

<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>12/17/13</p>
<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p>An Ordinance to Amend the Franklin Municipal Code as it Pertains to Court Costs Imposed in Municipal Court Actions</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.6.</i></p>

The Common Council previously adopted § 22-3 E of the Municipal Code, which imposed the maximum allowable court costs in Municipal Court actions of \$28. The legislature enacted 2013 WI Act 53, which became effective November 9, 2013. This Act authorizes a municipal court to impose court costs in an amount up to \$38. By recommendation of the Municipal Court Judge, the proposed ordinance adopts the new maximum of \$38 for each matter heard by the court. The increased fee will help offset the operational costs of the Municipal Court.

**COUNCIL ACTION REQUESTED**

A motion to adopt an Ordinance to Amend the Franklin Municipal Code as it Pertains to Court Costs Imposed in Municipal Court Actions as presented.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE TO AMEND THE FRANKLIN MUNICIPAL CODE AS IT  
PERTAINS TO COURT COSTS IMPOSED IN MUNICIPAL COURT ACTIONS

---

WHEREAS, the Wisconsin Legislature enacted 2013 WI Act 53, which became effective November 9, 2013 and which authorizes a municipal court to impose court costs in an amount up to \$38; and

WHEREAS, the City previously adopted § 22-3 E of the Municipal Code which imposed \$28 in court costs in municipal court actions; and

WHEREAS, the Municipal Court Judge has recommended that the City adopt the \$38 court costs allowed by law.

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

Section 1: § 22-3 E of the Municipal Code of the City of Franklin, Wisconsin, is hereby amended to read as follows (NOTE: Additions are underlined, Deleted text is ~~struck-through~~):

E. Fees and costs. Fees and costs in the Municipal Court shall be as set forth in §§ 800.10 and 814.65, Wis. Stats., as amended from time to time. The Municipal Judge, pursuant to §814.65(1), Wis. Stats., shall collect a fee of ~~\$28~~ 38 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons, or the action is tried as a contested matter.

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.

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

ORDINANCE NO. 2013-\_\_\_\_\_

Page 2

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

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

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

**BLANK PAGE**

<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>12/17/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Modification of the Professional Services Agreement with Ruckert- Mielke Pertaining to Impact Fee Updates</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.7.</i></p>

The Common Council previously approved an agreement with Ruckert-Mielke to review impact fees and prepare an update of the needs analysis and rate calculations. It is under this contract that the update to the parks impact fee was recently reviewed and approved. The remaining impact fees are still pending completion, but the project has been stalled pending a review of the project's total authorizations. The remainder of this Council Action Sheet will detail the background to and a recommendation for an increase in the total amount of the contract so that the project can be completed. It will also set out the compromise proposed that eliminates some current billed charges that exceed current authorizations.

The project contract anticipated a scope of services with a not-to-exceed amount of \$14,000. An additional \$2,100 was initially authorized to cover potential out-of-scope demands and reimbursable expenses. At this time, however, Ruckert-Mielke has submitted invoices for the project totaling \$28,067.10, and they anticipate approximately \$2,000 of additional work before the full project is completed. Unfortunately, I don't believe it is fair to say that it is as simple as indicating that it was a "not-to-exceed" contract. For example, the Parks impact fee review, which is completed and adopted, took a couple of cycles through the project to pin down the results that were finally approved. Additionally, at the end of the process the Common Council added trails to accommodate the North Cape Road Trail. Development costs are one of the initial steps in the review, so when the Common Council added the additional trails it basically led to a reworking of nearly every table included in the update. Similarly, after Ruckert-Mielke finished their first draft report, City staff's review led to a reconsideration of various factors, such as the average number of people per residence. Again, the modification to this number caused a rework of nearly everything. Similarly, the project and its timing did lead to some additional work that would not have been anticipated by Ruckert-Mielke with their initial proposal. For example, delay in updating historical parks data with input from the Parks Commission and delay caused by overlapping projects (such as the Police Union contract) led to some starting and stopping which increased hours dedicated to the project. Separating the parks out from the other fees so that staff could "do whatever it takes" to complete the Pleasant View trail also added additional work. The most recent example is that I had to discontinue work on the project after adoption of the Park Impact Fee update (which was the middle of the budget process and health insurance review) until I could break down in detail what was occurring with the contract charges (which is what I have just completed). To Ruckert-Mielke's credit, they were flexible and responsive to the City's needs. Given the above discussion, one could argue that some of the added charges could easily have caused Ruckert-Mielke to request a change order, to submit an "out-of-scope" charge, or to discontinue work pending further authorization.

On the flip side, Ruekert-Mielke did have some hourly rate increases that weren't provided for by the contract. Similarly, there were some project hours that one might argue were unnecessary or in excess of what they, themselves, had probably anticipated when they submitted their proposal. For example, the extent of their use of their "Senior Economic Consultant" caused charges and hours that seem high or out of line based on the total contract size.

Given all of the above, one could argue the topic either way as to whether and to what extent the added work constituted excessive effort and bad planning/estimating (which would be their problem in a not-to-exceed contract) or whether, and to what extent, developing and modifying project inputs and required delays could have been out-of-scope charges (which could be our problem). The truth lies somewhere in the middle. **Importantly, the bottom line is the end results have been successful so far and the final portion of the project has to be completed so that all of the remaining impact fees can get their required update.**

CONCLUSION: To that end, I have reviewed the invoices in detail and addressed the matter with Bill Mielke. We have agreed on a compromise proposal that I believe fairly balances the issues identified above. The compromise has Ruekert-Mielke eliminating \$6,700 in billed charges. This leaves remaining current charges of \$5,267.10 over the current authorized amount or \$7,367.10 above the not-to-exceed amount. The compromise was derived from eliminating any increases associated with hourly rate increases and eliminating approximately 1/3 of the remaining charges above the not-to-exceed amount. The 1/3 is my estimate of the excess charges, for lack of a better term. That leaves 2/3 of that net remaining amount as reasonable added work required beyond the initially anticipated demands of the contract. From that perspective, it is as if the added amount is a change order as a result of the expanded level of work. On top of this, the authorization needs to anticipate funding for the final completion of the project. I would recommend an additional \$1,783 in contingency authorization as well so that there are no problems in completing the projects (the odd number works well for rounding).

FUNDING: Funding for the study is provided directly through impact fee collections. The Development Fund has an Administrative Fee that is collected for the purpose of funding such needs assessments. No property tax dollars are used to fund this review. There is currently about \$53,000 available to fund the update to the study.

### **COUNCIL ACTION REQUESTED**

1. Motion to authorize the Director of Administration to execute a modification of the services agreement with Ruekert-Mielke for a review and update to impact fees increasing the not-to-exceed amount to \$23,367, which incorporates Ruekert-Mielke's current charges, with an additional project contingency authorization to the Director of Administration not to exceed \$1,783; all contingent upon Ruekert-Mielke waiving \$6,700 in existing charges and approval of the related budget modification.
2. Motion to authorize release of payments for outstanding invoices related to impact fee questions and projects. [If Motion #1 and the related budget modification are approved, payment of outstanding invoices should be authorized so the invoices can be closed before year's end.]



City of Franklin

mailed  
4/11/12

April 11, 2012

Joseph W. Eberle, P.E.  
Principal / Senior Project Manager  
Ruekert · Mielke  
W233 N2080 Ridgeview Parkway  
Waukesha, WI 53188

RE: Professional Services Agreement  
Impact Fee Updates

Dear Joe:

Attached are two copies of the final executed professional services agreement as requested. Please note that I have crossed out the extra signature lines for the City of Franklin that were not required in this instance. The Common Council authorized me to execute the agreement. As this is not always the practice and for your records, I have included a copy of the page from the Common Council motion authorizing me to execute the agreement.

We stand ready to meet with you to commence the process. To that end, please consider this letter your "Notice to Proceed" as described in Section VIII of the agreement.

We look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark W. Lubarda".

Mark W. Lubarda  
Director of Administration

## AGREEMENT

This AGREEMENT, made and entered into this 11<sup>th</sup> day of April, 2012, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and Ruckert & Mielke, Inc. (hereinafter "ENGINEER"), whose principal place of business is W233 N2080 Ridgeview Parkway, Waukesha, Wisconsin.

## WITNESSETH

WHEREAS, the ENGINEER is duly qualified and experienced as a municipal services ENGINEER and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to obtain the services of the ENGINEER in connection with providing impact fee study services, as described in Attachment A, for the City of Franklin.

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, CLIENT and ENGINEER agree as follows:

- A. This AGREEMENT may only be amended by written instrument signed by both CLIENT and ENGINEER.

### I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A. ENGINEER shall provide services to CLIENT for the activities specified in the ENGINEER's proposal dated December 14, 2011 (Attachment A).
- B. ENGINEER shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies. ENGINEER may employ the services of outside consultants when deemed necessary by ENGINEER to complete work under this AGREEMENT following approval by the City.
- C. ENGINEER is an independent ENGINEER and all persons furnishing services hereunder are employees of, or independent subcontractors to, ENGINEER and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of ENGINEER as employer. CLIENT understands that express AGREEMENTS may exist between ENGINEER and its employees regarding extra work, competition, and nondisclosure.
- D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

## II. FEES AND PAYMENTS

CLIENT agrees to pay ENGINEER, for and in consideration of the performance of Basic Services further described in ENGINEER's Proposal, and as specified in Attachment A, for the Impact Fee Study Updates, subject to the terms detailed below:

- A. ENGINEER may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay ENGINEER's invoice within 30 days of invoice date for all approved work.
- B. Total price of ENGINEER's work will not exceed \$14,000. For services rendered, monthly invoices will include a report that clearly states the hours and type of work completed and the fee earned during the month being invoiced.
- C. In consideration of the faithful performance of this AGREEMENT, the ENGINEER will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.
- D. Should CLIENT find deficiencies in work performed or reported, it will notify ENGINEER in writing within thirty (30) days of receipt of invoice and related report and the ENGINEER will remedy the deficiencies within thirty (30) days of receiving CLIENT's review. This subsection shall not be construed to be a limitation of any rights or remedies otherwise available to CLIENT.

## III. MODIFICATION AND ADDITIONAL SERVICES

- A. CLIENT may, in writing, request changes in the Basic Services required to be performed by ENGINEER and require a specification of incremental or decremental costs prior to change order agreement under this AGREEMENT. Upon acceptance of the request of such changes, ENGINEER shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to ENGINEER. Should any such actual changes be made, an equitable adjustment will be made to compensate ENGINEER or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by ENGINEER for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by ENGINEER of notice of such changes from CLIENT.

## IV. ASSISTANCE AND CONTROL

- A. Joseph W. Eberle, P.E., will coordinate the work of the ENGINEER, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.
- B. CLIENT will timely provide ENGINEER with all available information concerning PROJECT as deemed necessary by ENGINEER.

- C. ENGINEER will appoint, subject to the approval of CLIENT, Joseph W. Eberle, P.E., ENGINEER's Project Manager and other key providers of the Basic Services. Substitution of other staff may occur only with the consent of CLIENT.

## V. TERMINATION

- A. This AGREEMENT may be terminated by CLIENT, for its convenience, for any or no reason, upon written notice to CONTRACTOR. This AGREEMENT may be terminated by CONTRACTOR upon thirty (30) days written notice. Upon such termination by CLIENT, ENGINEER shall be entitled to payment of such amount as shall fairly compensate ENGINEER for all work approved up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential AGREEMENTS for services with other parties.
- B. In the event that this AGREEMENT is terminated for any reason, ENGINEER shall deliver to CLIENT all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that ENGINEER may have accumulated. Such material is to be delivered to CLIENT whether in completed form or in process. CLIENT shall hold ENGINEER harmless for any work that is incomplete due to early termination.
- C. The rights and remedies of CLIENT and ENGINEER under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.

## VI. INSURANCE

The ENGINEER shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier 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	\$3,000,000
D. Worker's Compensation and Employers' Liability	\$500,000
E. Professional Liability	\$1,000,000

Upon the execution of this AGREEMENT, ENGINEER shall supply CLIENT with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days prior notice to CLIENT, and naming Client as an additional insured for General Liability.

## VII. INDEMNIFICATION AND ALLOCATION OF RISK

- A. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT'S officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER'S officers, directors, partners, employees, and consultants in the performance of ENGINEER'S services under this AGREEMENT.
- B. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER'S officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT'S officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, ENGINEER'S total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER'S negligence bears to the total negligence of CLIENT, ENGINEER, and all other negligent entities and individuals.

## VIII. TIME FOR COMPLETION

ENGINEER shall commence immediately upon receipt of a Notice to Proceed and shall complete all work required as soon as practicable based upon receipt of necessary information from CLIENT.

## IX. DISPUTES

This AGREEMENT shall be construed under and governed by the laws of the State of Wisconsin. The venue for any actions arising under this AGREEMENT shall be the Circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

## X. RECORDS RETENTION

ENGINEER shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of 3 years following its completion. Such records shall be made available by the ENGINEER to CLIENT for inspection and copying upon request.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

RUEKERT & MIELKE, INC.

BY: *Mark W. Liburdy*

BY: *William J. Mielke*

PRINT NAME: Mark W. Liburdy

PRINT NAME: William J. Mielke, P.E., R.L.S.

TITLE: Director of Administration

TITLE: President/CEO

DATE: April 11, 2012

DATE: December 23, 2011

BY: \_\_\_\_\_

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

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

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

BY: \_\_\_\_\_

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

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

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

BY: \_\_\_\_\_

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

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

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

ATTACHMENT: ATTACHMENT "A" - DECEMBER 14, 2011 RUEKERT/MIELKE PROPOSAL

December 14, 2011

Mr. Mark Luberda  
Director of Administration  
City of Franklin  
9229 West Loomis Road  
Franklin, WI 53132

Re: Impact Fee Updates

Dear Mr. Luberda:

On November 9 and November 16, we met with City Staff to discuss the City's existing impact fees. Currently the impact fees the City has in place and their status is as follows:

- a. 2002 Library Facilities (9 years old)
- b. 2002 Park & Recreation (9 years old)
- c. 2002 Police & Municipal Court -Updated in 2004 (7 years old)
- d. 2002 Fire & Rescue -Updated in 2004 (7 years old)
- e. 2002 Stormwater Management (9 years old)
- f. 2002 Water (9 years old)
- g. 2002 Sanitary (9 years old)
- h. 2002 Transportation (9 years old)

Impact fees should be updated every 3 to 5 years in order for them to remain current, relevant and defensible. The City updated their Comprehensive Master Plan in 2009 and their Comprehensive Outdoor Recreation Plan in 2011. Both of these documents updated the City's growth rate projections and populations -- both of which are key components in the derivation of impact fees. In addition, land values and projected land uses utilized in the current versions of the impact fees need updating to current values.

The revised impact fees need to reflect to what extent items listed in the various needs assessments were implemented and at what cost. In addition, there may be items in the respective needs assessments that need to be added based on the most current capital



Letter to Mr. Mark Luberda  
December 14, 2011  
Page 2

improvement plans and items that should be deleted.

Ruekert/Mielke is providing this proposal to assist the City in updating the City's Impact Fees.

Scope of Services:

Impact Fees

1. Information and Data Gathering – We will work with City Staff to obtain the following information:
  - a. Impact fees collected by year to date and the current status of projects listed in each of the respective impact fees studies. We would rely on the data prepared by the City on an annual basis according to Ordinance No. 2002-1712.
  - b. The description of any additional anticipated future projects that were not listed in the previous studies from existing studies or any updated needs assessments.
  - c. Projects contained in previous studies that were eliminated.
  - d. The actual costs of projects contained in previous studies that were implemented.
  - e. The debt schedules for all projects funded with impact fees in order to review the amount paid and the remaining principal balance.
2. Update the Recommended Impact Fees for Library Facilities, Park & Recreation, Police & Municipal Court, Fire & Rescue, Stormwater Management, Water, Sanitary and Transportation
  - a. Update the lists of recommended improvements, estimated costs and the impact fee share of costs;
    - i. For purposes of this Study, we do not anticipate preparing new Needs Assessments for the various impact fees. – only updating the existing Needs Assessments based upon information provided by City Staff
  - b. Update population projections, land uses and land values to current values so that consistent data is utilized for all impact fees.



