Franklin and Milwaukee County have discussed the merit of transferring several roadways; and

WHEREAS, on November 15, 2013 City of Franklin and Milwaukee County entered into a jurisdictional transfer agreement for said section of roadway; and

WHEREAS, Milwaukee County has satisfactorily fulfilled the terms of the 2013 agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Common Council conditionally accepts the jurisdictional transfer from Milwaukee County of S North Cape Road (CTH OO) from Milwaukee County from 870 feet north of Hi-View Drive to W. Forest Home Ave.

This agreement being subject to review and approval of the City Attorney.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

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<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MTG. DATE</b> 8/16/2016
Reports & Recommendations	<b>AN ORDINANCE TO MODIFY §245-5C OF THE MUNICIPAL CODE REGARDING ALL NIGHT PARKING TO REMOVE NOVEMBER 1 AND REPLACE WITH DECEMBER 1</b>	<b>ITEM NO.</b> <i>G.17.</i>

**BACKGROUND**

The municipal code 245-5.C reads:

*All-night parking regulated. When signs have been erected at or reasonably near the corporate limits of the City as provided in § 349.13, Wis. Stats., no person shall park any vehicle between 2:00 a.m. and 7:00 a.m. on Mondays through Saturdays and between 3:00 a.m. and 7:00 a.m. on Sundays from **November 1 to April 1**, except physicians on emergency calls, on any street in the City. Permission to park contrary to provisions of this subsection may be granted by the Police Department upon request for reason of emergency and unforeseen conditions, provided that such parking would not interfere with snow removal operations.*

DPW staff would like the Common Council to consider changing November 1 to December 1.

**ANALYSIS**

Staff would like to make the change from November 1 to December 1 for the following reasons:

1. More convenient for the residents
2. Less enforcement for the Police Department
3. Very few snow events in November so there is no issue for DPW.
4. Similar regulations in neighboring communities.

The Board of Public Works considered and discussed this request and did move to recommend to Common council that the change from November 1 to December 1 be made. It was noted that in case of a winter storm event in November, a Snow Emergency could be declared.

**OPTIONS**

1. Adopt the attached ordinance changing November 1 to December 1; or
2. Table

**FISCAL NOTE**

Signs may be installed and/or modified with current DPW budget.

**RECOMMENDATION**

Motion to adopt Ordinance No. 2016 - \_\_\_\_\_ an ordinance to modify §245-5C of the Municipal Code regarding all night parking to remove November 1 and replace with December 1.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

DRAFT 08/11/16

ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE TO AMEND §245-5.C. OF THE MUNICIPAL CODE PERTAINING TO ALL-NIGHT PARKING TO CHANGE THE NOVEMBER 1 OVERNIGHT PARKING PROHIBITION DATE TO DECEMBER 1

WHEREAS, Wis. Stat. § 62.11(5) authorizes the Common Council to act for the government and good order of the City for the health, safety and welfare of the public; and

WHEREAS, the Department of Public works has considered the matter of applicable dates needed for restrictions on overnight parking; and

WHEREAS, considering weather and climate conditions, December 1 is a more appropriate date than November 1 for the need to prohibit overnight parking.

NOW, THEREFORE, the Mayor and Common Council of the City of Franklin, Wisconsin, do ordain as follows:

SECTION 1: §245-5.C. of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended as follows: delete: "November", and in place thereof, insert: "December".

SECTION 2: This ordinance shall take effect and be in force from and after its passage and publication.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Stephen R. Olson, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>8/16/2016</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Authorize the Director of Administration to execute a Letter of Agreement with Paragon Development Systems for services and computer commodity purchases for \$66,958.60 for the computer network "Layer 3 Switches" Project</b>	<b>ITEM NUMBER</b>  <i>6, 18.</i>

At the previous meeting, the Common Council approved a re-designation of the 2016 Information Services and the Police Department's IT-Related Capital Outlay Budgets in accordance with a project and expenditure plan provided at the meeting. Item 2 on the approved 2016 Information Services Capital Outlay: Project and Expenditure Plan, was a project entitled "Layer 3 Switches" estimated at \$65,000, with contingencies of up to \$15,000 (as noted in combination with Project 1 of the plan).

The Technology Commission reviewed a full presentation on the Layer 3 Network Upgrade at their July 22nd meeting. The presentation included the key objectives, presented a business case for the upgrade, and addressed physical architecture issues. The project was to address both the City Hall and Police Department networks. Six vendors were contacted: Heartland Business Systems (HBS - our current services contractor), Paragon Development Systems (PDS), Chaney Systems, MTM, River Run, and CDW. An extensive weighted grading system was used to evaluate the proposals received. The contractors were allowed to submit multiple vendor solutions, meaning Heartland, PDS, and Chaney, for example, submitted both a Cisco-based and an HP-based solution. MTM submitted only a Cisco proposal. River Run's proposal was HP-based, but incomplete. CDW's proposal was not received in time for Technology Commission consideration.

The Information Services Director and the Technology Commission recommended the HP solution offered by PDS. The PDS HP solution scored 171 and was very competitive in pricing at \$69,898. River Run was the most competitive pricing, but the incomplete proposal only scored 152. The next option would have been the HBS proposal at \$70,304, which scored a 160. Other proposals were significantly higher priced and all scored lower than PDS: Chaney-HP platform - \$109,242 score=165, Chaney-Cisco platform - \$139,393 score=155, MTM-Cisco platform - \$168,450 score=146, HBS-Cisco platform - \$91,635 score=112, PDS-Cisco platform - \$93,951 score=110. The PDS HP solution meets the core requirements and was very cost competitive. The Technology Commission concurred with the IS Director's recommendation that the PDS HP solution offered the City the best combination of price and technology solution.

The detailed itemization of the project components has since been fine tuned and the price has reduced to \$66,958.60. A detailed scope of services is currently being finalized that will clarify the specific duties and responsibilities of PDS for their Network Engineer hours, as well as the

duties and responsibilities of the City. A copy of the draft "Letter of Agreement" and the price proposal are attached. The Director of Administration will work with PDS to finalize the wording and incorporate appropriate boiler plate language. The IS Director indicates that the only area of service scope to resolve are the task items related to establishing routing between the old network segments and the new. The IS Director believes this can be done within the hours currently proposed. It is worth noting that over 97% of the costs of the proposal are the capital costs of the commodities. The services component still under discussion is a very small part of the overall proposal, so there is a very low risk on the service aspect of the contract.

Note also that the project was listed as sharing \$15,000 in contingency with the funding in Project 1. Note that it is the intent of the motion below that the authorization incorporates the ability to dedicate up to \$5,000 of the project contingency with the approval of the Mayor, since \$5,000 is the historical basis for the authority of the Mayor to authorize amendments to budgeted capital outlay items.

### **COUNCIL ACTION REQUESTED**

Authorize the Director of Administration to execute a Letter of Agreement with Paragon Development Systems for services and computer commodity purchases for \$66,958.60 for services generally as set forth in the attached draft and in a final form as he shall determine is in the best interest of the City and that the project may use up to an additional \$5,000 of the Information Services Capital Outlay appropriations as a project contingency.