Letter to Mr. Mark Luberda

December 14, 2011

Page 3

- c. Prepare a summary of impact fees collected to date and remaining impact fee eligible costs to be recovered for each fee.
- d. Compute an updated impact fee amount for each item.
- e. Evaluate the impacts on housing affordability in the City of Franklin of imposing the recommended impact fees.
- f. Work with the Director of Administration and the City Attorney to update the City's existing Impact Fee Ordinance to comply with legislative changes that have occurred since its last update.

### 3. Report Preparation

- a. Prepare a written report amending the existing impacts fees that will meet the requirements of Wisconsin Statutes 66.0617.
- b. Submit an electronic (word format) draft report to the City for Staff review and comment.
- c. Following the Staff review and comment, the draft report will be revised as needed and 15 bound copies will be submitted to the City.

### 4. Meetings

- a. Throughout the course of the study, it is anticipated that we will attend the following meetings at City Hall:
  - i. Three meetings with City Staff plus a kickoff meeting to gather information and a meeting to review the draft report.
  - ii. Attendance at the required Public Hearing to present the recommended fees and respond to questions.

We would propose to perform the above services based on our normal hourly rates per the attached schedule of rates with an estimated cost range of \$9,500 - \$14,000 and we are prepared to begin work immediately upon authorization by the City. The Project Manager for this project will be Joe Eberle as we believe he will create cost savings because of his need to frequently be in Franklin for the Ryan Creek Project. We will maintain a minimum of \$1,000,000 of Professional Liability Insurance throughout the course of this project. We would provide the City with monthly reports as to the budget and costs and would not exceed the maximum cost without approval of the City.



Ruekert·Mielke

engineering solutions for a working world

Letter to Mr. Mark Luberda

December 14, 2011

Page 4

Please contact me if you should have any questions.

Very truly yours,

RUEKERT/MIELKE

William J. Mielke, P.E., R.L.S.  
President, CEO

WJM:lfc

Attachment

cc: Cal Patterson, Director of Finance and Treasurer  
Jesse A. Wesolowski, City Attorney  
Joseph W. Eberle, P.E., Ruekert/Mielke  
File



HOURLY RATES

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Engineer 9	\$195.00
Engineer 7	\$165.00
Engineer 2	\$ 84.00
Senior Economic Consultant	\$145.00
Administrative Assistant	\$ 57.00

CONTRACT-  
GEOGRAPHIC  
MARKETING  
ADVANTAGE, LLC

G.13. Alderman Olson moved to authorize the Director of Administration to execute a 2012 contract with Geographic Marketing Advantage, LLC for Geographic Information System Support and Database Maintenance Services in a form substantially equivalent to the 2011 contract but incorporating 2012 budget limits, a .5% rate increase effective January 1, 2012, and substituting the necessary language to allow the contract to continue on a month-to-month basis after the term of the year as noted above. Seconded by Alderman Solomon. All voted Aye; motion carried.

IMPACT FEE DATA

G.14. Alderman Solomon moved to receive and file the report on Impact Fee Fund balance level. Seconded by Alderman Taylor. All voted Aye; motion carried.

\* →

Alderman Solomon then moved to direct the Director of Administration to execute a proposal with Ruekert-Mielke, for review and analysis of impact fee data and circumstances and preparation of or updating of needs analysis, rate calculations, and a report on such matters for an amount not-to-exceed \$14,000, with an additional authorization to the Director of Administration not to exceed \$2,100. Seconded by Alderman Taylor. All voted Aye; motion carried.

DIRECTOR OF  
FINANCE AND  
TREASURER

G.15. At 9:02 p.m., Mayor Taylor passed the gavel to Council President Taylor, who then chaired the meeting. The gavel was returned to Mayor Taylor at 9:15 p.m., who returned to chairing the meeting. Alderman Schmidt moved to authorize the action steps set forth in the memo from the Director of Administration of 12/15/2011, including restructuring the management of the Finance Department and advertising for a Finance Director. Seconded by Alderman Skowronski. At 9:34 p.m., Mayor Taylor passed the gavel to Council President Taylor, who then chaired the meeting. The gavel was returned to Mayor Taylor at 9:45 p.m., who returned to chairing the meeting. Alderman Wilhelm called for the question. Seconded by Alderman Taylor. All voted Aye; motion carried. On roll call for the main motion, Aldermen Skowronski, Schmidt and Solomon voted Aye; Aldermen Taylor, Wilhelm and Olson voted No. Mayor Taylor broke the tie by voting Aye; motion carried.

EMPLOYMENT  
AGREEMENT

G.16. Alderman Solomon moved to authorize the Mayor to execute the "Amendment to the Employment Agreement (6/27/11) with Calvin Patterson." Seconded by Alderman Skowronski. On roll call, Aldermen Solomon, Schmidt and Skowronski voted Aye; Aldermen Olson, Wilhelm and Taylor voted No. Mayor Taylor broke the tie by voting Aye; motion carried.

<p><b>APPROVAL</b></p> <p><i>Slw</i> <i>mmw</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>12/17/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p>An Ordinance to Amend Ordinance 2012-2096 (An Ordinance Adopting the 2013 Budgets and Tax Levy for the City of Franklin), as Amended, to Modify the Budget of the Development-Impact Fee Fund Adding \$9,000 to the "Other Professional Services" Line Item, Funded from Existing Administrative Fees for the Modification of the Professional Services Agreement with Ruekert-Mielke for an Impact Fee Update which Incorporates an Additional Project Contingency for the Final Completion of the Project</p>	<p><b>ITEM NUMBER</b></p> <p>G. 8.</p>

Per the preceding Council Action pertaining to the modification of the 2013 Professional Services Agreement with Ruekert-Mielke for a review and update to impact fees, a budget modification is required for the additional current Ruekert-Mielke project charges, the additional anticipated \$2,000 in additional work by Ruekert-Mielke to complete the full project, and an additional \$1,783 in contingency.

Attached is an ordinance requesting a budget modification adding \$9,000 to be paid from the "Other Professional Services" line item of the Development-Impact Fee Fund for the above stated purpose. The added work is fully funded by the Administrative Fee related to Impact Fees.

**COUNCIL ACTION REQUESTED**

Motion to approve Ordinance No. 2013-\_\_\_\_\_ "An Ordinance to Amend Ordinance 2012-2096 (An Ordinance Adopting the 2013 Budgets and Tax Levy for the City of Franklin), as Amended, to Modify the Budget of the Development-Impact Fee Fund Adding \$9,000 to the "Other Professional Services" Line Item, Funded from Existing Administrative Fees for the Modification of the Professional Services Agreement with Ruekert-Mielke for an Impact Fee Update which Incorporates an Additional Project Contingency for the Final Completion of the Project."

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE TO AMEND ORDINANCE 2012-2096 (AN ORDINANCE ADOPTING THE 2013 BUDGETS AND TAX LEVY FOR THE CITY OF FRANKLIN), AS AMENDED, TO MODIFY THE BUDGET OF THE DEVELOPMENT-IMPACT FEE FUND ADDING \$9,000 TO THE "OTHER PROFESSIONAL SERVICES" LINE ITEM, FUNDED FROM EXISTING ADMINISTRATIVE FEES FOR THE MODIFICATION OF THE PROFESSIONAL SERVICES AGREEMENT WITH RUEKERT-MIELKE FOR AN IMPACT FEE UPDATE WHICH INCORPORATES AN ADDITIONAL PROJECT CONTINGENCY FOR THE FINAL COMPLETION OF THE PROJECT

---

WHEREAS, the Common Council previously approved a professional services agreement with Ruekert-Mielke to review impact fees and prepare an update of the needs analysis and rate calculations with a not-to-exceed amount of \$14,000 with an additional \$2,100 authorized to cover potential out-of-scope demands and reimbursable expenses; and

WHEREAS, current project costs have exceeded the current authorized amount of the services agreement with Ruekert-Mielke for a review and update to impact fees due to added work, modified project inputs, and required delays; and

WHEREAS, Ruekert-Mielke anticipates approximately \$2,000 of additional work before the full project is completed; and

WHEREAS, a compromise proposal has been reached between Ruekert-Mielke and the City of Franklin that fairly balances the exceeded costs of the services agreement for a review and update to impact fees which compromise eliminated \$6,700 in billed charges; and

WHEREAS, the City believes the end results of the review and update to impact fees study by Ruekert-Mielke have been successful so far and that it is in the City's best interest for the final portion of the project to be completed so that all of the remaining impact fees can get their required update; and

WHEREAS, a modification of the professional services agreement with Ruekert-Mielke for a review and update to impact fees increasing the not-to-exceed amount to \$23,367, which incorporates Ruekert-Mielke's current charges with an additional project contingency authorization to the Director of Administration not to exceed \$1,783 requires a budget modification of \$9,000 to the "Other Professional Services" line item of the Development-Impact Fee Fund; and

NOW, THEREFORE, be it resolved by the Common Council that Ordinance 2012-2096 (an Ordinance adopting the 2013 budgets and tax levy for the City of Franklin), as amended, be further amended to modify the budget of the Development-Impact Fee Fund adding \$9,000 to the "Other Professional Services" line item, funded from existing Administrative Fees for the modification of the professional services agreement with Ruekert-Mielke for an impact fee update, increasing the not-to-exceed cost to \$23,367 which incorporates an additional project contingency authorization to the Director of Administration not-to-exceed \$1,783 for the final completion of the project.

Introduced at a regular meeting of the Common Council of the City of Franklin this 17th day of December, 2013.

Passed and adopted by the Common Council of the City of Franklin this 17th day of December, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, Director of Clerk Services

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

<p><b>APPROVAL</b></p> <p><i>Slw</i></p>	<p><b>REQUEST FOR</b></p> <p><b>COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>December 17, 2013</b></p>
<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p>A Resolution Authorizing Certain Officials to Execute an Agreement to Continue Professional Environmental Engineering Services to Monitor Compliance at the Metro Recycling &amp; Disposal Facility to December 31, 2014, with JSA Civil Environmental Engineers, Inc.</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.9.</i></p>

JSA Civil Environmental Engineers, Inc. has been providing landfill monitoring services at the Metro landfill for the past 9 years. The last annual contract expires December 31, 2013. Attached is a draft contract to renew the terms of the 2013 agreement for 2014 (mileage charge cost is the same as for 2013; hourly rates remain the same and JSA states that those hourly rates have not changed since 2008) and a resolution authorizing same. Waste Management of Wisconsin, Inc. is obligated to provide reimbursement for the contract cost pursuant to Article IV.24.B. of the WWMI Metro Landfill Facility Greenspace Protection and Limited Landfill Expansion Agreement dated August 16, 2010. The contract price is a cost not to exceed \$20,000.00, as adjusted by the consumer price index as set forth in the Agreement.

**COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Authorizing Certain Officials to Execute an Agreement to Continue Professional Environmental Engineering Services to Monitor Compliance at the Metro Recycling & Disposal Facility to December 31, 2014, with JSA Civil Environmental Engineers, Inc.



**CIVIL ENVIRONMENTAL ENGINEERS**

325 West Vine Street / Milwaukee, WI 53212-3606 / 414-263-2122

December 6, 2013

Project No: 1036.10066

Jesse Wesolowski, Esq

Attorney to the City of Franklin

11402 W. Church Street

Franklin, Wisconsin 53132

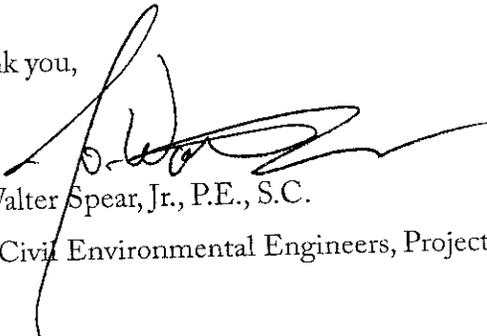
Re: 2013 JSA Civil Environmental Engineers' Professional Services for the City of Franklin

Dear Jesse;

We, JSA Civil Environmental Engineers (JSA), would like to continue to offer our Professional Services to the City of Franklin. We consider the City of Franklin to be a Legacy Client and offer rates and terms that we have maintained since 2008. These rates and conditions are attached.

Also attached, please find our "Scope of Professional Services". JSA currently audits the WMWI Metro Facility twice per month and reports directly to the Waste Facility Monitoring Committee, and its Chair ;Marvin Wolff. The product of the audits, a final report, is placed on the web at <http://jsacivil.com/pages/audit/franklin.html>. I, and my staff, greatly appreciate the experience and the continued opportunity to serve the City of Franklin. If you, or the City of Franklin, have any questions or comments regarding our current or future services, please do not hesitate to contact me.

Thank you,

  
Jo-Walter Spear, Jr., P.E., S.C.

JSA Civil Environmental Engineers, Project Manager and President

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

**This Standard Agreement for Services (the "AGREEMENT") is between JSA Civil Environmental Engineers, Inc., a Subchapter S Corporation, organized pursuant to Wisconsin Law, (CONSULTANT) and the City of Franklin, a municipal corporation organized pursuant to Wisconsin Law (CLIENT).**

## ARTICLE . SCOPE OF SERVICES

The CONSULTANT shall provide consulting services (the "Services") as described in Attachment A. An initial draft of the Auditor's Manual shall be provided to the Metro Recycling & Disposal Facility Monitoring Committee by CONSULTANT within 7 (all days shall be calendar days) days of the date of notice and authorization to CONSULTANT to proceed. CONSULTANT shall further respond to any Committee requirements upon such Auditor's Manual within 7 days of receipt. Odor monitoring Services shall commence within 7 days of the Monitoring Committee's approval of the Auditor's Manual. Notwithstanding anything to the contrary set forth in Attachment A, all auditing reports shall additionally be provided by CONSULTANT to the Monitoring Committee; reports to the City of Franklin shall be to the City Clerk; and all reports prepared in the ordinary course of business shall be delivered electronically, except for quarterly reports, which shall be delivered in paper form to the Monitoring Committee and the City Clerk. Electronic transmissions of all reports shall be made by CONSULTANT within 24 hours of the completions of such reports. Initial odor complaint mapping shall be completed by CONSULTANT concurrent with the completion of the Auditor's Manual. Hours budgeted for operations and construction auditing within Attachment A include and are sufficient to allow for the provision of professional advice by CONSULTANT upon the request of CLIENT, as to available remedies or available remedial action, which may be necessary to cure any occurrences or conditions disclosed upon audit.

## ARTICLE 2. COMPENSATION

Compensation to be paid by CLIENT to the CONSULTANT is described in Attachment A. Notwithstanding anything to the contrary set forth in Attachment A, CONSULTANT shall provide those Services and those Service hours per Task for such total compensation and expenses as shall not exceed those "TOTAL" amounts as are specifically allocated to such Tasks, respectively, in Attachment A. Such TOTAL amounts include all costs for labor, overhead, G&A, benefits, taxes, profit and all actual reasonable expenses, which shall be in such amounts and as set forth upon the "Standard Rates and Conditions" schedule contained within Attachment A. Total compensation and expenses for all landfill operations auditing Services (including odor monitoring) to be provided annually, commencing January 1, 2014, shall not exceed \$20,000.00, as adjusted by the consumer price index as set forth in the WMWI Metro Landfill Facility Greenspace Protection and Limited Landfill Expansion Agreement dated August 16, 2010, at Article IV.24.B.

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

## ARTICLE 3. TERMS OF PAYMENT

Payment by CLIENT to CONSULTANT shall be monthly, based on the invoicing provided by CONSULTANT.

### A. INVOICING

The CONSULTANT shall submit itemized invoices to CLIENT for progress payments once each month during the progress of the Services. Such invoices will represent the value of the completed Services, and will be prepared in such form and supported by documentation as CLIENT may reasonably require.

### B. PAYMENTS

CLIENT will review and approve invoices for payment. CLIENT will make payment to the CONSULTANT within thirty (30) days after receipt of the invoice. Progress payments to CONSULTANT will not constitute acceptance of the Services.

### C. LIENS

CONSULTANT will promptly pay for all services, labor, material, and equipment used or employed in the Services, and will maintain all materials, equipment, structures, buildings, premises, and other subject matter hereof free and clear of mechanic's or other liens.

## ARTICLE 4. OBLIGATION OF CONSULTANT

### A. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and will maintain complete control of and responsibility for its employees, subcontractors, and agents. The CONSULTANT shall also be solely responsible for the means and methods for carrying out the Services.