PDS Quote: #WQ66586227  
 Quote Date: 1-Aug-16  
 Exp Date: 31-Aug-16



To: City of Franklin  
 James Matelski  
 9229 W. Loomis Rd  
 Franklin, WI 53132

From: PDS  
 Dana Berner  
 361 Blettner Blvd.  
 Madison, WI 53714

Line#	Part Number	Description	List Price	Quantity	Unit Price	Extended Price
<b>a. City Hall - Core</b>						
1.00	JL095A	Aruba 5406R 16SFP+ v3 z12 Swch	\$9,599.00	1	\$6,229.10	\$6,229.10
1.01	J9993A	INCLUDED: Aruba 8p 1G/10GbE SFP+ v3 z12 Mod	\$9,599.00	2	\$3,114.20	\$6,228.40
2.00	J9828A	Aruba 5400R 700W PoE+ z12 PSU	\$799.00	2	\$518.50	\$1,037.00
2.01	J9828A	INCLUDED: Power Cord - U.S. localization		2	\$0.00	\$0.00
3.00	J9827A	Aruba 5400R z12 Management Module	\$2,499.00	1	\$1,621.70	\$1,621.70
4.00	J9150A	HPE X132 10G SFP+ LC SR Transceiver - For Connections to IDFs	\$1,040.00	6	\$497.90	\$2,987.40
5.00	J4858C	HPE X121 1G SFP LC SX Transceiver - For Connections to FD1, PD, Library	\$325.00	6	\$155.60	\$933.60
6.00	J9993A	Aruba 8p 1G/10GbE SFP+ v3 z12 Mod	\$4,799.00	1	\$3,114.20	\$3,114.20
<b>a. Core Subtotal</b>						<b>\$22,151.40</b>
<b>b. City Hall - Demarc (RENEW SKUS)</b>						
12.00	J9729A	Aruba 2920 48G POE+ Switch	\$3,879.00	2	\$1,909.60	\$3,819.20
12.01	J9729A	INCLUDED: Power Cord - U.S. localization		2	\$0.00	\$0.00
13.00	J9733A	Aruba 2920 2-port Stacking Module	\$1,019.00	2	\$452.10	\$904.20
14.00	J9731A	Aruba 2p 10GbE SFP+ Module	\$999.00	1	\$505.30	\$505.30
15.00	J9150A	HPE X132 10G SFP+ LC SR Transceiver - For Connection to Core	\$1,040.00	2	\$313.80	\$627.60
16.00	J9734A	Aruba 2920 0.5m Stacking Cable	\$149.00	2	\$116.00	\$232.00
<b>b. Demarc Subtotal</b>						<b>\$6,088.30</b>
<b>c. City Hall - Mailroom (RENEW SKUS)</b>						
17.00	J9729A	Aruba 2920 48G POE+ Switch	\$3,879.00	2	\$1,909.60	\$3,819.20
17.01	J9729A	INCLUDED: Power Cord - U.S. localization		2	\$0.00	\$0.00
18.00	J9733A	Aruba 2920 2-port Stacking Module	\$1,019.00	2	\$452.10	\$904.20
14.00	J9731A	Aruba 2p 10GbE SFP+ Module	\$999.00	1	\$505.30	\$505.30
20.00	J9150A	HPE X132 10G SFP+ LC SR Transceiver - For Connection to Core	\$1,040.00	2	\$313.80	\$627.60
21.00	J9734A	Aruba 2920 0.5m Stacking Cable	\$149.00	2	\$116.00	\$232.00
<b>c. Mailroom Subtotal</b>						<b>\$6,088.30</b>
<b>d. City Hall - Inspection (RENEW SKUS)</b>						
22.00	J9727A	Aruba 2920 24G POE+ Switch	\$2,198.00	2	\$1,271.30	\$2,542.60
22.01	J9727A	INCLUDED: Power Cord - U.S. localization		2	\$0.00	\$0.00
23.00	J9733A	Aruba 2920 2-port Stacking Module	\$1,019.00	2	\$452.10	\$904.20
14.00	J9731A	Aruba 2p 10GbE SFP+ Module	\$999.00	1	\$505.30	\$505.30
25.00	J9150A	HPE X132 10G SFP+ LC SR Transceiver - For Connection to Core	\$1,040.00	2	\$313.80	\$627.60
26.00	J9734A	Aruba 2920 0.5m Stacking Cable	\$149.00	2	\$116.00	\$232.00
<b>d. Inspection Subtotal</b>						<b>\$4,811.70</b>
<b>a. PD - Core</b>						
1.00	JL095A	Aruba 5406R 16SFP+ v3 z12 Swch	\$9,599.00	1	\$6,229.10	\$6,229.10
1.01	J9993A	INCLUDED: Aruba 8p 1G/10GbE SFP+ v3 z12 Mod		2	\$3,114.20	\$6,228.40
2.00	J9828A	Aruba 5400R 700W PoE+ z12 PSU	\$799.00	2	\$518.50	\$1,037.00
2.01	J9828A	INCLUDED: Power Cord - U.S. localization		2	\$0.00	\$0.00
3.00	J9827A	Aruba 5400R z12 Management Module	\$2,499.00	1	\$1,621.70	\$1,621.70
4.00	J4858C	HPE X121 1G SFP LC SX Transceiver - 2x City Hall	\$325.00	2	\$155.60	\$311.20
5.00	J9283B	HPE X242 10G SFP+ to SFP+ 3m DAC Cable - 1x Access	\$142.00	1	\$68.00	\$68.00
<b>a. Core Subtotal</b>						<b>\$15,495.40</b>
<b>b. PD - Access Switches (RENEW SKUS)</b>						
7.00	J9729A	Aruba 2920 48G POE+ Switch	\$3,879.00	4	\$1,909.60	\$7,638.40
7.01	J9729A	INCLUDED: Power Cord - U.S. localization		4	\$0.00	\$0.00
8.00	J9733A	Aruba 2920 2-port Stacking Module	\$1,019.00	4	\$452.10	\$1,808.40
9.00	J9731A	Aruba 2920 2-port 10GbE SFP+ Module	\$999.00	1	\$505.30	\$505.30
10.00	J9283B	HPE X242 10G SFP+ to SFP+ 3m DAC Cable - 1x Core	\$142.00	1	\$79.80	\$79.80
11.00	J9734A	Aruba 2920 0.5m Stacking Cable	\$149.00	3	\$116.00	\$348.00
12.00	J9735A	Aruba 2920 1.0m Stacking Cable	\$189.00	1	\$143.60	\$143.60
<b>b. Access Switches Subtotal</b>						<b>\$10,523.50</b>

PDS Quote: #WQ66586227  
 Quote Date: 1-Aug-16  
 Exp Date: 31-Aug-16



To: City of Franklin  
 James Matelski  
 9229 W. Loomis Rd  
 Franklin, WI 53132

From: PDS  
 Dana Berner  
 361 Blettner Blvd.  
 Madison, WI 53714

Line#	Part Number	Description	List Price	Quantity	Unit Price	Extended Price
<b>Implementation Services</b>						
	PDS1632467	PDS Field Services Trip Fee:	-	1	\$95.00	\$95.00
	PDS1632467	PDS Field Services Trip Free:	-	1	\$95.00	(\$95.00)
	PDS21422	Network Enginner II:	-	8	\$225.00	\$1,800.00
	PDS21422	Network Enginner II:	-	8	\$225.00	(\$1,800.00)
	PDS21422	Network Enginner II:	-	8	\$225.00	\$1,800.00
<b>Implementation Services Subtotal:</b>						<b>\$1,800.00</b>
<b>Quote Total</b>						<b>\$66,958.60</b>



**Letter of Agreement**

DRAFT

August 10, 2016

James Matelski  
City of Franklin  
9229 W. Loomis Road  
Franklin, WI 53132

Dear James:

Thank you for engaging Paragon Development Systems (PDS) to provide assistance with upgrading the City of Franklin (CoF) City Hall and Police Department network. This letter will summarize our agreement and will serve as authorization for PDS to proceed with resource allocation..