### B. REPORTING

CONSULTANT shall, if requested by CLIENT, submit with its monthly invoice, progress reports, in a form acceptable to CLIENT.

### C. PERFORMANCE

The standard of care applicable to CONSULTANT Services will be the degree of skill and diligence normally employed by others performing the same or similar Services and that of a professional engineer in Southeastern Wisconsin. The CONSULTANT will reperform any Services not meeting this standard without additional compensation.

### D. WORKING FILES

CONSULTANT will maintain files containing all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this AGREEMENT. CONSULTANT will provide copies of the information contained in its working files to CLIENT upon request of CLIENT and at the CLIENT'S cost. All copies of information and data given to CONSULTANT by CLIENT or generated by CONSULTANT in performance of the Services will be delivered by the CONSULTANT to CLIENT upon termination of the AGREEMENT. CONSULTANT may retain one copy of any documentation pertaining to the Services performed after the termination of this AGREEMENT.

### E. HOLD HARMLESS

CONSULTANT shall and hereby agrees to indemnify, defend, hold harmless and release CLIENT

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

(including its directors, officers, employees, representatives and agents) for any and all losses, demands, damages, claims, costs and expenses (including reasonable attorney's fees and costs) relating to or resulting from bodily injury or death, and for damage to property during or related to the Services under this AGREEMENT; provided, however, this release shall not be effective as to the extent that any such bodily injury or death or damage to property resulted from gross negligence or willful misconduct of CLIENT.

## F. CODES, LAWS, AND REGULATIONS

CONSULTANT will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this AGREEMENT. CLIENT shall provide copies of local ordinances and agreements pertaining to the site to CONSULTANT.

## G. PERMITS, LICENSES, AND FEES

CONSULTANT will obtain and pay for all permits and licenses required by law that are associated with the CONSULTANT'S performance of the Services and will give all necessary notices.

## H. INSURANCE

CONSULTANT shall, during the term of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier acceptable to CLIENT in amounts equal to the minimum limits set forth below

A. Limit of General/Commercial Liability	\$1,000,000.00
B. Automobile Liability; Bodily Injury/Property Damage	\$1,000,000.00
C. Worker's Compensation and Employer's Liability	Statutory
D. Professional Liability	\$1,000,000.00

Certificates of insurance evidencing the above shall be delivered to CLIENT on request and shall provide that such coverages may not be canceled or amended without 30 day prior notice to CLIENT and naming CLIENT as an additional insured for General Liability.

## I. ACCESS TO RECORDS

The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Unless otherwise provided in a Task Order said records will be available for examination by CLIENT during CONSULTANT'S normal business hours for a period of three (3) years after CONSULTANT'S final invoice to the extent required to verify the costs incurred hereunder.

## J. SUSPENSION OF WORK

The CONSULTANT will, upon written notice from CLIENT, suspend, delay or interrupt all or a part of the Services. In such event, CONSULTANT will resume the Services upon written notice from CLIENT, and an appropriate extension of time will be mutually agreed upon and added to CONSULTANT'S time of performance. CLIENT will reimburse CONSULTANT for reasonable termination and start up costs should work be suspended, interrupted or delayed unless due to the wrongful act or omission of CONSULTANT under this AGREEMENT or its duties of skill and diligence.

## K. WORKING RELATIONSHIP BETWEEN WASTE MANAGEMENT OF WISCONSIN, Inc., J Spear Associates, Inc. AND THE CITY OF FRANKLIN

During the term of this AGREEMENT no CONSULTANT employee or subconsultant working under this AGREEMENT shall knowingly perform any work for Waste Management of Wisconsin, Inc. or any of its subsidiaries. No CONSULTANT employee or subconsultant who has done work for Waste Management of Wisconsin, Inc. within two years of this AGREEMENT shall be

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

assigned to work under this AGREEMENT.

## **L. CONFLICT OF INTEREST**

CONSULTANT warrants that neither it nor any of its affiliates, their officers, employees or agents, have 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, their officers, employees or agents, will acquire directly or indirectly any such interest. CONSULTANT warrants that it will immediately notify CLIENT if any actual or potential conflict of interest arises or becomes known to CONSULTANT. Upon receipt of such notification, review and written approval is required from CLIENT for the CONSULTANT to continue to perform work under this AGREEMENT.

## **M. CONSULTANT'S PERSONNEL AT THE SUBJECT SITE**

The presence of duties of CONSULTANT'S personnel at the subject site, whether as onsite representatives or otherwise, do not make CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or contractors, or other entities, and do not relieve the contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction/operation methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of work in accordance with the Contract Documents and any health and safety precautions required by such activities. CONSULTANT and its personnel have no authority to exercise control over any contractor or other entity or their employees in connection with their work or any health and safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health and safety deficiencies of the contractor or other entity or any other persons at the site other than CONSULTANT'S own personnel.

The presence of CONSULTANT'S personnel at the subject site is for the purpose of providing CLIENT a greater degree of confidence that the complete work will conform to the applicable siting agreements and local and state laws, rules, codes, orders, and ordinances and that the integrity of the terms as reflected in the applicable siting agreements and local and state laws, rules, codes, orders, and ordinances have been implemented and preserved by the contractors. CONSULTANT neither guarantees the performance of the contractors nor assumes responsibility for contractor's failure to perform their work in accordance with the applicable siting agreements and local and state laws, rules, codes, orders, and ordinances.

## **ARTICLE 5. OBLIGATIONS OF CLIENT**

### **A. TIMELY REVIEW**

CLIENT will examine the CONSULTANT'S studies, reports, proposals, and other related documents and render decisions required by CONSULTANT a timely manner.

### **B. PROMPT NOTICE**

CLIENT will give written notice to CONSULTANT whenever CLIENT observes or becomes aware of any development that affects the scope or timing of CONSULTANT Services, or any defect in the work of the CONSULTANT.

### **C. CHANGES**

CLIENT may, by written order only, make changes, revisions, additions, or deletions (collectively

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

hereinafter called "changes") in the Services. CONSULTANT will immediately, upon knowledge of any potential changes (including actions, inactions, and written or oral communications) that do not conform to the authorized method of directing changes specified herein, notify CLIENT of such changes and will request written disposition. The CONSULTANT will not proceed with any changes unless notified to proceed in writing by CLIENT. Nothing herein will be construed as relieving the CONSULTANT of its obligations to perform, including without limitation, the failure of the parties to agree upon the CONSULTANT entitlement to, or the amount of, any adjustment in time or compensation. Any claim by the CONSULTANT for an adjustment under this paragraph must be preceded by CONSULTANT'S written notice to CLIENT prior to performing any work or changes that such work or changes will require additional payment to that contemplated by this AGREEMENT. If the Services are reduced by changes, such action will not constitute a claim for damages based on loss of anticipated profits.

## D. AUTHORITY OF CLIENT

The authority and responsibility of CLIENT are limited to the provisions set forth in this AGREEMENT.

## ARTICLE 6. GENERAL LEGAL PROVISIONS

### A. PROPRIETARY INFORMATION

All prices, rates, designs, reports, data, services, specifications, and other information related to the Services contain and comprise proprietary and company confidential information of CLIENT, and potentially other teaming partners. Except for the purpose hereof, CONSULTANT shall not publish or disclose to any third party or make use of such information during or at any time following the expiration or earlier termination hereof except if such disclosure is required by CLIENT, order of a court of competent jurisdiction, or otherwise required by applicable law.

### B. ASSIGNMENTS

Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this AGREEMENT, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire AGREEMENT are binding on the heirs, successors, and assigns of the parties hereto.

### C. WAIVERS

No waiver by either party of any default by the other party in the performance of any provision of this AGREEMENT will operate as, or be construed as, a waiver of any future default, whether like or different in character.

### D. FORCE MAJEURE

Neither party to this AGREEMENT will be liable to the other party for delays in performing the Services, or for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, and acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any cause beyond the reasonable control or contemplation of either party.

### E. AUTHORIZATION TO PROCEED

Verbal authorization by CLIENT, followed by confirming letter to CONSULTANT will be authorization for CONSULTANT to proceed with the Services.

### F. NO THIRD PARTY BENEFICIARIES

This AGREEMENT gives no rights or benefits to anyone other than the CONSULTANT and

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

CLIENT and has no third party beneficiaries.

## G. JURISDICTION

The laws of the State of Wisconsin shall govern the validity of this AGREEMENT its interpretation and performance, and any other claims related to it. The venue for any dispute shall be the Circuit Court for Milwaukee County. The prevailing party in any such litigation shall be entitled to be awarded its reasonable attorney's fees.

## H. SEVERABILITY AND SURVIVAL

If any of the Provisions contained in this AGREEMENT are held invalid, illegal, or unenforceable the unenforceability of the other remaining provisions shall not be impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this AGREEMENT for any cause.

## I. TERMINATION

### (1) TERMINATION FOR CONVENIENCE

CLIENT, for its convenience, may, effective forthwith upon any notice, terminate all or part of this AGREEMENT. In such event the CONSULTANT will be entitled to compensation for the Services competently performed up to the date of termination. The CONSULTANT will not be entitled to compensation for profit on the Services not performed.

### (2) TERMINATION FOR DEFAULT

CLIENT may, by written notice, terminate the whole or any part of the AGREEMENT for default in the event that the CONSULTANT fails to perform any of the provisions of this AGREEMENT, or fails to make progress as to endanger performance of the AGREEMENT in accordance with its terms, or, in the opinion of CLIENT, becomes financially or legally incapable of completing the Services and does not correct such to CLIENT'S reasonable satisfaction within a period of seven (7) working days after receipt of notice from CLIENT specifying such failure.

If after notice of termination, it is determined for any reason that the CONSULTANT was not in default or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to TERMINATION FOR CONVENIENCE.

In the event of termination for default, the CONSULTANT will not be entitled to termination expenses. Regardless of the cause of termination the CONSULTANT shall deliver legible copies of all completed or partially completed work products and instruments of service including, but not limited to laboratory, field or other notes log book pages, terminal data, computations and designs.

The rights and remedies of CLIENT provided in this Article will not be exclusive and are in addition to any other rights and remedies provided by law or equity or under this AGREEMENT.

## J. DELAYS AND EXTENSION OF TIME

If the CONSULTANT is delayed in the progress of the Services by any act or neglect of CLIENT or by any separate teaming partner, or by strikes, lockouts, fire, unusual weather conditions, or unavoidable casualties, the CONSULTANT will, within twenty-four (24) hours of the start of the occurrence give notice to CLIENT of the cause of the potential delay and estimate the possible

# STANDARD AGREEMENT FOR SERVICES TO MONITOR COMPLIANCE AT METRO RECYCLING AND DISPOSAL FACILITY DURING OPERATIONS AND CONSTRUCTION

time extension involved. Due to the time sensitive nature of the Services bring provided by CONSULTANT any extension or delays in CONSULTANT'S performance must be negotiated by the parties such that CLIENT can still meet deadlines which are established by entities that are not parties to this AGREEMENT. No extension of time will be granted to the CONSULTANT for delays occurring to parts of the Services that have no measurable impact on the completion of the Services under this AGREEMENT. No extension of time will be considered for weather conditions normal to the area in which the Services are being performed. Unusual weather conditions if determined by CLIENT to be of a severity that would stop all progress may be considered as cause for an extension of completion time. Delays in delivery of equipment or material purchased by the CONSULTANT or its subcontractors will not be considered as a just cause for delay. The CONSULTANT will be fully responsible for the timely ordering, scheduling, expediting, and/or delivery of all equipment, materials, and personnel.

## K. TERM OF AGREEMENT

The AGREEMENT shall extend to and expire upon December 31, 2014. This term may be extended by mutual consent of both parties.

## ARTICLE 7. NOTICES

For the purposes of this agreement, notices will be by United States Mail to:

For the CLIENT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the CONSULTANT:

JSA Civil Environmental Engineers, Inc.  
325 W. Vine Street  
Milwaukee, WI 53212  
ATTN: Jo-Walter Spear, Jr., P.E.

## ARTICLE 8. SIGNATURES AND ATTACHMENTS

A. The following attachments are made part of this AGREEMENT: Attachment A.

B. This AGREEMENT executed in duplicate original, represents the entire AGREEMENT between the parties, supersedes all prior agreements and understandings and may be changed only a written amendment executed by both parties:

Approved for JSA Civil Environmental Engineers, Inc.

Accepted for \_\_\_\_\_

By \_\_\_\_\_

By: \_\_\_\_\_

Name: Jo-Walter Spear, Jr., P.E.

Name: \_\_\_\_\_

**STANDARD AGREEMENT FOR SERVICES TO MONITOR  
COMPLIANCE AT METRO RECYCLING AND DISPOSAL  
FACILITY DURING OPERATIONS AND CONSTRUCTION**

Title: Project Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# **JSA Civil Environmental Engineers, Inc. (JSA) Scope of Professional Engineering Services to The City of Franklin, WI**

## **LANDFILL OPERATIONS AUDITING**

The scope of services has been broken down into the following tasks:

### **Task 1 Auditor's Manual**

The auditor's manual is reviewed and updated, annually. The budget for this task assumes one hour to review and update the manual.

**Deliverables:** Auditors Manual

### **Task 2 Operations and Construction Audit**

JSA auditors will perform audits of landfill operations and any construction activities occurring during the audit. The audit of operations will include, but not be limited to, observation of waste receipt; weigh-in, placement and compaction of wastes; the application of cover materials and cover integrity; odor monitoring (on-site and off-site); leachate management, including leachate recirculation, evaporation, and disposal; landfill gas recovery system operations; flare stability and consistency; vegetation observations for signs of landfill gas or leachate stress; and other necessary operations for the facility. To maximize the efficiency of the audits, JSA has prepared an audit form that encompasses regulatory, permit, and contractual requirements, as well as other standards of practice in the solid waste industry. JSA has used this form, or one similar to it, at other facilities. JSA will provide the City of Franklin, Metro Waste Disposal and Recycling Monitoring Committee (Committee) and Metro Waste Disposal and Recycling Facility(Metro) with an audit report following each site visit. Particular attention will be paid to activities and procedures that do not conform the contract between Metro and the City of Franklin (City). We will provide our findings and recommendations to the Committee in writing.

Inspection of operations will be conducted during each site visit, as appropriate. Construction continues at a landfill after the major actions of building new cells. The addition of a new landfill gas recovery well, placement of incremental cap areas, erosion damage repairs and other construction activities will be observed if they are in process during the audit.

Our team has extensive experience in all aspects of landfill construction and operation and will draw upon our Project Manager's experience with landfill construction and operations, with the support of our Principal, who has over 30 years of landfill construction and operations experience. We will use our experience to anticipate problems and to keep the City fully informed of the project status.

Our budget for this task is based on the assumption that one team member will spend 3 to 4 hours at the site each week, with senior review of the audit reports.

During periods of intense or complex construction, the audits may consume more time than anticipated above. Our experience in other audit situations is that there are opportunities to manage the total budget to prevent budget over runs at the project level.

**Deliverables:** Copy of landfill operations audit report following each site visit, including a copy of the landfill construction audit report for construction activity occurring during the audit; Year End Report

### **Task 3 Odor Monitoring**

JSA will conduct Odor Monitoring before and during every audit event at the Metro site. A course about the landfill has been defined for the limits of odor monitoring and the results of each event are recorded upon a map that is included in the Audit report. JSA also maintains an online database of all odors reported and their geographic location about the Metro site.

**Deliverables:** Copy of the Odor Monitoring Map with every Audit Report, provide and maintain online database of odor complaints.

### **Task 4 Environmental Monitoring and Data Analysis**

At the direction of the City or the Committee, JSA will review and evaluate groundwater quality and surface water quality data, groundwater elevation data, leachate quality data; and landfill gas data provided by Metro to the City or the Wisconsin Department of Natural Resources (WDNR). This evaluation will include both a general trend analysis and a trend analysis that relates to the background data.

If our team identifies significant changes or anomalies in the groundwater or surface water data, we will evaluate the impact of the landfill on those changes and notify the City. At the request of the City, we will identify appropriate mitigation actions and present these actions in a technical memorandum for the City's review.

**Deliverables:** Quarterly and Annual review of Metro's analysis of groundwater and surface water

quality and an assessment of the numerical results; a memorandum summarizing the observation during a quarterly groundwater and surface water monitoring event; quarterly and annual review of Metro's sampling and analysis of landfill gas and an assessment of the numerical results; and a memorandum summarizing the observation during a landfill gas monitoring event.

### **Task 5 Facility Closure and Post-Closure Care Monitoring**

At the direction of the City, JSA will make independent annual determinations of the funding level (+30% or -50%) necessary to close the landfill and to monitor and maintain it for a period of 30-years following closure. This level will be compared to the current balance of the facility closure, monitoring, and maintenance funds or current calculations of that fund, by Metro. We will provide a written assessment to the City indicating whether sufficient funds have been set aside.

**Deliverable:** Annual written report assessing funding requirements for closure and post-closure monitoring.

### **Task 6 Attendance at Landfill Committee Meetings**

JSA will attend the Committee Meetings in order to address questions from members of the committee. Typically, the Auditor and/or an engineer will attend the meeting, based on our understanding of committee concerns. We request to be placed on the agenda early in the meeting and will attend for a period of one hour at no cost to the City. If we are requested to remain after the hour, the City will be billed for the time at the regular hourly rate of our attendees. The budget for this task assumes that we will spend no more than one hour at the meetings.

**Deliverable:** Documentation as requested by the committee at prior meetings, if any.

### **Task 7 Additional Services as Requested**

JSA is prepared to perform a variety of tasks for the duration of the contract period not specifically addressed in the scope of services. Our experience suggests that the flexibility offered by this arrangement will be extremely valuable to the City. Because of the variety of situations that are encountered in the course of landfill construction and operation, there are services that may be requested that can not be envisioned at the time the scope of services is written. The following list is not a proposal for additional services, but a short lists of examples of services we have been asked to provide during an audit contract that were not envisioned in the contract:

- Consultation regarding storm water and erosion control when problems occur,
- Consultation regarding alternative daily cover,
- Consultation regarding the Operator's plans to meet new regulations including air quality, gas management, and NPDES regulations,
- Consultation regarding Operator proposals to change environmental monitoring plans,
- Solid waste market assessment and consultation,
- Consultation on the effectiveness and selection of landfill deodorants,
- Consultation on and the preparation of comments regarding legislation or regulation that effects landfill operation or impacts the agreement between the community and the landfill

**Deliverable:** Deliverable and level-of-effort for activities under this Task will be developed on a case by case basis as requested by the City.



**CIVIL ENVIRONMENTAL ENGINEERS**

325 West Vine Street / Milwaukee, WI 53212-3606 / 414-263-2122

## Standard Rates and Conditions

### For Legacy Clients

2014

<u>Title</u>	<u>Rate</u>
Principal	\$120.00
Project Manager	\$ 85.00
Administration	\$ 50.00
Engineering Technician	\$ 50.00

Mileage is billed at \$ 0.63 per mile and travel is billed at one-half the traveler's hourly rate. Copies are billed at \$ 0.10 per page for letters, memoranda, reports, etc. Drawings are billed at \$ 0.75 per square foot of drawing for black and white and \$ 8.00 per square foot for color. All other direct expenses are itemized on our invoice. Invoicing will include any disposable supplies or special equipment, as applicable. Clients will be provided with a secure Intranet page, for the receipt and maintenance of deliverables and other documents. Our secure intranet page is also available for collaborative document development and review. A 10 % surcharge will be applied to all expenses to cover administration and management. Each client invoice is assessed a \$50.00 Administrative Services Fee to recover accounting and billing costs.

JSA Civil Environmental Engineers charges time on the basis of the nearest ½ hour for engineers and planners and the nearest ¼ hour for graphics, CAD, and Administrative personnel. Invoicing is done at least once each month, either around the middle of the month or the end of the month, based on client preference. Invoices will be submitted within ten (10) days of the close of the billing period and are payable upon receipt. Should invoices be issued outside of this schedule, they are due and payable upon receipt. JSA reserves the right to assess late charges of 5.0% of the principal per month against all invoices not paid within 60 days of issuance. In addition, work on the project by JSA may be suspended and data, reports and/or other products withheld, should invoices not be paid within 45 days. Invoices are due and payable upon receipt. Invoices paid within fifteen (15) days of issuance are eligible for a 2.5% discount, which maybe taken by the client when making payment.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

RESOLUTION NO. 2013-\_\_\_\_

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO EXECUTE AN AGREEMENT TO CONTINUE PROFESSIONAL ENVIRONMENTAL ENGINEERING SERVICES TO MONITOR COMPLIANCE AT THE METRO RECYCLING & DISPOSAL FACILITY TO DECEMBER 31, 2014, WITH JSA CIVIL ENVIRONMENTAL ENGINEERS, INC.

---

WHEREAS, JSA Civil Environmental Engineers, Inc. having proposed to provide continued services as previously approved by the Common Council for the monitoring of the Metro Recycling & Disposal Facility landfill operations, for compliance with applicable state and local laws, codes, rules, orders and ordinances and siting agreements, to the end of the year 2014, the cost of such services being reimbursable to the City pursuant to Article IV.B. of the WMWI Metro Landfill Facility Greenspace Protection and Limited Landfill Expansion Agreement; and

WHEREAS, the Common Council having considered such proposal and the resources currently available to obtain such monitoring services, and the benefit to the Community from the provision of such services and having found such proposal to be reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the agreement for Professional Environmental Engineering Services to Monitor Compliance at Metro Recycling & Disposal Facility landfill, with JSA Civil Environmental Engineers, Inc., as previously extended by the Common Council to December 31, 2013, be further extended to December 31, 2014, to provide services limited to bi-monthly audits, reports thereon and government meeting attendance limited to one hour each meeting, and such prior contract terms as may be applicable thereto, at cost not to exceed \$20,000.00, as adjusted by the consumer price index as set forth in the WMWI Metro Landfill Facility Greenspace Protection and Limited Landfill Expansion Agreement dated August 16, 2010, at Article IV.24.B., and all in such form and content as annexed hereto, be and the same is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and the same are hereby authorized to execute and deliver such agreement.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

RESOLUTION NO. 2013-\_\_\_\_\_

Page 2

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

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

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

**BLANK PAGE**

APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE
<i>Slw</i> Reports & Recommendations	<b>SUBJECT:</b> A resolution awarding contract to the low bidder, Musson Brothers, Inc. in the amount of \$245,508.25, for the S. 36th Street Private Property Sanitary Sewer Lateral Inflow and Infiltration rehabilitation from W. Missouri Avenue to W. Madison Boulevard	12/17/2013  ITEM NO.  <i>G.10.</i>

**BACKGROUND**

Pursuant to the direction at the Common Council, staff has advertised and received bids for the S. 36th Street Private Property Sanitary Sewer Lateral Inflow and Infiltration rehabilitation from W. Missouri Avenue to W. Madison Boulevard. A total of three bids were received with Musson Brothers, Inc. being low bid at \$245,508.25.

**ANALYSIS**

The engineering estimate was \$265,000 for this phase of the project and the Milwaukee Metropolitan Sewerage District (MMSD) has, by inter-governmental agreement, agreed to reimburse the City up to \$245,508.25. This project will correct the private property laterals on 32 properties.

The project engineer, Ruekert/Mielke has reviewed the bids received and is recommending award to Musson Brothers, Inc. in the amount of \$245,508.25. Staff is in agreement with this recommendation.

**OPTIONS**

Adopt resolution

or

Table

**FISCAL NOTE**

Total cost, except for administration, will be reimbursed to the City by MMSD.

**RECOMMENDATION**

Motion to adopt Resolution No. 2013-\_\_\_\_\_, a resolution awarding contract to the low bidder, Musson Brothers, Inc. in the amount of \$245,508.25 for the S. 36th Street Private Property Sanitary Sewer Lateral Inflow and Infiltration rehabilitation from W. Missouri Avenue to W. Madison Boulevard

RJR/db

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2013 - \_\_\_\_\_

A RESOLUTION AWARDDING CONTRACT TO THE LOW BIDDER  
MUSSON BROTHERS, INC IN THE AMOUNT OF \$245,508.25  
FOR THE S. 36TH STREET  
PRIVATE PROPERTY SANITARY SEWER LATERAL  
INFLOW AND INFILTRATION REHABILITATION FROM  
W. MISSOURI AVENUE TO W. MADISON BOULEVARD

---

WHEREAS, the City of Franklin advertised and solicited bids for the S. 36th Street Private Property Sanitary Sewer Lateral Inflow and Infiltration Rehabilitation from W. Missouri Avenue to W. Madison Boulevard; and

WHEREAS, the low bidder was Musson Brothers, Inc. with a bid of \$245,508.25; 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 engineering staff and consulting engineers to award the contract to Musson Brothers, Inc. in the amount of \$245,508.25.

WHEREAS, the total cost of rehabilitation will be reimbursed by the Milwaukee Metropolitan Sewerage District as per intergovernmental agreement.

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 S. 36th Street Private Property Sanitary Sewer Lateral Inflow and Infiltration rehabilitation from W. Missouri Avenue to W. Madison Boulevard based on their low bid for a total cost of \$245,508.25 in accordance with bid specifications.

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 \_\_\_\_\_, 2013 by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

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

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

RJR/db

December 10, 2013

Mr. John M. Bennett, P. E.  
City Engineer/Director of Public Works  
City of Franklin  
9229 West Loomis Road  
Franklin, WI 53132

RE: 36<sup>th</sup> Street Private Property Sanitary Sewer Lateral I/I Rehabilitation

Dear Mr. Bennett:

Bids for the above project were opened on December 9, 2013 at 2:00 p.m. at the City of Franklin Hall chambers and were as follows:

	<u>Bidder</u>	<u>Base Bid</u>
1.	<u>Musson Bros., Inc.</u>	\$ <u>245,508.25</u>
2.	<u>United Pipe Renewal, Inc.</u>	\$ <u>282,227.00</u>
3.	<u>Performance Pipelining, Inc.</u>	\$ <u>292,905.88</u>

We reviewed the documentation submitted by the apparent low bidder and found that:

1. The Bid Form has been appropriately completed.
2. We have no objections to the low bidder, nor to the proposed major subcontractors and suppliers.
3. Low bidder has successfully completed similar projects over the last five years according to references we have contacted.

On these bases, we recommend that Musson Bros., Inc. be awarded the 36<sup>th</sup> Street Private Property Sanitary Sewer Lateral I/I Rehabilitation contract, in the amount of \$245,508.25. This amount is based on the bid unit prices and estimated quantities. Actual quantities, and therefore the final contract price, may vary. On all construction projects, and especially complex ones like this, unpredictable factors may increase the final contract amount. For this reason we recommend that the City of Franklin include a 10 percent contingency when preparing the financial plan for this work.

Our review did not include an evaluation of bidder's current financial condition nor of their permanent safety program.



**Ruekert·Mielke**

engineering solutions for a working world

Recommendation of Award  
Mr. John M. Bennett, P. E.  
City of Franklin  
December 10, 2013  
Page 2

Should you decide to accept our recommendation, we have prepared the enclosed Notice of Award for your use. After Council approval has been received, please have the appropriate official sign where indicated and forward all three signed copies of the Notice of Award to our office. We will then fill in the date at the top of page one and forward it, with contracts for execution, to the Contractor. One fully completed Notice of Award will be returned to you for your records.

Bids remain subject to acceptance until February 9, 2014, unless Bidder agrees to an extension. Please advise us of your award decision, or call if there are any questions.

Very truly yours,

RUEKERT/MIELKE

Jerad J. Wegner, P.E.  
Project Engineer

JJW:sjs

Encl: Notice of Award (3 copies)

cc: Ronald J. Romeis, P. E., City of Franklin  
Michael F. Campbell, P.E., Ruekert/Mielke  
File

APPROVAL <i>Slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 12/17/13
Reports & Recommendations	<b>SUBJECT:</b> A resolution awarding contract to the low bidder, Stark Asphalt, in the amount of \$52,595.00 for the installation of concrete sidewalk on S. 51st Street from W. Minnesota Avenue north 1,340 feet to W. Rawson Avenue	ITEM NO. <i>6.11.</i>

**BACKGROUND**

The City of Franklin received 5 bids for the S. 51st Street sidewalk extension project. This project consists of the installation of concrete sidewalk on S. 51st Street from W. Minnesota Avenue north 1,340 feet to W. Rawson Avenue. This handicap accessible sidewalk is the third of three phases which will allow residents of Clare Meadows walking access to W. Rawson Avenue, shopping opportunities, and other essential services such as a bank and a pharmacy.

**ANALYSIS**

The bids received were as follows:

Stark Asphalt	\$52,595.00
D.C. Burbach, Inc.	\$65,235.50
Milwaukee General	\$68,132.60
Zenith Tech, Inc.	\$68,350.00
Marvin Gleason Construction	\$78,791.75

The bids were reviewed by Engineering Staff and found to be correct. The Engineer's project estimate is \$73,250.00. Staff recommends award to the low bidder, Stark Asphalt, a qualified contractor, for the total base bid amount of \$52,595.00.

The project is scheduled to begin in spring 2014, with installation of the project acceptance by May 30, 2014.

**OPTIONS**

Accept bid and authorize contract

or

Reject bids

**FISCAL NOTE**

The City has received project approval for Community Development Block Grant (CDBG) funding for this project construction totaling \$80,000. The City will not need to commit funds for this phase of the project. Please note that in addition to the contract costs recommended herein, there will be some additional direct costs associated with work to be performed directly by the Department of Public Works, but the total project will remain within budget allocations.

**RECOMMENDATION**

Motion to approve Resolution No. 2013-\_\_\_\_\_, a resolution awarding contract to the low bidder, Stark Asphalt, in the amount of \$52,595.00 for the installation of concrete sidewalk on S. 51st Street from W. Minnesota Avenue north 1,340 feet to W. Rawson Avenue.

RJR/sg

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2013 - \_\_\_\_\_

A RESOLUTION AWARDED CONTRACT TO THE LOW BIDDER, STARK ASPHALT, IN THE AMOUNT OF \$52,595.00 FOR THE INSTALLATION OF CONCRETE SIDEWALK ON S. 51<sup>ST</sup> STREET FROM W. MINNESOTA AVENUE NORTH 1,340 FEET TO W. RAWSON AVENUE

---

WHEREAS, the City of Franklin advertised and solicited bids for installation of concrete sidewalk on S. 51<sup>st</sup> Street from W. Minnesota Avenue north 1,340 feet to W. Rawson Avenue; and

WHEREAS, the low bidder was Stark Asphalt with a bid of \$52,595.00; and

WHEREAS, Stark Asphalt 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 \$52,595.00 to Stark Asphalt.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, that Stark Asphalt be awarded the contract for the S. 51<sup>st</sup> Street sidewalk project from W. Minnesota Avenue north 1,340 feet to W. Rawson Avenue on their low total base bid of \$52,595.00 in accordance with bid specifications.

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

Introduced at a regular meeting of the Common Council of the City of Franklin this 17<sup>th</sup> day of December, 2013 by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 17<sup>th</sup> day of December, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

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

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

RJR/sg

APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 12/17/13
Reports & Recommendations	<b>SUBJECT:</b> A resolution authorizing officials to execute an Intergovernmental Agreement with the Milwaukee Metropolitan Sewerage District (MMSD) for the private property infiltration and inflow (PPII) elimination on S. 36th Street between W. Missouri Avenue and W. Madison Boulevard.	ITEM NO. <i>G.12.</i>

**BACKGROUND**

Pursuant to the private property infiltration and inflow (PPII) program developed and funded by the Milwaukee Metropolitan Sewerage District (MMSD), the Rawson Homes Subdivision (the oldest sanitary sewers in the City) has been identified by flow testing to have major problems with private property infiltration and inflow. The private laterals on S. 36th Street between W. Missouri Avenue and W. Madison Boulevard have been tested and 32 qualify for either lining or relay. The attached agreement is for the funding of 32 private laterals to either be relayed or having "T" liners installed.

**ANALYSIS**

The MMSD has developed an Intergovernmental Agreement for the lateral and foundation rehabilitation on S. 36th Street between W. Missouri Avenue and W. Madison Boulevard. Staff has reviewed and recommended approval of an Intergovernmental Agreement with the MMSD to fund the work at a cost of \$292,500. The work necessary on the laterals and plumbing is considered public works project and must be competitively bid.