**Project Scope**

**City Hall**

- Confirm logical networking design, addressing schema, and prepare default templates
- Core Switch Configuration
  - Install template core switch configuration and finalize setup
- Access Switch Configuration
  - Install template configuration, set stack master switch, finalize setup
  - Confirm access switch stack can communicate to new core

**Police Department**

- Confirm logical networking design, addressing schema, and prepare default templates
- Core Switch Configuration
  - Install template core switch configuration and finalize setup
- Access Switch Configuration
  - Install template configuration, set stack master switch, finalize setup
  - Confirm access switch stack can communicate to new core



## Deliverables and Closure

This project will be considered complete upon delivery of the following services:

1. PDS has completed the tasks described in the Project Scope section.

## Client Responsibilities

- James Matelski will be Paragon Development Systems, Inc.'s primary contact as designated by CoF. All information, questions, and problem solving issues will be directed to Paragon Development Systems, Inc. through this individual.
- At the City Hall Location, the CoF will:
  - Rack & Stack
    - Unpackage and install modules into core switch
    - Unpackage and install stacking modules into access switches
    - Install core switch into new telco rack
    - Install access switches into IDF racks & install stacking cables
      - Demarc
      - Mailroom
      - Inspection
    - Install uplink cables from core to IDF and label connection
  - Assist PDS with:
    - Install template configuration, set stack master switch, finalize setup
    - Confirm access switch stack can communicate to new core
- At the Police Department Location, CoF will:
  - Rack & Stack
    - Unpackage and install modules into core switch
    - Unpackage and install stacking modules into access switches
    - Install core switch into new telco rack
    - Install access switches into IDF racks & install stacking cables
    - Install DAC uplink cables from core to access switches and label connection.
  - Assist PDS with:
    - Install template configuration, set stack master switch, finalize setup
    - Confirm access switch stack can communicate to new core
- CoF staff will be available to meet with PDS team resources as needed for this engagement. PDS may request information in advance of these meetings; timely response is critical.
- Project delays resulting from CoF resource constraints are the responsibility of CoF and may result in the unavailability of PDS-supplied or other resources. This could result in increased costs to CoF or additional project delays. Projects delayed more than 90 days as a result of CoF resource constraints may be cancelled by PDS.



- CoF staff will be responsible for communicating the nature of the engagement to all affected business units and end users, outages are to be expected and scheduled off-hours.
- CoF will provide PDS resources assigned to this engagement with appropriate physical security clearance, in addition to network credentials / authorizations necessary to complete the engagement.
- By signing this Letter Agreement, CoF represents that the appropriate licenses for all software installed by PDS are in its possession at the time of installation. In addition, CoF agrees it will protect PDS from liability, including cost of defense, should CoF or its employees not own the appropriate licenses.

## Out of Scope

### City Hall

- Old Core to New Core Routing
  - a. Install cabling between the old Dell 6224 core switch and the new HP 4506 core switch
  - b. Establish routing between the old network and parallel new network
  - c. Confirm servers and network devices on old network can be reached from new network
  - d. Confirm Internet access can be reached from new network
  - e. Confirm workstations can receive DHCP address on new network
- New Fibers to PD Routing
  - a. Install new fiber pairs to PD to their HP 4506 core switch
  - b. Remove old fiber pair to prevent loop
  - c. Confirm routing to old 204.75.246.x network
  - d. Confirm routing to new PD network
- CoF Migration Tasks
  - a. IDF Migration Tasks (all)
    - i. Move workstations to new network and receive new address from DHCP
    - ii. Move printers to new network and readdress
    - iii. Move wireless access points to new network
    - iv. Move vendor devices/probes over to new network
  - b. Demarc IDF Additional Migration Tasks:
    - i. Move VPN concentrator over to new network – reconfigure site-to-site VPN settings
    - ii. Transition over to new firewall on new network
    - iii. Migrate Simplex alarm panels to new network
    - iv. Move PBX over to new network (believe admin access only)
- Future Migration Tasks



- a. Library L2 Fiber – will be ported over to new core with 2017 upgrade project and install of L3 switches.
- b. FD1 L2 Fiber – will be ported over to new core with 2017 upgrade project and install of L3 switches.
- c. Data Center – new server farm build out will be on new network and will replace the old Hyper-V farm. As part of the Hyper-V to VMWare VM conversion, all servers will be readdressed.
- d. Installation of new Untangle firewall will be installed on new network

## Police Department

- Old Core to New Core Routing
  - a. Install cabling between the Cisco 2811 router and the new HP 4506 core switch
  - b. Establish routing between the old network and parallel new network
  - c. Confirm servers and network devices on old network can be reached from new network
  - d. Confirm Internet access can be reached from new network
  - e. Confirm access to BadgerNet TIME through the Greenfield VPN tunnel.
  - f. Confirm workstations can receive DHCP address on new network
- New Fibers to PD Routing
  - a. Install new fiber pairs to CH to their HP 4506 core switch
  - b. Remove old fiber pair to prevent loop
  - c. Confirm routing to old 172.16.1.0 CH network
  - d. Confirm routing to new CH network
- CoF Migration Tasks
  - a. IDF Migration Tasks (all)
    - i. Move workstations to new network and receive new address from DHCP
    - ii. Move printers to new network and readdress
    - iii. Move wireless access points to new network
    - iv. Move vendor devices/probes over to new network
  - b. Infrastructure Migration Tasks:
    - i. Move Arbitrator devices onto specified VLANs on new switches
    - ii. Move Indigo cameras onto specified VLANs on new switches
    - iii. Migrate Simplex alarm panels to new network
- Future Migration Tasks
  - a. Install new clustered firewall onto new network and reconfigure Greenfield site-to-site VPN tunnel.
  - b. Data Center – new server farm build out will be on new network and will replace the old Hyper-V farm. As part of the Hyper-V to VMWare VM conversion, all servers will be readdressed.
  - c. Move Barracuda web filtering to firewall cloud based services.



## Financial Plan

Services outlined in this agreement will be provided by PDS based on the following fixed price structure.

### Services Description

PDS Professional Services	\$2,800
<b>FIXED PRICE*</b>	<b>\$ 2,800</b>

\*Fixed price includes all planning and technical resource time and associated travel costs and expenses

Pricing for this engagement is based on regular business hours of 8:00 a.m. to 5:00 p.m. unless specifically stated elsewhere in this agreement. Start and end times may be adjusted based on mutual agreement between CoF and PDS. Any additional work that must be performed after-hours will be billed at standard overtime rates and will require a Change Request.

Consulting services performed by PDS resources may occur off-site as well as on-site.

On-site consulting services will be performed at 9229 W. Loomis Road Franklin, WI 53132.

CoF will be invoiced for professional services Monthly once work has begun.

CoF will be invoiced for any hardware associated with this project when said hardware is delivered to a CoF or PDS facility.

Pricing quoted for this agreement is based solely on the information provided by client. All pricing has been estimated based on the information outlined in this agreement. A \$500.00 fee will be charged to CoF should this agreement be cancelled after execution.

It is assumed project services will begin within NET 90 days from signature of agreement, if not, PDS reserves the right to evaluate and adjust pricing, schedule and scope

Any product, item or service that is not included in the scope, deliverables, or assumptions is not a part of this agreement and will require a Change Request. Upon signature from client, PDS will perform additional work if time permits or will schedule the additional time/resources as needed to complete the Change Request.

PDS standard payment terms are NET 30 from date of invoice. PDS retains the right to charge interest at the legally allowable rate on all undisputed amounts aged beyond NET 30 days.

All parties agree that they will not at any time during the period from the start date of this agreement through the date six months after the termination of this agreement, solicit as an employee or consultant any of the employees of the other party to this Agreement without written release by the authorized representative of both parties. If both parties agree to release this non-solicitation Agreement for an individual, the hiring party agrees to make payment of 20% of the initial starting



salary plus bonus of the employee if hired within 90 days from the date of granting of consent, and 10% of the initial starting salary plus bonus of the employee if hired within 91-180 days from the date of granting consent.

If this agreement accurately summarizes the terms of our earlier conversations, please sign and return to PDS by August 31, 2016. Terms and conditions are subject to change after the aforementioned date.