**OPTIONS**

Approve

or

Table

**FISCAL NOTE**

All costs, except for administration, will be funded by MMSD.

**RECOMMENDATION**

Motion to adopt Resolution 2013-\_\_\_\_\_, a resolution authorizing officials to execute an Intergovernmental Agreement with the Milwaukee Metropolitan Sewerage District (MMSD) for the private property infiltration and inflow (PPII) elimination on S. 36th Street between W. Missouri Avenue and W. Madison Boulevard.

JMB/db  
Encl.

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2013 - \_\_\_\_\_

A RESOLUTION AUTHORIZING OFFICIALS TO EXECUTE  
AN INTERGOVERNMENTAL AGREEMENT  
WITH THE MILWAUKEE METROPOLITAN SEWERAGE DISTRICT (MMSD)  
FOR THE PRIVATE PROPERTY INFILTRATION AND INFLOW (PPII) ELIMINATION  
ON S. 36TH STREET BETWEEN W. MISSOURI AVENUE AND W. MADISON BOULEVARD

-----  
WHEREAS, the Milwaukee Metropolitan Sewerage District (MMSD) has developed and funded a private property infiltration and inflow (PPII) program; and

WHEREAS, the City has through flow testing identified that the Rawson Homes Subdivision has major inflow and infiltration problems; and

WHEREAS, the City has through closed circuit television dye injection has identified that major infiltration is entering the sanitary sewer system through private laterals; and

WHEREAS, the MMSD has developed an agreement where they will fund to cost to mitigate the infiltration and inflow on S. 36th Street; and

WHEREAS, the agreement provides for rehabilitation of 32 laterals; and

WHEREAS, funds are available from the MMSD PPII Program to fund this program.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin, which the Mayor and City Clerk are, authorized to execute an agreement whereby the MMSD will fund the rehabilitation of 32 laterals on S. 36th Street between W. Missouri Avenue and W. Madison Boulevard as so stated in the agreement in the amount of \$292,500.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

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

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

JMB/db

## Funding Agreement FR05

### Private Property Infiltration and Inflow Reduction Agreement

This Agreement is made between the Milwaukee Metropolitan Sewerage District (District) with its principal place of business at 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446 and the City of Franklin (Municipality), with its municipal offices at 9229 W. Loomis Road, Franklin, WI 53213.

WHEREAS, Wisconsin law, through Section 66.0301 Stats., authorizes any municipality to enter into an intergovernmental cooperation agreement with another municipality for the furnishing of services; and

WHEREAS, the District is responsible for collecting and treating wastewater from the Municipality's locally owned collection system; and

WHEREAS, the Municipality's sewers collect wastewater from lateral sewers located on private property and owned by private property owners; and

WHEREAS, during wet weather events stormwater enters lateral sewers through defective pipes and leaky joints and connections ("infiltration) and stormwater also enters lateral sewers from foundation drains, improper connections and other sources ("inflow"); and

WHEREAS, infiltration and inflow increases the amount of wastewater that the District must collect and treat; and

WHEREAS, during wet weather events infiltration and inflow ("I/I") into privately owned sewers contributes to the risk of sewer overflows; and

WHEREAS, the District wishes to fund measures to reduce I/I from private property.

Now, therefore, for the consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows:

#### 1. Date of Agreement

This Agreement becomes effective immediately upon signature by both parties and shall end when the Municipality receives final payment from the District; or when this Agreement is otherwise terminated as set forth herein.

#### 2. District Funding

The District shall reimburse the Municipality for \$292,500 in costs for the private property I/I control work described in Attachment A ("the Work"). The District funding shall be provided as a reimbursement upon submission of quarterly invoices. Beyond the financial support for the Work, the District shall have no involvement in ownership, construction, maintenance or operation of the Work. The Municipality shall identify the District as a funder in informational literature and signage.

#### 3. Procedure for Payment

The Municipality shall submit an invoice to the District for the amount to be reimbursed. Invoices may be submitted no more often than quarterly. The invoice should include a documentation of all costs to be reimbursed. Invoices from consultants shall provide the hourly

billing rates, if applicable, the hours worked by individuals, and a summary of the tasks accomplished.

Reports and invoices shall be submitted to:

Jerome Fogel, P.E.  
Senior Project Manager  
Milwaukee Metropolitan Sewerage District  
260 West Seeboth Street  
Milwaukee, WI 53204 – 1446

Final reimbursement will not be provided until the project is complete and the Deliverables have been received.

#### **4. Changes in Work and Modifications to the Agreement**

Any changes to the Work must be approved by the District, in writing, in advance. The District may not reimburse for work that is not included in Attachment A unless prior written approval from the District is obtained.

This Agreement may be modified only by a writing signed by both parties.

#### **5. Ongoing Reporting Obligation**

For a period of five years following the completion of the Work, the Municipality agrees to report to the District any problems which may arise with the completed Work. This information may be used by the District in planning future I/I reduction efforts.

#### **6. Permits, Certificates and Licenses**

The Municipality is solely responsible for ensuring compliance with all federal, state and local laws requiring permits, certificates and licenses required to implement the Work.

#### **7. Public Bidding**

The selection of professional service providers must be performed in accordance with the Municipality's ordinances and policies. All non-professional service work (i.e. construction, sewer inspection, post-construction restoration) must be procured in accordance with State of Wisconsin statutes and regulations and in accordance with the Municipality's ordinances and policies. Whenever work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request and the Municipality must provide an opinion from a licensed attorney representing the Municipality stating that the procurement is in compliance with State of Wisconsin law and Municipal ordinances.

#### **8. Responsibility for Work, Insurance and Indemnification**

The Municipality is solely responsible for planning, design, construction and maintenance of the Work, including the selection and payment of consultants, contractors, and materials. The Municipality is solely responsible for ensuring compliance with Wisconsin prevailing wage law.

The District shall not provide any insurance coverage of any kind for the Work or the Municipality.

The Municipality shall defend, indemnify and hold harmless the District and its Commissioners, employees, and agents against any and all damages, costs, liability and expense whatsoever (including attorneys fees and related disbursements) arising from or connected with the planning, design, construction, operation or maintenance of the Work.

## **9. Terminating the Agreement**

The District may terminate this Agreement at any time prior to commencement of the Work. After the Work has commenced, the District may terminate the Agreement only for good cause, such as, but not limited to, breach of agreement by the Municipality. The Municipality may terminate the Agreement at any time, but will not receive any payment from the District if the Work is not completed.

## **10. Exclusive Agreement**

This is the entire Agreement between the Municipality and the District regarding reimbursement for Work.

## **11. Severability**

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect.

## **12. Applicable Law**

This Agreement is governed by the laws of the State of Wisconsin.

## **13. Resolving Disputes**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Milwaukee County. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the dispute is not resolved within 30 days after it is referred to the mediator, either party may take the matter to court.

## **14. Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement;  
or
- three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

## **15. No Partnership**

This Agreement does not create a partnership relationship nor give the Municipality the apparent authority to make promises binding upon the District. The Municipality does not have authority to enter into contracts on the District's behalf.

## **16. Assignment**

The Municipality may not assign any rights or obligations under this Agreement without the District's prior written approval.

**17. Public Records**

The Municipality agrees to cooperate and assist the District in the production of any records in the possession of the Municipality that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law, §§19.31-19.39, Wis. Stats. The Municipality agrees to indemnify the District against any and all claims, demands, and causes of action resulting from the Municipality's failure to comply with this requirement.

**MILWAUKEE METROPOLITAN SEWERAGE  
DISTRICT**

**CITY OF FRANKLIN**

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

By: \_\_\_\_\_  
Thomas M. Taylor  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Clerk:

\_\_\_\_\_  
Attorney for the District

\_\_\_\_\_  
Sandi Wesolowski

## Attachment A

### WORK PLAN 36<sup>th</sup> STREET FROM MADISON BOULEVARD TO MISSOURI AVENUE LATERAL REHABILITATION CITY OF FRANKLIN

1. Cover Letter

2. Background Information

In Spring of 2013, the City of Franklin as part of its Investigative Work Plan, performed water injection and closed circuit television in the private sanitary laterals for 32 properties on 36th Street North of Madison Boulevard. This work was completed by the Visu-Sewer. External property inspections were also performed to investigate drainage and grading issues. These external inspections were completed by Ruekert/Mielke Inc.

Of the 32 sewer laterals inspected, all 32 exhibited root intrusion or structural defects that allowed injected water into the sanitary sewer system.

3. Description of Work to be Performed

The City plans to rehabilitate 32 sewer laterals that showed moderate to severe defects. Of the 32, 24 laterals will be lined from the main line to at least 50 feet into the lateral with a cured-in-laced lining, 2 laterals which were previously rehabbed will receive a spot liner at the connection, and 6 laterals will be relayed with PVC pipe due to structural problems (see Exhibit A). The awarded contractor will also be required to Sonde locate the 32 sewer laterals.

The City installed flow meters in 2011 to gauge pre-construction conditions. Post-construction monitoring in both 37th Place and 36th Street is planned following rehab to quantify the effectiveness of the PP/I Program.

4. Plans and Specifications

Plans and Specifications are being prepared by our consultant (Ruekert-Mielke) and will be submitted to the MMSD for review prior to bidding.

5. Public Information and Education (I&E plan)

A neighborhood meeting in a nearby subdivision park was held to explain the PP I/I Program to the residents and to gain citizen support.

The City has obtained an access agreement, and "temporary easement" from each of the property owners. It is anticipated that there will be 100% participation since the City is

offering the lateral rehab at no cost to the homeowner.

6. Cost Estimate

32 laterals to be rehabilitated	=	\$213,000
24 Line x \$6500/ea.	=	\$156,000
6 Relay x \$8500/ea.	=	\$ 51,000
2 Spot line x \$3,000/ea.	=	\$ 6,000
	Contingency+ 10%	<u>\$ 21,300</u>
	Sub Total	\$234,300
Work Plan/1 Staff and 1 Board Meeting	=	\$ 3,500
Engineering, Design Services @ 6%	=	\$ 14,100
Bidding, Construction Management and Inspection Services @ 12% or as required*	=	\$ 28,200
Post construction flow monitoring (37th Pl. and 36th St.)		
13 weeks @ \$400/wk. x two locations	=	\$ 10,400
Flow monitoring analysis	=	<u>\$ 2,000</u>
Approximate Total Cost	=	\$292,500

\*This cost estimate could vary depending upon the weather and efficiency of the construction contractor

7. Schedule of Work

Design	Fall (2013)
Bidding	November - December
Construction	December - Start 2013
May 2014-	Substantial Completion
July 1, 2014 -	Final Restoration and Completion

8. Estimated Timeline for Expenses

Fall 2013:	Engineering Design Services
November:	Engineering Bidding Services
January 2014:	Construction 1st Partial Payment and Engineering C.M.
March:	Construction 2nd Partial Payment and Engineering C.M.
May:	Construction 3rd Partial Payment and Engineering C.M.
June:	Final Payment

9. Procurement Process

The City will publically bid the Sanitary Sewer Lateral Rehabilitation project and choose the lowest cost and most responsible and responsive bidder.

10. Data Attributes to be Collected

Footage, size and type of lateral rehabilitated per house.

Daily Construction Inspection Reports will be prepared by on-site inspector.

11. Goals and Anticipated Outcomes

The goal is to reduce Private Property I/I. The investigative phase which included, water injection, TV work and flow monitoring will be used as the baseline condition. Post rehab monitoring will be used to gauge the effectiveness of the Program.

12. Outline of Project Completion Report

The on-site Inspector will complete daily Construction Inspection Reports. These will be summarized by the Engineer.

Franklin will supply post construction flow monitoring for 3 months to gauge the effectiveness of the program.

13. Photo/Video Documentation

The awarded contractor will be required to televise all 32 laterals after they have been rehabilitated.

14. Summary of Tests and Methods

The on-site Inspector will complete daily Construction Inspection Reports. These will be summarized by the Engineer.

Post construction flow monitoring will be performed to gauge the effectiveness of the program.

15. Plan to Track Work Quality

The Construction Review Technician will be on-site as necessary to ensure quality of workmanship.

The City will perform post construction flow monitoring to gauge rehab effectiveness.

The City will determine if warranty inspections will be required when preparing the bidding documents.

**Deliverables:**

1. Map of participating homes with electronic data base format of associated information including without limitation: property tax i.d., address, and column categories of work performed by property including lateral lined, cleanout installed, section repair, etc.
2. Provide samples of all Public Involvement/Public Education documents.
3. Draft plan and specification documents for review for all proposed work.
4. Final version of project documents including but not limited to plans, specifications, bidding documents, and meeting schedule reviewed and approved by the District.
5. Accurate schedule of field activities updated on a bi-weekly basis.
6. Notification of public and project meetings with inclusion of the District in participation thereof.
7. Progress reports on project activities and public involvement (PI) activities on a monthly basis or with pay reimbursement request, whichever occurs more frequently.
8. Inspection reports from the field engineer for work completed on a monthly basis or with expense reimbursement request, whichever occurs more frequently.
9. Photo documentation of project work in jpeg format on disc, jump drive or other format agreeable to both parties.
10. Quality control and quality assurance reports by the contractor submitted on a regular basis as work progresses.
11. Post work survey results collected from property owners.
12. Summary report upon completion of the project outlining quantifiable results of the completed work based on pre-work estimates, measurements, or data collected. The report shall include a specific section reporting on the results of the PI effort including follow up contact with residents in the project area as included in the PI plan. The report shall include specific details on the results of the efforts in planning that were intended to maximize efficiency and results as well as lessons learned throughout the project that may be applied in subsequent projects. The report shall include accounting of total project costs including municipality internal costs by category (engineering, public outreach, etc).
13. The City will be responsible for providing pre work flow data and reporting post work flow monitoring data and or other data related to identified measures of success for at least 2 years post work completion or as long as data is available, whichever period is longer, and reporting on any problems with the work for 5 years.

<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>December 17, 2013</p>
--	--	---

<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p>An Ordinance to Amend the Municipal Code to Provide for the Prevention of Blight Created by the Boarding Up of Windows upon Unoccupied Dwelling Structures (Ald. Taylor)</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.13.</i></p>
---	---	---

See attached draft ordinance which prohibits the boarding up of windows in lieu of glass window maintenance upon unoccupied dwelling properties. The Municipal Code already requires the same for occupied dwellings. In addition to public nuisance enforcement procedures being available under the proposed ordinance, the general penalty provisions of the Municipal Code with regard to forfeitures also apply.

**COUNCIL ACTION REQUESTED**

A motion to adopt An Ordinance to Amend the Municipal Code to Provide for the Prevention of Blight Created by the Boarding Up of Windows upon Unoccupied Dwelling Structures.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE TO AMEND THE MUNICIPAL CODE TO PROVIDE FOR  
THE PREVENTION OF BLIGHT CREATED BY THE BOARDING UP OF WINDOWS  
UPON UNOCCUPIED DWELLING STRUCTURES

---

WHEREAS, the Municipal Code of the City of Franklin regulates housing structures pursuant to Ch. 154.1., which incorporates by reference the Building Officials Conference of America, Inc. Basic Housing Code; and

WHEREAS, the aforesaid Code does not apply to unoccupied dwelling structures, and the City has experienced the occurrence of some unoccupied dwelling structures due to economic circumstances which have occurred throughout the Country due to the economy recession, such properties being properties in the state of foreclosure and the like; and

WHEREAS, some of the unoccupied dwelling structures have been altered by way of boarding up windows, such alterations being unsightly and adverse to the aesthetics and property values of the surrounding areas and negatively impacting the peace and security of neighboring residents; and

WHEREAS, the Common Council having considered the ill effects upon neighboring persons and properties of such boarding up alterations and having determined that such alterations constitute a public nuisance and should be prohibited.

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

SECTION 1: §154-1. of the Municipal Code of Franklin, Wisconsin, entitled "Housing code adopted", be and the same is hereby amended to read as follows:  
"The BOCA Basic Housing Code, 1st Edition 1964, as amended through 1968, published by the Building Officials Conference of America, Inc., is adopted by reference and made a part of this chapter as if set out in full. A violation of the provisions thereof shall constitute a violation of this chapter. Notwithstanding the foregoing or any provisions of the BOCA Code which only apply to occupied dwellings, see §178-5.H. of the Municipal Code which additionally requires windows to be glazed upon unoccupied dwelling structures."

SECTION 2: §178-5. of the Municipal Code of Franklin, Wisconsin, entitled "Dilapidated buildings", as a Subsection of the Section entitled "Public Nuisances affecting peace and safety", be and the same is hereby

amended to read as follows: "All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human use, including, but not limited to unoccupied dwelling structures upon which every window sash is not fully supplied with glass window panes or an approved substitute which are without open cracks or holes, such window glazing maintenance thereby being a requirement hereunder. The aforesaid glazing maintenance requirement shall not be applicable in situations where the Building Inspector has determined that safety and/or security circumstances require the boarding up of windows."

SECTION 3: 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 4: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 5: This ordinance shall take effect and be in force from and after its passage and publication; with regard to the application of this ordinance to property upon which unoccupied dwelling structure windows are currently boarded up upon the date of adoption hereof, this ordinance shall take effect on January 18, 2014.

Introduced at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Alderman \_\_\_\_\_.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

ATTEST:

\_\_\_\_\_  
Sandra L. Wesolowski, City Clerk  
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_

**BLANK PAGE**

<p><b>APPROVAL</b></p> 	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>12/17/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Amendment to the Agreement with Milwaukee County for the 2013 Clare Meadows North Handicap Accessible Sidewalk CDBG Project, Phase III, Granting an Extension of the Project to July 1, 2014</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.14.</i></p>

The City received their 2013 signed Community Development Block Grant project agreements back from Milwaukee County on November 19, 2013. One of these agreements is for the final phase of the Clare Meadows North Handicap Accessible Sidewalk Project. As this is a 2013 project, the agreement stipulates a December 31, 2013 date for completion of the sidewalk and expenditure of the project funds, unless the City can show progress on the schedule of the project's performance of which then an extension may be granted via an amendment to the agreement.

Since the City did not receive signed agreements for the sidewalk until late November, the City only had time to complete the advertising and receipt of bids for the project (bids were received December 12, 2013) this year. Construction would then proceed in spring 2014. Since the City has made progress on the project through advertising and receipt of bids, Milwaukee County informed the City that they would prepare an amendment to the agreement granting an extension of the project to July 1, 2014 for the 2013 agreement.

### **COUNCIL ACTION REQUESTED**

Authorize the Director of Administration to accept and execute an amendment to the Agreement with Milwaukee County for the 2013 Clare Meadows North Handicap Accessible Sidewalk CDBG Project, Phase III, once prepared and received from Milwaukee County, granting an extension of the project to July 1, 2014 or such other date that the County may provide.

**BLANK PAGE**

<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>12/17/2013</p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>A Resolution to Amend the City of Franklin Bargaining Employees' Retirement Plan and the City of Franklin Certain Employees' Retirement Plan to Amend Plan Names, Eligibility, Employer Pick-Up Contributions, Vesting, and to Meet Federal Requirements and to Incorporate such into the Employee Handbook</b></p>	<p><b>ITEM NUMBER</b></p> <p>G.15.</p>

The attached resolution adopts a series of changes to both City retirement plans, which changes were all previously anticipated. In addition to participation in the Wisconsin Retirement System for public safety employees, the City has maintained two retirement plans: a defined benefit plan named "the City of Franklin Bargaining Employees' Retirement Plan," which generally covered Public Works, Sewer and Water, and custodial employees, and a defined contribution plan named "the City of Franklin Certain Employees' Retirement Plan," which generally covered clerical, professional, supervisory, and non-represented employees. The proposed amendments are largely a further result of Acts 10 and 32, as well as language clarifications recommended by labor attorney Matt Flanary, from Buelow Vetter Buikema Olson & Vliet, LLC, who specializes in employment benefits and pension issues.

The Personnel Committee first reviewed these recommendations in February of 2013, as a result of discussions on the basis of the 2013 budget adoption. They were supportive of the requested changes, but, at that time, they wanted to investigate a potential freeze on new members entering the defined benefit plan, which was not part of the expectations of the budget approval. Principal performed an actuarial report on the impacts of such a soft freeze. Following their review in May of 2013, the Personnel Committee did not approve a motion on the matter. As such, the remaining issues are incorporated into the proposed Amendments, which impacts are summarized and discussed briefly below. Additionally, these changes are the last step in the implementation requested by the Library Board and previously approved by the Council for establishing certain Library positions as extended-term part-time employees with partial benefits.

**Amendment to the City of Franklin Bargaining Employees' Retirement Plan (Defined Benefit Plan):**

1. Plan Name: Due to Act 10, none of the employees covered by this plan is any longer a "bargaining" employee. The name previously used did not clearly distinguish or identify the plan, whereas changing the name to "the City of Franklin Defined Benefit Retirement Plan" is much more clear and up to date.
2. Eligibility: The eligibility language takes the following actions in each sub-part.
  - a. This section retains the limitations to Public Works and Sewer and Water Department, but eliminates new custodians, who would become eligible in the other plan. It also increases the part-time hour requirement to 30 or more, from 20 or more, so that the retirement benefit eligibility aligns with the federal health insurance eligibility requirements. The "7 month or more per year" requirement is added to address the potential for full-time seasonal workers, who would not be eligible for retirement benefits, such as a summer parks helper.
  - b. This section effectively grandfathers two custodians who have been in this plan for a number of years. Together with subsection "a" it makes it clear that any new custodial employee would not be eligible for participation in this plan.
  - c. This is catch-all language recommended by the attorney that acts as a safeguard against a non-participant claiming membership status or eligibility. Effectively it says that you are eligible to be a member based on past service only if we had, in fact, been treating you as a member under the prior plan language. This is part of the risk management, clarification language.

A second "Eligibility" section is at the end of the amendment and has an effective date of January 1, 2014. This section inserts a subsection "d." which addresses the ability for an individual who is internally promoted to supervisor to remain in the same retirement plan. The City's Employee Handbook promotes and encourages internal promotion, but a requirement to change retirement plans was an obstacle to such promotions. It will also allow anyone meeting this requirement to move back into this plan and remain there (as would affect one current supervisor), which is the attorney's reason for the separate effective dates. Note that if a new supervisor is hired from outside the organization or from a non-covered department, that employee would not be eligible and would be enrolled in the defined contribution plan.

3. Employer Pick-Up Contributions: Following the adoption of Act 10, the Common Council took the action of having employees contribute to the plan indirectly through payroll deduction. The attorney and Principal agree that a provision of this nature is integral to the plan and should be stated in the plan document itself. This language does that. Currently employees in this plan contribute 8.2% of their paycheck to represent "a non-elective and non-discretionary contribution to the Plan that will be processed as an employer pick-up contribution..." The impact of this action in this plan, however, is negligible as there is no amendment to the vesting provision. Note that the resolution re-establishes the employer pick-up contribution rate of 8.2% simply to help communicate this to Principal in one document.

**Amendment to the City of Franklin Certain Employees' Retirement Plan (Defined Contribution Plan):**

1. Plan Name: The current name simply does a poor job of identifying the nature or intent of the plan. Changing the name to "the City of Franklin Defined Contribution Retirement Plan" is much more clear and pairs appropriately with the other name change.

2. Eligibility: This language change provides clarification to the existing participation language while responding to the flexibility provided by Act 10 and allows future adjustments to participation to largely be handled through resolutions of the Common Council. It is not preferred to frequently change plan language, so employee position eligibility will be handled "according to applicable Employer policy, annual or other similar written objective guidance." It also eliminates eligibility at just 20 hours of service and will enable the City to easily align the retirement benefit with the 30-hour-or-more standard applied to health insurance. This, for example, is what the Library Board requested and the Common Council approved relative to Library Assistant and Library Shelver positions. This will enable the Library to use these employees more than 20 hours per week (but less than 30) and not have retirement coverage become required.

Subsection (b) is similar risk management language recommended by the attorney that basically says an employee needs to be contributing to be considered covered, which would restrict an employee who wasn't contributing from coming back years later and claiming the City needs to make all retroactive contributions.

3. Employer Pick-Up Contributions: As noted above, following the adoption of Act 10, the Common Council took the action of having employees contribute to the plan indirectly through payroll deduction. The attorney and Principal agree that a provision of this nature is integral to the plan and should be stated in the plan document itself. This language does that. As such, the employee contribution continues in its current indirect fashion where the City reduces the wages of employees and uses the money so that the City can make the total contribution. In conjunction with the enhanced vesting requirement below, the payroll deduction effectively becomes treated more like a direct employee contribution.

4. Vesting: The employer pick-up contribution is provided an accelerated vesting schedule. Vesting toward the remaining portion of the employer contribution remains on the same schedule. The result is that if an employee achieves two full years of employment then they will fully vest in the employer pick-up contribution portion. The remaining language is largely a carry-forward of existing language. This issue in conjunction with the pick-up language above is perceived as a fairness issue by many of the employees. The two-year requirement is left in place so that a new employee who fails to stay for two years is not provided the enhanced vesting benefit related to their payroll deduction portion.

**Amendment to Comply with the Worker, Retiree, and Employer Recovery Act of 2008 and the Small Business Jobs Act of 2010:**

Principal has identified that the attached, standard form amendment related to the above referenced topic should be approved as an amendment to the Defined Contribution Plan. This is an amendment required by federal law and prepared by Principal for this purpose. The attorney recommends approval and expects that it should have no effective impact on the plan administration. The resolution authorizes me, as Plan Administrator, to execute the amendment.

**Recommendation:**

I recommend approval of these changes. After these changes are adopted, staff will be able to continue to work with Attorney Flanary to pursue the necessary IRS determinations to ensure that our plans are considered fully compliant with applicable pension laws. Funds were budgeted in 2013 for such steps, which will now be addressed in 2014. As such, in early 2014, I will request a carryover of the funds necessary to take these next steps. Although having an IRS determination letter is not required, it does not appear that either plan has received one since their initiation in the 1960's. Although the plan has always been with Principal, which provides good administration, involved oversight, and compliance guidance; the plans' length of existence and number of administrators over 50 years suggests that it is worthwhile to obtain documented confirmation as to the plans' legal status, which is why the funds were appropriated for the necessary filings and legal fees.

The resolution adopting these changes also directs and authorizes the Director of Administration to make the necessary language changes to the Employee Handbook and the Civil Service Personnel Administration Program as necessary to incorporate the retirement plan changes into those documents. The resolution also allows technical corrections by the labor attorney following review by Principal, which is currently underway, in the event they request minor clarifying language that does not substantively impact the intent of the resolution.

**COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2013-\_\_\_\_, "A Resolution to Amend the City of Franklin Bargaining Employees' Retirement Plan and the City of Franklin Certain Employees' Retirement Plan to Amend Plan Names, Eligibility, Employer Pick-Up Contributions, Vesting, and to Meet Federal Requirements and to Incorporate such into the Employee Handbook".

A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

RESOLUTION NO. 2013-\_\_\_\_\_

A RESOLUTION TO AMEND THE CITY OF FRANKLIN BARGAINING EMPLOYEES' RETIREMENT PLAN AND THE CITY OF FRANKLIN CERTAIN EMPLOYEES' RETIREMENT PLAN TO AMEND PLAN NAMES, ELIGIBILITY, EMPLOYER PICK-UP CONTRIBUTIONS, VESTING, AND TO MEET FEDERAL REQUIREMENTS AND TO INCORPORATE SUCH INTO THE EMPLOYEE HANDBOOK

---

WHEREAS, Wisconsin Act 10 has led to the elimination of non-public safety employee bargaining units from the City of Franklin and led to a change in the retirement benefit affecting non-represented, non-public safety employees, including the addition of an Employer Pick-up Contribution, which contributions should be reflected in the retirement plan language; and

WHEREAS, amending the name of each referenced plan will not affect the plan benefits or plan administration but will add clarity in understanding the intent and nature of the plan; and

WHEREAS, amending the eligibility requirements will clarify the intent of the Common Council relative to plan participation, including, but not limited to, generally increasing the part-time employment qualification from 20 hours per week to 30 hours per week; enabling determination of position eligibility as contemplated by the Employee Handbook and actions of the Common Council, supporting internal promotions within Public Works and Sewer and Water, and grandfathering existing custodian participation in the Defined Benefit Plan while moving new custodial employee participation to the Defined Contribution Plan; and

WHEREAS, modifying the vesting requirements of the Defined Contribution Plan enhancing employees vesting on that portion of dollars equivalent to or attributable to the employer pick-up contribution; and

WHEREAS, the Defined Contribution Plan is required to ensure compliance with the Worker, Retiree and Employer Recovery Act of 2008 and the Small Business Jobs Act of 2010; and

WHEREAS, such changes to the retirement plans and employee benefits structure should be reflected in the Employee Handbook.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Amendment to The City of Franklin Certain Employees' Retirement Plan and the Amendment to the City of Franklin Bargaining Employees' Retirement Plan, both of which are attached hereto and incorporated herein by reference and subject to technical corrections by the City's attorney, who advises on employee benefits, as may be required to satisfy the requirements of the Principal Financial Group, are hereby adopted and the Director of Administration is authorized to execute such documents as required and to modify the Employee Handbook and/or Civil Service Policy Administration Manual in a manner and format as he shall so determine to incorporate these changes therein.

RESOLUTION NO. 2013-\_\_\_\_\_  
PAGE 2

BE IT FURTHER RESOLVED by the Mayor and Common Council of the City of Franklin that the Amendment to Comply with the Worker, Retiree, and Employer Recovery Act of 2008 and the Small Business Jobs Act of 2010, which is attached hereto and incorporated herein by reference, is hereby adopted and the Director of Administration is authorized to execute said document.

BE IT FURTHER RESOLVED that the Mayor and Common Council of the City of Franklin do hereby reaffirm that participants in the City of Franklin Defined Benefit Retirement Plan, as re-titled herein, shall continue to have their paycheck reduced by 8.2% to represent a non-elective and non-discretionary contribution to the Plan that will be processed as an employer pick-up contribution under the Plan.

Introduced at a regular meeting of the Common Council of the City of Franklin this 17th day of December, 2013 by Alderman \_\_\_\_\_.

Passed and adopted by the Common Council of the City of Franklin this 17th day of December, 2013.

APPROVED:

ATTEST:

\_\_\_\_\_  
Thomas M. Taylor, Mayor

\_\_\_\_\_  
Sandra L. Wesolowski, Director of Clerk Services

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

**AMENDMENT TO  
THE CITY OF FRANKLIN BARGAINING EMPLOYEES' RETIREMENT PLAN**

This amendment of the City of Franklin Bargaining Employees' Retirement Plan (the "Plan") is adopted to reflect certain legislative and design changes. This amendment shall continue to apply to the Plan, including the Plan as later amended, until such provisions are integrated into the Plan or the provisions of this amendment are specifically amended.

This amendment shall supersede any previous amendment and the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. All other provisions of the Plan remain unchanged and controlling.

**WHEREAS**, Section 10.01 of the Plan expressly provides that the City of Franklin (the "Employer") retains the right to amend the Plan at any time; and

**WHEREAS**, the Employer has determined that the following Plan amendments are required by applicable law and/or in the best interests of the Employer.

**NOW, THEREFORE, BE IT RESOLVED**, that the Plan is amended as set forth below, effective as of January 1, 2013:

**1. Plan Name.** The name of the Plan shall be changed from "the City of Franklin Bargaining Employees' Retirement Plan" to "the City of Franklin Defined Benefit Retirement Plan" and any references shall be replaced throughout the entirety of the document.

**2. Eligibility.** The definition of Eligible Employee, as set forth in Section 1.02 of the Plan, is amended and restated in its entirety to read as follows:

Eligible Employee means only an Employee of the Employer in one of the following categories:

- a) an individual who is employed in a laborer-type position (i.e., non-clerical employees) for the Department of Public Works and the Sewer and Water Department (as defined by the Common Council) who regularly works 30 or more hours per week and also 7 months or more per year (periods of service that are not at least two consecutive weeks in length do not count toward satisfying the 7 months eligibility standard); or
- b) an individual who is employed in the position of Custodian and who was also an Active Participant in the Plan prior to January 1, 2012, as evidenced by receipt of a benefit statement under this Plan for a period of service that includes a date prior to January 1, 2012; or
- c) an individual who was an Active Participant in the Plan on December 31, 2012, as evidenced by receipt of a benefit statement under this Plan for a period of service that includes December 31, 2012.