Sincerely,

Dana Berner, Account Director



The undersigned agree to the terms and conditions set forth in this document and are authorized to execute this Letter Agreement.

**Acceptance**

**For Paragon Development Systems, Inc.:**

**For City of Franklin:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Paragon Development Systems, Inc.  
13400 Bishops Lane, Suite 190  
Brookfield, WI 53005

City of Franklin  
9229 W. Loomis Road  
Franklin, WI 53132

PO# \_\_\_\_\_  N/A

Version History

Version	Date	Author	Changes
1.0	August 10, 2016	Matthew LeNoble, PMP	Original composition

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<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>August 16, 2016</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>AUTHORIZATION TO EXECUTE TWO AGREEMENTS WITH GOVERNMENT PAYMENT SERVICE, INC TO FACILITATE LESS COSTLY CREDIT CARD PROCESSING IN THE POLICE DEPT</b>	<b>ITEM NUMBER</b> <i>G.19.</i>

**Background**

Several years ago, the City entered into an agreement with Government Payment Service, Inc (Indianapolis, IN) to exclusively process credit card transactions for the City of Franklin. The City currently accepts credit card payments for several services, but most importantly for payment of fines and forfeitures generated by the Municipal Court and Police Dept. All fees associated with credit card processing are paid by the cardholder. The City incurs no additional processing costs for credit card transactions. Government Payment Service, Inc. incurs any costs with credit card chargebacks.

When the current arrangement was entered into, the a single Participant Agreement was executed for the Municipal Court, with the Police Dept processed as a sub-set of the Municipal Court's agreement. Government Payment Services, Inc has unique rate structures depending upon the type of payment being processed. Many of the Police Dept transactions involve Cash Bail type payments. These payments have one of the highest risks of chargeback. As such, these payment types incur the highest fees associated with card transactions. The fee is currently 7% of the transaction amount. However, credit card fees for other types of criminal justice-related payments are only 3.5% of the transaction amount. Currently, all Police payments incur these fees. Many remitters request lower fees.

Government Payment Services, Inc is offering to separate the Cash Bail Payments from other Criminal Justice-related payments conditioned upon a separate Participation Agreement for the Police Dept. This would separate the Police account in the Government Payment Services, Inc system from the Police account. By doing this, those payments eligible for the lower fee would be charged the lower fee.

By also executing a new Participation Agreement for the Municipal Court, the fine and forfeiture payments made thru the Municipal Court would also be eligible for reduced fees.

**Analysis**

A side benefit of this service, is that less currency is collected and held at the Municipal Court and Police dept. There are risks and banking costs associated with handling currency. The credit card processing reduces those risks.

The City Attorney has reviewed the attached agreements. Provision which the City Attorney believes are important to the City have been incorporated in the agreements by Government Payment Service, Inc.

**Options**

Common Council could maintain the current linked Municipal Court/Police credit card accounts, retaining the existing processing fee structure.

Or

Common Council could approve executing the attached two Participation Agreements with Government Payment Service, Inc. The only real change for the City would be separation of the Municipal Court credit card processing from the Police Dept credit card processing and lowering the processing fees paid by citizens.

**Recommendation**

The Director of Finance & Treasurer recommends approval of the two Participation Agreements (copies attached).

**Fiscal Impact**

This is no adverse fiscal impact to the City of these agreements.

**COUNCIL ACTION REQUESTED**

Motion authorizing the Director of Finance & Treasurer to execute Participation Agreements with Government Payment Service, Inc for the Municipal Court and Franklin Police Dept.

Finance Dept - Paul 

### PARTICIPATION AGREEMENT

Participant:	Government Payment Service, Inc. ("GPS")
ATTN: Director of Finance & Treasurer	7102 Lakeview Parkway West Drive
Franklin Police Department	Indianapolis, Indiana 46268
9229 West Loomis Road	Phone: (866) 564-0169
Franklin, WI 53132	Facsimile: (888) 665-4755
	Email: <a href="mailto:accountservices@govpaynet.com">accountservices@govpaynet.com</a>

**1. Services.** The above City of Franklin – Police Department authorizes GPS to act on its behalf in processing credit, debit, and prepaid debit card transactions through the Visa, MasterCard, Discover, and American Express payment systems for the payment types specified in this Participation Agreement ("Agreement"). GPS shall provide Participant with training, documentation, and electronic and telephonic support at GPS' expense. GPS shall cause funds to be forwarded electronically to such account as Participant designates within two banking days after transaction authorization or by mailed check if Participant so indicates.

**2. Term and Termination.** This Agreement shall become effective upon the date of the latter signature to this Agreement and shall continue for five years, automatically renewing for additional one year periods. This Agreement may be terminated (i) by Participant at any time with or without cause upon 30 days written notice to GPS; (ii) by GPS upon 30 days' written notice to Participant prior to any renewal term; or (iii) by either party immediately upon notice to the other party of such other party's material breach of this Agreement, subject to a reasonable opportunity to cure such breach.

**3. Fees.** GPS shall not charge Participant for services. GPS shall collect all service fees from cardholders as its sole compensation. All service fees are non-refundable. GPS may modify service fees at its sole option, providing Participant with 30 days' advance written notice. Service fees are as described in Attachment "A" to this Agreement.

**4. Chargebacks.** Participant shall have no liability for chargebacks. GPS shall be responsible for handling all transaction disputes associated with cardholders' use of cards to make payments to Participant through GPS, for asserting any challenges to chargeback claims, and for any resulting chargeback liability. All

payments will be considered no longer subject to chargeback 12 months after their authorization date.

**5. Warranties.** Each party warrants that this Agreement is valid, binding, and enforceable against such party in accordance with its terms and that each party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. GPS further warrants that during the performance of this Agreement, GPS (i) shall provide services in a non-discriminatory manner and shall not deny services or employment on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status or any other legally protected class; (ii) will comply with all applicable laws and regulations and the rules and procedures applicable to the credit and debit card brands it accepts and processes; and (iii) in accordance with PCI DSS v3.0, requirement 12.9, will maintain proper security and responsibility for cardholder data while it is in GPS's possession, all at GPS' sole cost.

**6. Indemnification and Disclaimers.** GPS shall indemnify and save harmless Participant, its agents, officers, and employees from responsibility or liability for all damages, costs, expenses, (including reasonable attorney fees and defense costs) relating to death or bodily injury or damages to physical property directly resulting from GPS' performance under this Agreement. **GPS ACCEPTS NO RESPONSIBILITY FOR SECURITY OF CARDHOLDER DATA ON SYSTEMS OTHER THAN THOSE CONTROLLED BY GPS. GPS LIABILITY WITH RESPECT TO PAYMENTS PROCESSED HEREUNDER IS LIMITED TO MAKING PAYMENTS IN THE AMOUNTS AUTHORIZED. GPS IS NOT A SURETY AND PROCESSING A PAYMENT THROUGH GPS**

**DOES NOT GUARANTEE ANY PARTICULAR OUTCOME INCLUDING, BUT NOT LIMITED TO, A DEFENDANT'S COURT APPEARANCE OR FULL SATISFACTION OF A FINANCIAL OBLIGATION. OTHER THAN WARRANTIES**

**EXPLICITLY MADE IN THIS AGREEMENT, GPS DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED. NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PARTICIPANT BEARS RESPONSIBILITY FOR ANY ADMINISTRATIVE ACTIONS IT MAY TAKE IN CONNECTION WITH SERVICES PROVIDED UNDER THIS AGREEMENT.**

**7. Independent Contractor.** GPS shall provide all services to Participant as an independent contractor. Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of master and servant or employer and employee between the parties or to provide either party with the right, power, or authority, expressed or implied, to create any such duty or obligation on behalf of the other party.