No other Employee of the Employer shall be eligible to participate in this Plan and, notwithstanding the preceding eligibility classes, no protective occupation Employee or any other Employee may be an Active Participant in this Plan for any period of time when such Employee is an active participant in the Wisconsin Retirement System, the

City of Franklin Defined Contribution Retirement Plan (formerly known as the City of Franklin Certain Employees' Retirement Plan)(and any successor thereto) or any other retirement plan maintained by the Employer and accruing benefits or contributions under such plan for the same service.

No service, except service as an Eligible Employee, shall be considered Accrual Service under this Plan. The Employer retains the sole right and authority to interpret the terms of the Plan and determine eligibility hereunder.

**3. Employer Pick-Up Contributions.** Consistent with state law, a portion of the cost of this Plan may consist of employer pick-up contributions within the meaning of Internal Revenue Code Section 414(h)(2) and Section 3.01 of the Plan is hereby amended to add a new second paragraph thereto which shall read as follows:

A portion of the Employer Contributions may consist of mandatory, non-elective and non-discretionary employee contributions that may be facilitated through mandatory, non-elective and non-discretionary employee wage reductions. The amount, if any, of such mandatory wage reductions shall be set, from time to time, by the Employer's Common Council. Such contributions will be processed as employer pick-up contributions as described in Code Section 414(h)(2).

**BE IT FURTHER RESOLVED**, that the definition of Eligible Employee, as set forth in Section 1.02 of the Plan, is further amended and restated in its entirety to read as set forth below, effective as of January 1, 2014:

Eligible Employee means only an Employee of the Employer in one of the following categories:

- a) an individual who is employed in a laborer-type position (i.e., non-clerical employees) for the Department of Public Works and the Sewer and Water Department (as defined by the Common Council) who regularly works 30 or more hours per week and also 7 months or more per year (periods of service that are not at least two consecutive weeks in length do not count toward satisfying the 7 months eligibility standard); or
- b) an individual who is employed in the position of Custodian and who was also an Active Participant in the Plan prior to January 1, 2012, as evidenced by receipt of a benefit statement under this Plan for a period of service that includes a date prior to January 1, 2012; or
- c) an individual who was an Active Participant in the Plan on December 31, 2012, as evidenced by receipt of a benefit statement under this Plan for a period of service that includes December 31, 2012; or
- d) an individual who meets each of the three following conditions: (i) is a Supervisor for the Department of Public Works or the Sewer and Water Department; (ii) previously participated in the Plan as a laborer; and (iii) was promoted to Supervisor status on or before January 1, 2013.

No other Employee of the Employer shall be eligible to participate in this Plan and, notwithstanding the preceding eligibility classes, no protective occupation Employee or

any other Employee may be an Active Participant in this Plan for any period of time when such Employee is an active participant in the Wisconsin Retirement System, the City of Franklin Defined Contribution Retirement Plan (formerly known as the City of Franklin Certain Employees' Retirement Plan)(and any successor thereto) or any other retirement plan maintained by the Employer and accruing benefits or contributions under such plan for the same service.

No service, except service as an Eligible Employee, shall be considered Accrual Service under this Plan. The Employer retains the sole right and authority to interpret the terms of the Plan and determine eligibility hereunder.

**IN WITNESS WHEREOF**, the undersigned authorized representative of the City of Franklin has caused this Amendment to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF FRANKLIN:

By: \_\_\_\_\_

**AMENDMENT TO  
THE CITY OF FRANKLIN CERTAIN EMPLOYEES' RETIREMENT PLAN**

This amendment of the City of Franklin Certain Employees' Retirement Plan (the "Plan") is adopted to reflect certain legislative and design changes. This amendment shall continue to apply to the Plan, including the Plan as later amended, until such provisions are integrated into the Plan or the provisions of this amendment are specifically amended.

This amendment shall supersede any previous amendment and the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. All other provisions of the Plan remain unchanged and controlling.

**WHEREAS**, Section 10.01 of the Plan expressly provides that the City of Franklin (the "Employer") retains the right to amend the Plan at any time; and

**WHEREAS**, the Employer has determined that the following Plan amendments are required by applicable law and/or in the best interests of the Employer.

**NOW, THEREFORE, BE IT RESOLVED**, that the Plan is amended as set forth below, effective as of January 1, 2013:

**1. Plan Name.** The name of the Plan shall be changed from "the City of Franklin Certain Employees' Retirement Plan" to "the City of Franklin Defined Contribution Retirement Plan" and any references shall be replaced throughout the entirety of the document.

**2. Eligibility.** The definition of Eligible Employee, as set forth in Section 1.02 of the Plan, is amended and restated in its entirety to read as follows:

**Eligible Employee** means only an Employee of the Employer who is employed in a pension benefit-eligible position as both: (a) determined according to applicable Employer policy, manual or other similar written objective guidance; and (b) also evidenced by the Employer properly reducing the Employee's wages for mandatory pick-up contributions to this Plan. No other Employee of the Employer shall be eligible to participate in this Plan and, notwithstanding the preceding language, no protective occupation Employee or any other Employee may be an active participant in this Plan for any period of time when such Employee is an active participant in the Wisconsin Retirement System, City of Franklin Defined Benefit Retirement Plan (formerly known as the City of Franklin Bargaining Employees' Retirement Plan)(and any successor thereto) or any other retirement plan maintained by the Employer and accruing benefits or contributions under such plan for the same service. In the event of a conflict between policy documents, the Employer retains the sole right and authority to interpret those documents.

**3. Employer Pick-Up Contributions.** Consistent with state law, a portion of the cost of this Plan may consist of employer pick-up contributions within the meaning of Internal Revenue Code Section 414(h)(2) and the second paragraph of Section 3.01 of the Plan is hereby amended and restated in its entirety to read as follows:

The amount of the Employer Contribution for each eligible person shall be calculated as of the Contribution Date and shall be equal to 10% of the Participant's Monthly Compensation. Notwithstanding the preceding language, beginning with each pay date

occurring on or after January 1, 2013, each employee who is eligible to participate in this Plan shall, to the maximum extent allowed by law, have his or her paycheck reduced by 5.0% to represent a mandatory, non-elective and non-discretionary contribution to the Plan. Future changes to the mandatory employee wage reduction will be set by the Employer's Common Council. The mandatory contribution will be processed as an employer pick-up contribution under the Plan's current benefit and accrual language and Internal Revenue Code Section 414(h)(2). The total Employer Contribution (including both the employer pick-up contribution and the traditional Employer Contribution will equal 10% of the Participant's Monthly Compensation. Any employer pick-up contributions shall be separately tracked and adjusted for income, losses, expenses and other similar amounts.

**4. Modified Vesting.** The definition of Vesting Percentage, as set forth in Section 1.02 of the Plan, is amended and restated in its entirety to read as follows:

**Vesting Percentage** means the percentage used to determine the nonforfeitable portion of a Participant's Account attributable to Employer Contributions.

A Participant's Vesting Percentage with respect to that portion of his Account that is attributable to any employer pick-up contribution as described in EMPLOYER CONTRIBUTIONS SECTION of Article III is shown in the following schedule opposite the number of whole years of his Vesting Service.

VESTING SERVICE (whole years)	VESTING PERCENTAGE
Less than 2	50
2 or more	100

A Participant's Vesting Percentage with respect to that portion of his Account that is NOT attributable to employer pick-up contributions as described in EMPLOYER CONTRIBUTIONS SECTION of Article III is shown in the following schedule opposite the number of whole years of his Vesting Service.

VESTING SERVICE (whole years)	VESTING PERCENTAGE
Less than 3	50
3	60
4	70
5	80
6	90
7 or more	100

The Vesting Percentage for a Participant who is an Employee on or after his Normal Retirement Date or the date he meets the requirement(s) for an Early Retirement Date shall be 100%. The Vesting Percentage for a Participant who is an Employee on the date he dies shall be 100%. The Vesting Percentage for a Participant who is an Employee on the date he becomes disabled shall be 100% if such disability is subsequently determined to meet the definition of Totally and Permanently Disabled.

If the schedule(s) used to determine a Participant's Vesting Percentage is changed, the new schedule shall not apply to a Participant unless he is credited with an hour of service with the Employer on or after the effective date of the change.

**IN WITNESS WHEREOF**, the undersigned authorized representative of the City of Franklin has caused this Amendment to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF FRANKLIN:

By: \_\_\_\_\_

**AMENDMENT TO COMPLY WITH  
THE WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008  
AND THE SMALL BUSINESS JOBS ACT OF 2010**

This amendment of the Plan is adopted to comply with the requirements of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the Small Business Jobs Act of 2010 (SBJA). This amendment is to be construed in accordance with such laws. This amendment shall continue to apply to the Plan, including the Plan as later amended, until such provisions are integrated into the Plan or the provisions of this amendment are specifically amended.

This amendment shall supersede any previous amendment and the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

**CITY OF FRANKLIN CERTAIN EMPLOYEES' RETIREMENT PLAN**

The Plan named above gives the undersigned the right to amend it at any time. According to that right, the Plan is amended as follows:

If Rollover Contributions are allowed from an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (as specified in the ROLLOVER CONTRIBUTIONS SECTION of Article III), by adding the following modification to the allowed rollover(s):

Beginning January 1, 2011, a Rollover Contribution that is a direct rollover from an eligible plan under Code Section 457(b) shall exclude any portion of a designated Roth account. A Rollover Contribution that is a participant rollover from an eligible plan under Code Section 457(b) shall exclude distributions of a designated Roth account.

By adding the following as the second paragraph in the APPLICATION SECTION of Article VII:

Notwithstanding the provisions of this article, a Participant or Beneficiary who would have been required to receive required minimum distributions (described in the REQUIRED MINIMUM DISTRIBUTIONS SECTION of this article) for 2009 but for the enactment of Code Section 401(a)(9)(H), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 required minimum distributions or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 required minimum distributions) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years, will not receive those required minimum distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Solely for purposes of applying the provisions of the DIRECT ROLLOVERS SECTION of Article X, required minimum distributions made for 2009 will be treated as Eligible Rollover Distributions.

This amendment is made an integral part of the aforesaid Plan and is controlling over the terms of said Plan with respect to the particular items addressed expressly therein. All other provisions of the Plan remain unchanged and controlling.

Unless otherwise stated on any page of this amendment, eligibility for benefits and the amount of any benefits payable to or on behalf of an individual who is an Inactive Participant on the effective date(s) stated above, shall be determined according to the provisions of the aforesaid Plan as in effect on the day before he became an Inactive Participant.

Signing this amendment, the undersigned, as plan sponsor, has made the decision to adopt this plan amendment. The undersigned is acting in reliance on their own discretion and on the legal and tax advice of their own advisors, and not that of any member of the Principal Financial Group or any representative of a member company of the Principal Financial Group.

Signed this \_\_\_\_\_ day of \_\_\_\_\_,

For the Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Title

**BLANK PAGE**

<p><b>APPROVAL</b></p> <p><i>Slw</i> <i>MMJ</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p>12/17/2013</p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Aerotropolis Milwaukee Interlocal Cooperation Agreement</b></p>	<p><b>ITEM NUMBER</b></p> <p>G.16,</p>

I recommend approval of the "Interlocal Cooperation Agreement" pertaining to continued cooperation with the local government parties of the Milwaukee Gateway Aerotropolis Corporation, also known as the Aerotropolis Milwaukee. The Common Council previously authorized participation with and membership in Aerotropolis Milwaukee. This agreement, on its face, provides a broader statement of philosophy toward cooperation in local government land use planning and economic development activities. Importantly, it does not impose any strict requirements or an enforceable, structured process in these areas. As such, it doesn't impose any limits on the City while it does open up or promote lines of communication for regional cooperation that could be beneficial to the City. The result is a relatively no-risk agreement.

In general, the Agreement achieves this by using relatively soft, non-committal language. The two core statements of the agreement exemplify this open structure. First, the "Cooperation" clause (Section 5.a.), which clearly does not impose a strict, controlling directive upon the City, simply states the following: "The Local Government Parties agree to cooperate reasonably and in good faith with respect to land use planning and economic development activities with the Interlocal Aerotropolis Area."

As a second example, the "Projects" language (Section 5.b.), which is similarly soft and non-binding, simply states the following: "The Local Government Parties may identify, discuss, and approve projects that are beneficial to, and support, the Purpose. In addition, the Local Government Parties may discuss and approve other matters to which they may agree, including..." [Emphasis Added]

The use of "may" renders our actions under the scope of the agreement within our unilateral control. Tom Rave, Executive Director of the Gateway to Milwaukee, confirmed this in an email to Mayor Taylor wherein he noted the following:

"The language in the agreement uses the words 'may' and not 'will' and the intent of the Agreement is for cooperative processes for land use planning and economic development activities...Any municipality may choose to operate as it sees fit within its own boundaries and there is also a withdrawal clause in the Agreement...This Agreement is basically 'without any teeth' and is intended to develop a cooperative attitude around economic development and related activities going forward."

There are some drawbacks to the agreement. It is not written very clearly. For example, the Interlocal Aerotropolis Area is not defined very well, but it appears the City can designate any portion of the City as being within the area and "may modify its designated... Area at any time." It appears the document presumes that we will add our own signature page and/or a joint signature page will be provided after the other communities approve it. The lack of clarity in some of the writing, however, isn't really a problem given the lack of overall constraints upon the City. If the Agreement had strict requirements or a high level of risk, the language would need to be very specific and clear; that is not the case.

My biggest concern remains the third "Whereas" reference to the AAEDTF having a purpose of carrying on their work "on behalf of the Local Government Parties." Presuming "on behalf of" continues to mean "for the broader benefit of" then there isn't a concern that they are misinterpreted to be taking direct actions for us that may not otherwise occur within the constraints of the open records and meeting laws. I believe a recent Attorney General opinion clarified restrictions on private entities carrying out governmental unit duties. As such, we need to ensure that line is never crossed, but it doesn't appear to be an issue at this point given their actions over the past year or so. At this point, since that reference is in a "Whereas" referring to the other agreement, it really becomes a non-factor in the consideration of this document. Also, but of less concern, the 6-month notice before withdrawal is probably longer than it needs to be. Although it is unclear why there would be a 6-month waiting period to withdraw, nothing needs to happen during the 6-month period, and the City can't be compelled to take any action during that period. As such, there really isn't any added risk to the incorporation of a waiting period for withdrawal. As such, keeping it as is to match the agreements by other municipalities is not a problem.

**In conclusion**, I recommend approval. The document appears to present little operational risk to the City while potentially linking us to future economic development opportunities that could be beneficial. It is also beneficial that the document demonstrates to the region the collaborative commitment of municipalities to work toward economic growth. The Aerotropolis was hoping to have this agreement addressed by each municipality before the end of the year. Also note that the document anticipates that each City will designate the portion of its municipality to be part of the "Interlocal Aerotropolis Area" and a subsequent email suggests areas within 2 blocks of major State or County streets or highways and railroads. This topic should be referred to the Planning Department for development of a proposed area for designation.

**CITY ATTORNEY COMMENTS:**

The City Attorney concurs that the proposed agreement 'has no teeth'; nonetheless, the City Attorney questions the purpose of what might be characterized as an agreement to agree, the use of the term "Interlocal", which only appears in the Wisconsin Statutes Annotated under statutes pertaining to invasive species, air pollution and solid and hazardous waste statutes, as opposed to the statutory term "intergovernmental" with regard to cooperation agreements, and that the agreement requires the exercise of cooperation ("reasonably and in good faith") in "land use planning and economic development activities within the Interlocal Aerotropolis Area" - the area is not defined, though assumed to be all of the municipalities involved, which municipalities only have authority with regard to planning and economic development authority essentially within their own boundaries, and finally, that Resolution No. 2010-6646 adopted by the Council provides that the Aerotropolis Corporation was directed by all to coordinate the planning and development efforts of its member governments, and as such, the proposed agreement is either redundant or a delegation of the previously directed task.

**COUNCIL ACTION REQUESTED**

Motion to authorize the Mayor and City Clerk to execute the Interlocal Cooperation Agreement as a separate document and/or with a multi-municipal signature page and to direct the Planning Department to prepare a recommendation for an "Interlocal Aerotropolis Area" designation.

## Interlocal Cooperation Agreement

This Interlocal Cooperation Agreement (this "Agreement") is entered into as of \_\_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date") by, between, and among the Local Government Parties (as hereinafter defined).