**8. Taxes.** GPS shall be responsible for the payment of all taxes legally imposed upon its services.

**9. Notices.** All notices permitted or required by this Agreement shall be in writing and given to the respective parties in person, by first class mail, by recognized private courier, or by facsimile (with a hard copy following) directed to the address first stated in this Agreement or to such other person or place that the parties may from time to time designate (if to GovPayNet, note "Attention: Account Services"). Notices and consents under this section shall be deemed to be received, if sent by mail or courier, five days following their deposit in the U.S. Mail or with such courier or, if sent by facsimile, when such facsimile is transmitted to the number the intended recipient provides and sender receives a confirmation that such facsimile was transmitted.

**9.1. FOR PURPOSES OF SERVICE CHANGES:**

Participant is responsible for advising GPS as to the types of payments GPS is authorized to accept on Participant's behalf (per the fees in Attachment "A") and the type of service and equipment modes that will apply to each payment type. Participant may at any time (i) authorize GPS to accept additional types of payments, (ii) cancel the processing through GPS of any types of payments, (iii) modify the service or equipment modes (from among Internet, telephone, Internet and telephone, *GovSwipe*<sup>®</sup>, etc.), (iv) modify the account(s) to which GPS shall direct payments to Participant, or, if Participant is a government entity and using appropriate means, (v) add other agencies,

departments or sub-agencies ("Affiliated Agencies") to, or delete Affiliated Agencies from Participant's use of any GPS services and equipment by specifying all such changes to GPS in writing. Any such changes will be subject to GPS acknowledgment and acceptance in writing. For purposes of this subsection only, "in writing" shall mean via letter, facsimile, or email (if to GovPayNet, to [accountservices@govpaynet.com](mailto:accountservices@govpaynet.com)).

**10. GovSwipe.** GPS will provide Participants who select *GovSwipe* with card readers and peripheral equipment (cables, etc.), which are and will remain the property of GPS. Participant understands that GPS card readers are embedded with proprietary technology ("Firmware"). GPS grants Participant a license to use such card readers and Firmware for the duration of the Agreement. Participant's use of card readers and Firmware shall be limited to the purposes of this Agreement. Acceptance and use of card readers does not convey to Participant any title, patent, copyright or other proprietary right in or to the Firmware. At all times, GPS or its suppliers retain all rights to the Firmware, including but not limited to updates, enhancements, and additions. Participant shall not attempt to access or disclose the Firmware to any party, or transfer, copy, license, sub-license, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on Firmware.

Participant will use reasonable care to protect card readers from loss, theft, damage or any legal encumbrance. GPS shall provide card readers and installation instructions at service implementation and when providing any replacement or additional card readers by shipment to a location Participant designates or, at GPS's option, Participant will allow GPS and its designated representatives reasonable access to Participant's premises for training purposes and device installation, repair, removal, modification, upgrades, and relocation.

Card readers for use with *GovSwipe* are designed to communicate cardholder data to GPS through Participant's computing equipment to which they are cable-attached via USB port. Internet access to GPS is required for transaction processing via *GovSwipe* and is enabled solely by Participant's computers and networks. Participant is responsible to use standard safeguards and practices to keep its computers and networks secure and free from malicious software or hardware. GPS shall not be held liable to Participant for exposure of Participant's computers or networks to malicious software or hardware of any kind. GPS is solely responsible for the maintenance of any card

readers and shall supply Participant with replacement card readers on Participant's request and as GPS deems appropriate. Upon termination of the Agreement, GPS may require Participant to return card readers at GPS's expense and by such method as GPS specifies.

**10.1 Participant Standard Contract Clauses.**

**Expertise.**

At least the same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by similar employees of other organizations providing similar services, and all persons providing such services under this Agreement shall have such active certifications, licenses, and permissions as may be required by law.

**Pursuant to Law.**

Notwithstanding anything to the contrary anywhere else set forth within this Agreement, all services and any and all materials and/or products provided by GPS under this Agreement shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.

**Insurance.**

GPS shall, during the term of the Agreement, maintain insurance coverage with an authorized insurance carrier acceptable to the Client in amounts at least equal to the minimum limits set forth below:

- A. Limit of General/Commercial Liability: \$2,000,000
- B. Automobile Liability; Bodily Injury/Property Damage: \$1,000,000
- C. Excess Liability for General Commercial or Automobile Liability: \$2,000,000
- D. Worker's Compensation and Employers' Liability: Per statute
- E. Professional Liability: \$1,000,000

Certificates of insurance evidencing shall delivered to the Participant prior to commencement of any work under this Agreement naming Participant as an additional insured for General Liability.

**Conflict of Interest.**

GPS warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the

services under this Agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. GPS warrants that it will immediately notify the Participant if any actual or potential conflict of interest arises or becomes known to the GPS. Upon receipt of such notification, a Participant review and written approval is required for the GPS to continue to perform work under this Agreement.

**Governing Law and Disputes.**

This Agreement shall be construed pursuant to the laws of the State of Wisconsin. The venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

**Records.**

GPS shall maintain all of its records pertaining to this Agreement for not less than three years following the completion of this Agreement and shall provide for the inspection and copying of such records by the Participant upon request.

**11. Miscellaneous.** There are no third-party beneficiaries to this Agreement. This Agreement may not be assigned, in whole or in part, by either party hereto without prior written consent of the other party, which consent shall not be unreasonably withheld. Either party is excused from performance and shall not be liable for any delay in performance or non-performance, in whole or in part, caused by the occurrence of any contingency beyond the control of the non-performing party including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, terrorism, loss of power or telecommunications, flood, storm, Acts of God, and similar occurrences. A waiver of any portion of this Agreement shall not be deemed a waiver or renunciation of other portions. Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof. In the event that any provision of this Agreement is adjudicated by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, all other provisions of this Agreement shall remain in full force and effect.

**12. Completeness and Execution.** This Agreement is the entire agreement between the parties and expresses the complete understanding of the parties, superseding all prior or contemporaneous agreements with regard

to the subject matter herein. This Agreement may not be altered, amended or modified except in a writing incorporated hereto and signed by the parties, provided, however, that GPS may revise the terms of this Agreement if required to comply with law, regulation, or card industry rules and GPS provides prompt notice to Participant of such change(s). This

Agreement may be executed simultaneously in multiple counterparts, each of which is deemed an original, but all of which taken together constitute one and the same instrument. All signed fax or electronically imaged counterparts to this Agreement shall be deemed as valid as originals.

**FRANKLIN POLICE DEPARTMENT**

**GOVERNMENT PAYMENT SERVICE, INC.**

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Paul Rotzenberg

Director of Finance & Treasurer

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Mark E. MacKenzie

President & Chief Executive Officer

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Date

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Date



**ATTACHMENT “A” – SERVICE FEES**

**GPS Agree. No. 4674 WI –Franklin Police Department, 2016Jul6**

<b>Service Fee Schedule for Bail Payments</b>	
<b>Service Fee for Payments via Web/Gov\$wipe®</b> <i>(Service Fee Schedule #97)</i>	<b>Service Fee for Payments via Call Center/Live Agent</b> <i>(Service Fee Schedule #98)</i>
<b>7.0%</b>	<b>7.0%</b>

<b>Service Fee Schedule for Criminal Justice-Related Payments</b>	
<b>Service Fee for Payments via Web/Gov\$wipe®</b> <i>(Service Fee Schedule #99)</i>	<b>Service Fee for Payments via Call Center/Live Agent</b> <i>(Service Fee Schedule #100)</i>
<b>3.5%</b> <i>Minimum Fee = \$3.50</i>	<b>5.0%</b> <i>Minimum Fee = \$5.00</i>

**All Service Fees Are Non-Refundable**



### PARTICIPATION AGREEMENT

Participant:	Government Payment Service, Inc. ("GPS")
ATTN: Dir. Of Finance & Treasurer	7102 Lakeview Parkway West Drive
Franklin Municipal Court	Indianapolis, Indiana 46268
9229 West Loomis Road	Phone: (866) 564-0169
Franklin, WI 53132	Facsimile: (888) 665-4755
	Email: <a href="mailto:accountservices@govpaynet.com">accountservices@govpaynet.com</a>

**1. Services.** The above City of Franklin – Municipal Court authorizes GPS to act on its behalf in processing credit, debit, and prepaid debit card transactions through the Visa, MasterCard, Discover, and American Express payment systems for the payment types specified in this Participation Agreement ("Agreement"). GPS shall provide Participant with training, documentation, and electronic and telephonic support at GPS' expense. GPS shall cause funds to be forwarded electronically to such account as Participant designates within two banking days after transaction authorization or by mailed check if Participant so indicates.

**2. Term and Termination.** This Agreement shall become effective upon the date of the latter signature to this Agreement and shall continue for five years, automatically renewing for additional one year periods. This Agreement may be terminated (i) by Participant at any time with or without cause upon 30 days written notice to GPS; (ii) by GPS upon 30 days' written notice to Participant prior to any renewal term; or (iii) by either party immediately upon notice to the other party of such other party's material breach of this Agreement, subject to a reasonable opportunity to cure such breach.

**3. Fees.** GPS shall not charge Participant for services. GPS shall collect all service fees from cardholders as its sole compensation. All service fees are non-refundable. GPS may modify service fees at its sole option, providing Participant with 30 days' advance written notice. Service fees are as described in Attachment "A" to this Agreement.

**4. Chargebacks.** Participant shall have no liability for chargebacks. GPS shall be responsible for handling all transaction disputes associated with cardholders' use of cards to make payments to Participant through GPS, for asserting any challenges to chargeback claims, and for any resulting chargeback liability. All

payments will be considered no longer subject to chargeback 12 months after their authorization date.

**5. Warranties.** Each party warrants that this Agreement is valid, binding, and enforceable against such party in accordance with its terms and that each party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. GPS further warrants that during the performance of this Agreement, GPS (i) shall provide services in a non-discriminatory manner and shall not deny services or employment on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, marital status or any other legally protected class; (ii) will comply with all applicable laws and regulations and the rules and procedures applicable to the credit and debit card brands it accepts and processes; and (iii) in accordance with PCI DSS v3.0, requirement 12.9, will maintain proper security and responsibility for cardholder data while it is in GPS's possession, all at GPS' sole cost.

**6. Indemnification and Disclaimers.** GPS shall indemnify and save harmless Participant, its agents, officers, and employees from responsibility or liability for all damages, costs, expenses, (including reasonable attorney fees and defense costs) relating to death or bodily injury or damages to physical property directly resulting from GPS' performance under this Agreement. **GPS ACCEPTS NO RESPONSIBILITY FOR SECURITY OF CARDHOLDER DATA ON SYSTEMS OTHER THAN THOSE CONTROLLED BY GPS. GPS LIABILITY WITH RESPECT TO PAYMENTS PROCESSED HEREUNDER IS LIMITED TO MAKING PAYMENTS IN THE AMOUNTS AUTHORIZED. GPS IS NOT A SURETY AND PROCESSING A PAYMENT THROUGH GPS**

**DOES NOT GUARANTEE ANY PARTICULAR OUTCOME INCLUDING, BUT NOT LIMITED TO, A DEFENDANT'S COURT APPEARANCE OR FULL SATISFACTION OF A FINANCIAL OBLIGATION. OTHER THAN WARRANTIES**

**EXPLICITLY MADE IN THIS AGREEMENT, GPS DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED. NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PARTICIPANT BEARS RESPONSIBILITY FOR ANY ADMINISTRATIVE ACTIONS IT MAY TAKE IN CONNECTION WITH SERVICES PROVIDED UNDER THIS AGREEMENT.**

**7. Independent Contractor.** GPS shall provide all services to Participant as an independent contractor. Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of master and servant or employer and employee between the parties or to provide either party with the right, power, or authority, expressed or implied, to create any such duty or obligation on behalf of the other party.

**8. Taxes.** GPS shall be responsible for the payment of all taxes legally imposed upon its services.

**9. Notices.** All notices permitted or required by this Agreement shall be in writing and given to the respective parties in person, by first class mail, by recognized private courier, or by facsimile (with a hard copy following) directed to the address first stated in this Agreement or to such other person or place that the parties may from time to time designate (if to GovPayNet, note "Attention: Account Services"). Notices and consents under this section shall be deemed to be received, if sent by mail or courier, five days following their deposit in the U.S. Mail or with such courier or, if sent by facsimile, when such facsimile is transmitted to the number the intended recipient provides and sender receives a confirmation that such facsimile was transmitted.

**9.1. FOR PURPOSES OF SERVICE CHANGES:** Participant is responsible for advising GPS as to the types of payments GPS is authorized to accept on Participant's behalf (per the fees in Attachment "A") and the type of service and equipment modes that will apply to each payment type. Participant may at any time (i) authorize GPS to accept additional types of payments, (ii) cancel the processing through GPS of any types of payments, (iii) modify the service or equipment modes (from among Internet, telephone, Internet and telephone, *Gov\$wipe*<sup>®</sup>, etc.), (iv) modify the account(s) to which GPS shall direct payments to Participant, or, if Participant is a government entity and using appropriate means, (v) add other agencies,

departments or sub-agencies ("Affiliated Agencies") to, or delete Affiliated Agencies from Participant's use of any GPS services and equipment by specifying all such changes to GPS in writing. Any such changes will be subject to GPS acknowledgment and acceptance in writing. For purposes of this subsection only, "in writing" shall mean via letter, facsimile, or email (if to GovPayNet, to [accountservices@govpaynet.com](mailto:accountservices@govpaynet.com)).

**10. Gov\$wipe.** GPS will provide Participants who select *Gov\$wipe* with card readers and peripheral equipment (cables, etc.), which are and will remain the property of GPS. Participant understands that GPS card readers are embedded with proprietary technology ("Firmware"). GPS grants Participant a license to use such card readers and Firmware for the duration of the Agreement. Participant's use of card readers and Firmware shall be limited to the purposes of this Agreement. Acceptance and use of card readers does not convey to Participant any title, patent, copyright or other proprietary right in or to the Firmware. At all times, GPS or its suppliers retain all rights to the Firmware, including but not limited to updates, enhancements, and additions. Participant shall not attempt to access or disclose the Firmware to any party, or transfer, copy, license, sub-license, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on Firmware.

Participant will use reasonable care to protect card readers from loss, theft, damage or any legal encumbrance. GPS shall provide card readers and installation instructions at service implementation and when providing any replacement or additional card readers by shipment to a location Participant designates or, at GPS's option, Participant will allow GPS and its designated representatives reasonable access to Participant's premises for training purposes and device installation, repair, removal, modification, upgrades, and relocation.

Card readers for use with *Gov\$wipe* are designed to communicate cardholder data to GPS through Participant's computing equipment to which they are cable-attached via USB port. Internet access to GPS is required for transaction processing via *Gov\$wipe* and is enabled solely by Participant's computers and networks. Participant is responsible to use standard safeguards and practices to keep its computers and networks secure and free from malicious software or hardware. GPS shall not be held liable to Participant for exposure of Participant's computers or networks to malicious software or hardware of any kind. GPS is solely responsible for the maintenance of any card

readers and shall supply Participant with replacement card readers on Participant’s request and as GPS deems appropriate. Upon termination of the Agreement, GPS may require Participant to return card readers at GPS’s expense and by such method as GPS specifies.

**10.1 Participant Standard Contract Clauses.**

**Expertise.**

At least the same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by similar employees of other organizations providing similar services, and all persons providing such services under this Agreement shall have such active certifications, licenses, and permissions as may be required by law.

**Pursuant to Law.**

Notwithstanding anything to the contrary anywhere else set forth within this Agreement, all services and any and all materials and/or products provided by GPS under this Agreement shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.

**Insurance.**

GPS shall, during the term of the Agreement, maintain insurance coverage with an authorized insurance carrier acceptable to the Client in amounts at least equal to the minimum limits set forth below:

- A. Limit of General/Commercial Liability: \$2,000,000
- B. Automobile Liability; Bodily Injury/Property Damage: \$1,000,000
- C. Excess Liability for General Commercial or Automobile Liability: \$2,000,000
- D. Worker’s Compensation and Employers’ Liability: Per statute
- E. Professional Liability: \$1,000,000

Certificates of insurance evidencing shall delivered to the Participant prior to commencement of any work under this Agreement naming Participant as an additional insured for General Liability.

**Conflict of Interest.**

GPS warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the

services under this Agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. GPS warrants that it will immediately notify the Participant if any actual or potential conflict of interest arises or becomes known to the GPS. Upon receipt of such notification, a Participant review and written approval is required for the GPS to continue to perform work under this Agreement.

**Governing Law and Disputes.**

This Agreement shall be construed pursuant to the laws of the State of Wisconsin. The venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be entitled to its costs, including its reasonable attorneys’ fees, incurred in any litigation.

**Records.**

GPS shall maintain all of its records pertaining to this Agreement for not less than three years following the completion of this Agreement and shall provide for the inspection and copying of such records by the Participant upon request.

**11. Miscellaneous.** There are no third-party beneficiaries to this Agreement. This Agreement may not be assigned, in whole or in part, by either party hereto without prior written consent of the other party, which consent shall not be unreasonably withheld. Either party is excused from performance and shall not be liable for any delay in performance or non-performance, in whole or in part, caused by the occurrence of any contingency beyond the control of the non-performing party including, but not limited to, work stoppages, fires, civil disobedience, riots, rebellions, terrorism, loss of power or telecommunications, flood, storm, Acts of God, and similar occurrences. A waiver of any portion of this Agreement shall not be deemed a waiver or renunciation of other portions. Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof. In the event that any provision of this Agreement is adjudicated by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, all other provisions of this Agreement shall remain in full force and effect.

**12. Completeness and Execution.** This Agreement is the entire agreement between the parties and expresses the complete understanding of the parties, superseding all prior or contemporaneous agreements with regard

to the subject matter herein. This Agreement may not be altered, amended or modified except in a writing incorporated hereto and signed by the parties, provided, however, that GPS may revise the terms of this Agreement if required to comply with law, regulation, or card industry rules and GPS provides prompt notice to Participant of such change(s). This

Agreement may be executed simultaneously in multiple counterparts, each of which is deemed an original, but all of which taken together constitute one and the same instrument. All signed fax or electronically imaged counterparts to this Agreement shall be deemed as valid as originals.

**FRANKLIN MUNICIPAL COURT**

**GOVERNMENT PAYMENT SERVICE, INC.**

\_\_\_\_\_  
Paul Rotzenberg

\_\_\_\_\_  
Mark E. MacKenzie

Director of Finance & Treasurer

President & Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**ATTACHMENT “A” – SERVICE FEES**

**GPS Agree. No. 4672 WI-Franklin Municipal Court, 2016Jul6**

<b>Service Fee Schedule for Administration &amp; Civil Payments #2</b>			
<b>Payments Made via Internet (Web/Gov\$wipe®) Service Fee Schedule #110</b>		<b>Telephone-Assisted Payments (Call Center/Live Agent) Service Fee Schedule #111</b>	
<b>Transaction Range</b>	<b>Service Fee</b>	<b>Transaction Range</b>	<b>Service Fee</b>
\$0.01 > \$50.00	\$1.50	\$0.01 > \$50.00	\$5.50
\$50.01 > \$75.00	\$1.75	\$50.01 > \$75.00	\$5.75
\$75.01 > \$100.00	\$3.00	\$75.01 > \$100.00	\$7.00
\$100.01 > \$150.00	\$4.00	\$100.01 > \$150.00	\$8.00
\$150.01 > \$200.00	\$6.00	\$150.01 > \$200.00	\$10.00
<i>For each additional increment of \$50.00, or portion thereof, add \$1.50.</i>		<i>For each additional increment of \$50.00, or portion thereof, add \$1.50.</i>	

**All Service Fees Are Non-Refundable**



<b>APPROVAL</b>  <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b>  <b>8/16/2016</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>Population estimate as of January 1, 2016</b>	<b>ITEM NUMBER</b>  <i>6, 20,</i>

Franklin has received the preliminary population estimate of 35,741 as of January 1, 2016, which is an increase from 35,655 as of January 1, 2015. If the Council wishes to challenge this estimate, such challenge must be submitted before September 15, 2016.

For your review, Franklin's prior population was as follows:

1960	10,006	2002	30,749
1970	12,247	2003	31,467
1980	16,469	2004	31,804
1990	21,732	2005	32,548
1991	22,356	2006	33,000
1992	23,168	2007	33,380
1993	24,052	2008	33,550
1994	24,778	2009	33,700
1995	25,163	2010	33,900
1996	25,726	4/1/10 census	35,451
1997	26,591	2011	35,504
1998	27,186	2012	35,520
1999	27,780	2013	35,810
2000	28,804	2014	35,702
4/1/00 census	29,494	2015	35,655
2001	30,199	2016	35,741
2002	30,749		
2003	31,467		
2004	31,804		
2005	32,548		

### COUNCIL ACTION REQUESTED

Motion to place on file the Wis. Dept. of Administration January 1, 2016 population estimate of 35,741.

OR

Motion to direct Director of Clerk Services to submit challenge, based on information provided by staff, to State of Wisconsin 2015 population estimate no later than September 15, 2016.



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**SCOTT WALKER**  
GOVERNOR

**SCOTT A. NEITZEL**  
SECRETARY

Division of Intergovernmental Relations  
Post Office Box 8944  
Madison, WI 53708-8944  
Voice (608) 266-1755  
Fax (608) 267-6917

0986  
SANDRA WESOLOWSKI  
CLERK, CITY OF FRANKLIN  
9229 W LOOMIS RD  
FRANKLIN WI 53132-9630

August 10, 2016

**PRELIMINARY ESTIMATE OF JANUARY 1, 2016 POPULATION**

Dear Municipal Clerk:

The Demographic Services Center's preliminary estimate of the January 1, 2016 population for the City of Franklin in Milwaukee County is 35,741. This represents a change of 290 persons (0.82%) since the 2010 Census.

Wisconsin's total population is estimated at 5,774,996 which is a change of 88,010 persons and

1.55%. Following is a summary of the data we used in estimating your population:

	2010 Census Count	2016 Preliminary Estimate
2010 U.S. Census Count	35,451	
January 1, 2016 Estimate		35,741
Motor vehicles registered	28,844	29,976
Percent of vehicles in State	0.547%	0.568%
Income tax filers	23,639	23,220
Percent of filers in State	0.650%	0.677%
Filers plus dependents	30,723	29,771
Percent of filers plus dependents in State	0.622%	0.659%
Income tax returns	15,873	15,758
Percent of income tax returns in State	0.621%	0.641%
Institutional Population	1,989	1,362

In addition, in response to our housing survey that we sent you earlier this year, your municipality reported a net change of 50 housing units for calendar year 2015. (If we did not receive a survey from you, we estimated your change in housing stock or used other sources.)

Approximately 28,324 of the estimated population for the City of Franklin are of voting age. This courtesy estimate helps you to comply with Wisconsin Statute 5.66, which requires municipal clerks to approximate the number of electors prior to elections. The voting age population was calculated by applying the census proportion of persons over 18 to the preliminary January 1 estimate, and then multiplying the result by a state-wide factor to account for the general aging of the population. Please note that, if you have an adult correctional facility in your municipality, its population is included in this voting-age estimate.

## COUNTY POPULATION ESTIMATE CHALLENGE FORM

If you believe the estimate of the county or any of its component municipalities is not a reasonable approximation of the population, complete this form and submit it **with administrative data** that can be used to evaluate the challenge. Submit the challenge on or before **September 15, 2016**.

Mail challenges to:

**Dan Barroilhet, Demographer  
Demographic Services Center  
WI Department of Administration  
PO Box 8944  
Madison, WI 53708-8944  
(608) 266-1755**

The Council/Board of the County of \_\_\_\_\_

has authorized me to submit a challenge to the correctness of the annual preliminary population estimate prepared for our county. The county contends the estimate is inaccurate because it is based upon inadequate information.

**Evidence based upon administrative records or other information is presented in support of this contention, as required by §16.96 of the Wisconsin Statutes.**

**The statutes do not permit the Department of Administration to accept the results of a population enumeration conducted by any group, agency or unit of government other than the U.S. Census Bureau.**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DAYTIME TELEPHONE: (     ) \_\_\_\_\_

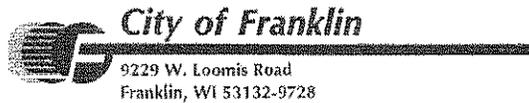
SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>8/16/16</b>
<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS LICENSES</b>	<b>ITEM NUMBER</b> <b>H.1.</b>

See attached list from meeting of August 16, 2016.

**COUNCIL ACTION REQUESTED**



**City of Franklin**

9229 W. Loomis Road  
Franklin, WI 53132-9728

414-425-7500

**License Committee  
Agenda\*  
Aldermen's Room  
August 16, 2016 – 5:45 pm**

<b>1.</b>	<b>Call to Order &amp; Roll Call</b>	<b>Time:</b>		
<b>2.</b>	<b>Applicant Interviews &amp; Decisions</b>			
<b>License Applications Reviewed</b>		<b>Recommendations</b>		
<b>Type/ Time</b>	<b>Applicant Information</b>	<b>Approve</b>	<b>Hold</b>	<b>Deny</b>
Operator – New 2016-17	<b>Ernie R Allen, Jr</b> 514 W Luebbe Ln Glendale, WI 53217 Chili's Bar & Grill			
Operator – New 2016-17	<b>Thomas N Cane</b> 5432 Olympia Dr Greendale, WI 53129 Knights of Columbus – Arts & Crafts Fair			
Operator – New 2016-17	<b>Kristen N Fenninger</b> 9750 S 31 <sup>st</sup> St Franklin, WI 53132 Bowery Bar & Grill			
Operator – New 2016-17	<b>Diane M Holytz</b> 7325 W Holt Ave Milwaukee, WI 53219 Polish Center of Wisconsin			
Operator – New 2016-17	<b>Pamela J LeHouillier</b> 6456 W River Pointe Dr Franklin, WI 53132 Franklin Lioness Club – St Martins Fair			
Operator – New 2016-17	<b>Andrew R Hushek</b> 5315 W Arizona St Milwaukee, WI 53219 VFW Post 10394			
Operator – New 2016-17	<b>Tracy Kukla-Lewis</b> 7640 S Mission Ct Franklin, WI 53132 Franklin Lioness Club – St Martins Fair			
Operator – New 2016-17	<b>Alexis M Steltz</b> 12045 W Saint Martins Rd Franklin, WI 53132 Romey's Place			
Extraordinary Entertainment & Special Event	<b>Knights of Columbus Trinity Council #4580</b> Person in Charge: David Kunze Location: 7335 S Lovers Lane Rd Event: 30 <sup>th</sup> Annual Labor Day Arts & Crafts Fair Date of Event: September 4, 2016			
Temporary Class B Beer and Wine	<b>Knights of Columbus Trinity Council #4580</b> Person in Charge: David Kunze Event: 30 <sup>th</sup> Annual Labor Day Arts & Crafts Fair Date of Event: September 4, 2016			
Temporary Entertainment & Amusement	<b>American Legion Willey-Herda Post 192</b> Person in Charge: Adjutant – Gretchen W Davies Event: St Martins Fair – Raffle Game (Amended) Event Date: Sept. 4 <sup>th</sup> , 2016 (one day only)			

Type/ Time	Applicant Information	Approve	Hold	Deny
<b>Temporary Class B Beer</b>	<b>VFW Post #10394</b> Person in Charge: Andrew Hushek Event: St. Martins Labor Day Fair Date of Event: September 4 & 5, 2016			
<b>Temporary Entertainment &amp; Amusement</b>	<b>VFW Post #10394</b> Person in Charge: Andrew Hushek Event: Live Music at St Martins Fair Event Date: September 4 & 5, 2016			
<b>3.</b>	<b>Adjournment</b>			
		Time		

\*Notice is given that a majority of the Common Council may attend this meeting to gather information about an agenda item over which they have decision-making responsibility. This may constitute a meeting of the Common Council per State ex rel. Badke v. Greendale Village Board, even though the Common Council will not take formal action at this meeting.

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APPROVAL <i>Slw</i> <i>pal</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE 8/16/16
Bills	Vouchers and Payroll Approval	ITEM NUMBER I. 1
<p>Attached are vouchers dated August 2, 2016 through August 11, 2016 Nos. 161734 through Nos. 161909 the amount of \$ 1,443,378.11. Included in this listing are EFT's Nos. 3229 through Nos. 3237 and Library vouchers totaling \$ 10,365.61.</p> <p>Early release disbursements dated August 2, 2016 through August 10, 2016 under Resolution 2013-6920 in the amount of \$ 462,460.78 are provided on a separate listing and are also included on the complete disbursement listing.</p> <p>The net payroll dated August 5, 2016 is \$ 367,030.54 previously estimated at \$ 359,000.00. Payroll deductions for August 5, 2016 are \$ 205,726.27 previously estimated at \$ 206,000.00.</p> <p>The estimated payroll for August 19, 2016 is \$ 369,000.00 with estimated deductions and matching payments of \$ 370,000.00.</p> <p>The estimated payroll for September 2, 2016 is \$ 364,000.00 with estimated deductions and matching payments of \$ 208,000.00.</p> <p>Attached is a list of property tax refunds and settlements dated July 29, 2016 through August 11, 2016 Nos. 16408 and EFT Nos. 112 through Nos. 118 in the amount of \$ 8,835,544.12 These payments have been released as authorized under Resolution 2013-6920. Voided checks in the amount of \$ (722.59) are separately listed.</p>		
<p><b>COUNCIL ACTION REQUESTED</b></p>		
<p>Motion approving net general checking account City vouchers in the range of Nos. 161734 through Nos. 161909 in the amount of \$ 1,443,378.11 dated August 2, 2016 through August 11, 2016.</p>		
<p>Motion approving the net payroll dated August 5, 2016 in the amount of \$ 367,030.54 and payments of the various payroll deductions in the amount of \$ 205,726.27 plus any City matching payments, where required.</p>		
<p>Motion approving the estimated net payroll dated August 19, 2016 in the amount of \$ 369,000.00 and payments of the various payroll deductions in the amount of \$ 370,000.00 plus any City matching payments, where required.</p>		
<p>Motion approving the estimated net payroll dated September 2, 2016 in the amount of \$ 364,000.00 and payments of the various payroll deductions in the amount of \$ 208,000.00 plus any City matching payments, where required.</p>		
<p>Motion approving property tax refunds and settlements Nos. 16408 and EFT Nos. 112 through Nos. 118 in amount of \$ 8,835,544.12 dated July 29, 2016 through August 11, 2016.</p>		