### RECITALS

WHEREAS, each Local Government Party conducts planning and development activities designed in part to foster and enhance economic development for the benefit of the residents and businesses within its geographic boundaries;

WHEREAS, in March 2008, the Airport Area Economic Development Task Force (AAEDTF) was organized with the objective of improving collaboration of planning efforts and development standards among the Local Government Parties for the areas surrounding General Mitchell International Airport (GMIA);

WHEREAS, following an 18-month process, including a review of their respective land use plans for the GMIA area, the Local Government Parties, together with the Southeastern Wisconsin Regional Planning Commission, GMIA, elected officials and staff representing Milwaukee County, the Port of Milwaukee, the State of Wisconsin, and the Federal Government, and business owners, representatives and staff from the Airport Gateway Business Association, the South Suburban Chamber of Commerce, the Milwaukee Metropolitan Association of Commerce, the Greater Milwaukee Committee, Spirit of Milwaukee, and Visit Milwaukee, authorized the incorporation of the AAEDTF as a 501(c)3 organization for the purpose of carrying on the work of the AAEDTF on behalf of the Local Government Parties;

WHEREAS, the AAEDTF developed a Vision Statement, Mission Statement, Goals, and Founding Principles for the Milwaukee Gateway Aerotropolis Corporation (Aerotropolis Milwaukee), which was incorporated in 2010 as a membership corporation that is controlled by its member governments and government instrumentalities, but also has representation appointed from local business associations;

WHEREAS, by previous resolutions, the Local Government Parties have become members of Aerotropolis Milwaukee and directed it to (1) conduct studies and evaluations on their behalf, (2) make the results of such studies and evaluations available to its members and the general public, and (3) coordinate planning and development efforts of the Local Government Parties with respect to the GMIA area;

WHEREAS, in furtherance of the efforts of Aerotropolis Milwaukee, the Local Government Parties desire to cooperate with each other with respect to regional land use planning and economic development within the areas surrounding GMIA ;

WHEREAS, each Local Government Party has the statutory power and authority to perform various economic development and regional planning activities within the Interlocal Aerotropolis Area, as well as administrative functions in support thereof; and

WHEREAS, the Local Government Parties have been, and are, duly authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Local Government Parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide a cooperative intergovernmental process for land use planning and economic development activities within the Interlocal Aerotropolis Area, in connection with attracting commercial, industrial, and other businesses and activities having a direct or indirect relationship to intermodal transportation, logistics, air commerce and the use of GMIA (the "Purpose").

2. **Duration.** The initial term of this Agreement shall commence on the Effective Date and be in effect for a period of three (3) years thereafter, unless sooner terminated pursuant to the terms of this Agreement. At the conclusion of the initial term, this Agreement shall renew automatically for periods of three (3) years each, until and unless a majority of the Local Government Parties provide written notice of their intention not to renew this Agreement at least six (6) months prior to the expiration of the then-current term.

3. **Interlocal Aerotropolis Area.** The Interlocal Aerotropolis Area, as well as the particular Local Government Parties participating in this Agreement, may be changed or modified by amendment to this Agreement signed by all of the Local Government Parties. Notwithstanding the foregoing, any Local Government Party may modify its designated Interlocal Aerotropolis Area at any time, provided the same shall reasonably relate, directly or indirectly, to intermodal transportation, logistics, air commerce, or the use and development around GMIA.

4. **Governance.**

The implementation of the Operational Requirements of this Agreement shall be carried out by the Milwaukee Gateway Aerotropolis Corporation and its participating members. Responsibilities of this Agreement including but not limited to provision of public notice and compliance with all applicable laws shall be carried out by the Milwaukee Gateway Aerotropolis Corporation.

5. **Operational Requirements.**

- a. **Cooperation.** The Local Government Parties agree to cooperate reasonably and in good faith with respect to land use planning and economic development activities within the Interlocal Aerotropolis Area.

- b. **Projects.** The Local Government Parties may identify, discuss, and approve projects that are beneficial to, and support, the Purpose. In addition, the Local Government Parties may discuss and approve other matters to which they may agree, including, by way of example and not of limitation, and shall pursue in good faith:
  - i. Design and development principles;
  - ii. Streamlined or expedited permitting processes;
  - iii. Economic incentives, including creation of tax incremental financing districts within and across municipal boundaries;
  - iv. Joint marketing and promotion;
  - v. Infrastructure development;
  - vi. Changes to boundaries or size of the Interlocal Aerotropolis Area.

**6. Withdrawal.**

Any Local Government Party may withdraw from this Agreement at any time upon not less than six (6) months prior written notice given to all of the other Local Government Parties.

**7. Applicable Law.**

This Agreement shall be subject to, governed by, and construed under the laws of the State of Wisconsin. The Local Government Parties hereby acknowledge that this is a simple cooperative agreement which does not authorize or establish a budget, financing or supplies of any kind, or permit the acquisition, holding or disposition of any real or personal property in connection with the Purpose; and, if the Local Government Parties hereafter desire to authorize or permit any of the foregoing, this Agreement must be amended accordingly. Each Local Government Party acknowledges that it may be necessary to amend this Agreement, from time to time, in order to ensure its compliance with all applicable laws, rules and regulations.

**8. General.**

This Agreement sets forth the entire agreement of the Local Government Parties. This Agreement shall be amended or modified only by a written instrument signed by all of the Local Government Parties. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then, in such event, that provision shall be stricken and all other provisions of this Agreement which can operate independently of such stricken provision(s) shall continue in full force and effect. This Agreement may be executed by counterparts, each of which (taken together) is an original by all of which constitute one instrument.

**IN WITNESS WHEREOF**, the following governmental entities have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2010-6646

A RESOLUTION SUPPORTING THE CREATION OF THE MILWAUKEE GATEWAY  
AEROTROPOLIS CORPORATION AND SEEKING MEMBERSHIP INTO THE  
MILWAUKEE GATEWAY AEROTROPOLIS CORPORATION BY THE CITY OF FRANKLIN

---

WHEREAS, the City of Franklin conducts planning and development activities designed in part to enhance economic development, promote sound land-use planning, and promote job retention and growth; and

WHEREAS, The Airport Area Economic Development Task Force (AAEDTF) held its first meeting in March of 2008, has continued to meet since that time, and has enjoyed the participation of elected officials and representatives of many area communities and organizations, including but not limited to the Cities of Cudahy, Greendale, Greenfield, Milwaukee, Oak Creek, Saint Francis, South Milwaukee, and Franklin, Milwaukee County, General Mitchell International Airport (GMIA), the Port of Milwaukee, the State of Wisconsin, the Federal Government, local business owners, the Airport Gateway Business Association, the South Suburban Chamber of Commerce, the Milwaukee Metropolitan Association of Commerce, the Greater Milwaukee Committee, the Spirit of Milwaukee, and Visit Milwaukee; and

WHEREAS, The University of Wisconsin – Milwaukee has provided staff support and assisted in visioning and the initial strategic planning for the AAEDTF and has worked towards better collaboration of planning efforts and development standards for the areas surrounding GMIA; and

WHEREAS, the Southeastern Wisconsin Regional Planning Commission, GMIA, and each of the municipalities noted, participated in a review of their land use and area plans for the Airport area, in a session in September of 2008, aimed at better coordination of individual plans; and

WHEREAS, at a meeting of the AAEDTF in July of 2009, a motion, which was unanimously supported by those in attendance, was approved to examine the potential for creating a 501(c)(3), non-profit organization or other appropriate entity to carry on the work of the AAEDTF on behalf of the participating governments and government entities; and

WHEREAS, the AAEDTF in September 2009 recommended creation of an entity that would allow for continuation of the AAEDTF's efforts and approved a Vision Statement, Mission Statement, Goals and Founding Principles for said group, which Mission Statement reads in part, that, "The Gateway Aerotropolis is a public-private partnership focused around GMIA that fosters regional economic collaboration."; and

WHEREAS, the Milwaukee Gateway Aerotropolis Corporation (the "Corporation") has been created as a Wisconsin non-stock corporation that has been organized and, following its formal designation as such, will be operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), by lessening the burdens of its member governments with respect to the planning and development of a new "Milwaukee Aerotropolis" and by coordinating the planning and development efforts with respect to the Milwaukee Aerotropolis among the Corporation's members and other regional planning organizations, such as the Southeastern Wisconsin Regional Planning Commission; and

WHEREAS, one of the Founding Principles of the Corporation reads in part, that "Milwaukee County and City governments plus all municipal jurisdictions in the Gateway region will participate in this development initiative and, where appropriate, will designate staff and assist with funding efforts for planning and implementation activities to achieve the Gateway's goals"; and

WHEREAS, the Corporation will (1) conduct studies and evaluations on behalf of its members regarding the development of the Milwaukee Aerotropolis; (2) make the results of such studies and evaluations available to its members and the general public; and (3) coordinate the planning and development efforts of its member governments with respect to the Milwaukee Aerotropolis; and

WHEREAS, the Corporation is structured as a non-stock, membership corporation that will be controlled by its member governments and government instrumentalities, but that also will have representatives appointed by local business associations; and

WHEREAS, the Airport Gateway Business Association Board of Directors has authorized the grant of \$15,000 in start-up costs and allocation of their Executive Director and staff's time to this effort.

NOW, THEREFORE, BE IT RESOLVED, that the City of Franklin does hereby support the creation of the Milwaukee Gateway Aerotropolis Corporation, that the Corporation be operated exclusively for charitable and educational purposes within the meaning of Code Section 501(c)(3), and that the Corporation obtain recognition of such status by the Internal Revenue Service, in order to lessen the burdens of the City of Franklin by coordinating planning and development efforts with respect to the Milwaukee Aerotropolis with those of the Corporation's other members and other regional planning organizations; and

BE IT FURTHER RESOLVED, that the Corporation is directed (1) to conduct studies and evaluations for the benefit of the City of Franklin and the other members regarding the Milwaukee Aerotropolis; (2) to make the results of such studies and evaluations available to its members and the general public; and (3) to coordinate the planning and development efforts of its member governments with respect to the Milwaukee Aerotropolis; and

BE IT FURTHER RESOLVED, that the City of Franklin shall seek and obtain membership in the Corporation, on the condition that such membership provides the City of Franklin a right to a position as a member of the Board of Directors with a voting right and that the Bylaws incorporate (1) an ability for the City to withdraw from the Corporation at the City's sole discretion without penalty or obligation and (2) that said membership and position on the Board of Directors does not obligate the City of Franklin to a financial or staff commitment without specific approval by the Common Council; and

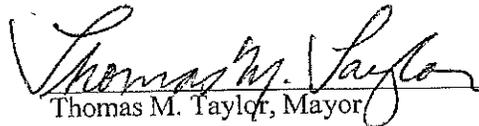
BE IT FURTHER RESOLVED, that the City of Franklin staff as designated by the Mayor are directed to coordinate with the Corporation as needed in order to permit the Corporation to carry out its purposes; and

BE IT FURTHER RESOLVED, that the City will consider funding efforts to support the Milwaukee Aerotropolis and will work towards better coordination of planning and development efforts which improve the Airport Gateway area.

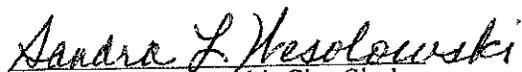
Introduced at a regular meeting of the Common Council of the City of Franklin this 18th day of May, 2010.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 18th day of May, 2010.

APPROVED:

  
Thomas M. Taylor, Mayor

ATTEST:

  
Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0

**BLANK PAGE**

<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>12/17/13</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Representation at the South Suburban Chamber of Commerce Annual Awards Dinner</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>6.17.</i></p>

The South Suburban Chamber of Commerce is having its annual Awards Dinner on Thursday, January 30, 2014 at the Crowne Plaza Hotel [6401 S 13<sup>th</sup> St Milwaukee, WI]. The purpose of this event is networking with other Chamber members and to celebrate the Business of the Year and Pride in Premises winners. Attendance at such events is typical core components of basic economic development community relation activities.

Dinner is \$50 per person. Funding a table for 8 City-sponsored individuals would cost \$400 and would cover the Mayor, Aldermen, and the Chairman of the Forward Franklin EDC. If any of these individuals are unable to attend, an invitation would be extended to other Forward Franklin EDC members to fill the spaces, and further to staff if necessary.

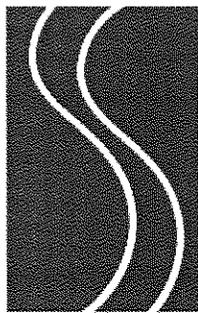
Funding for Forward Franklin EDC activity is available with unspent appropriations in the 2013 Economic Development Dept.

**COUNCIL ACTION REQUESTED**

Motion to authorize use of \$400 of Contingency appropriations for City representative participation at the South Suburban Chamber of Commerce Annual Awards Dinner.

**Joel Dietl**

**From:** South Suburban Chamber of Commerce [smuller@southsuburbanchamber.com]  
**Sent:** Monday, December 09, 2013 1:44 PM  
**To:** Joel Dietl  
**Subject:** Register Now for South Suburban Chamber 2014 Annual Awards Dinner - Sponsorships Available



South Suburban  
Chamber of Commerce  
Serving Oak Creek, Franklin & Surrounding Communities

## You Are Invited!

# South Suburban Chamber 2014 Annual Awards Dinner

### **2014 Annual Awards Dinner**

Thursday, January 30, 2014,

Crowne Plaza Hotel

6401 S. 13th St. Milwaukee, WI 53221

Guest speaker:

**John McHugh, Manager of Corporate  
Communications and Leadership  
Development Kwik Trip**

*Cost: \$50/person*

*Reserved Table for 8: \$400*

**Please note that all sponsorship  
commitments received by December 13,  
will be included in the official invitation!**

**Diamond Presenting Sponsor: \$3,000**

- **Includes ALL of the benefits listed**

### **Gold Sponsors: \$750**

- **Dinner for 6,**
- **Prominent recognition at the dinner,**
- **And on all printed and electronic media,**
- **Name included on the program,**
- **Ability to display promotional materials and distribute items at side table.**

### **Silver Sponsorships: \$500**

- **Dinner for 4,**
- **Recognition at the dinner,**

- below, Plus:**
- **Two tables of 8.**
  - Prime Signage opportunity,
  - Opportunity to MC a portion of the program,
  - Ability to display promotional materials and distribute items at side table,

**Platinum Sponsors: \$1,500**

- One **table of 8** for dinner,
- Includes prominent recognition at the dinner,
- And on all printed and electronic media,
- Name and/or logo included on the program and invitations,
- Ability to display promotional materials and distribute items at side table,
- Plus: name included in media releases; presentation at event and on Chamber electronic communications and other media.

- Company name on the table,
- Name on program, signage at dinner.

**Bronze Sponsorships: \$250**

- **Dinner for 2,**
- Name on program, signage at dinner.



*Join John McHugh, Manager of Corporate Communications and Leadership Development as he shares the Kwik Trip story.*

**2014 Annual Awards Dinner Program**

*Dinner Timetable*

5:00 -6:30 p.m.	Networking Reception with music
6:30 p.m.	Welcome, Dinner
7:15 p.m.-7:45 p.m.	Speaker
7:45 p.m.	Awards presentations/ President's Annual Message
9:00 p.m.	Adjourn

FOLLOW US ON:



**Forward this email**

**BLANK PAGE**

<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>12/17/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Authority to Purchase MSGovern's "OpenForms" Upgrade to the City's Permitting Software for an Amount Not-To-Exceed \$17,320</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G, 18.</i></p>

Govern, a software package of MSGovern, is the system that tracks and issues building permits. It is also used for tracking and issuing a variety of permits through the Clerk's office, as well as tracking and reporting on city-wide complaints. Lastly, it works in conjunction with the GIS system to maintain the property and building attribute data that is shared between Govern's permitting system and our ESRI mapping - or Geographical Information System (GIS).

The 2013 budget appropriated funding for three separate capital projects associated with the Govern permitting system. One, to transfer and secure needed historical data from the prior permitting system, was approved at the last Council meeting. The second one is the focus of this Council Action Sheet. The third is development of a new interface between Govern and GIS to replace our unique EditApp system, which is in jeopardy of failing from software attrition of sorts, likely in early 2015. That project is actively underway, but in that project we are acting as a development tester for Govern. They are developing the tool to suit our needs with the intent to be able to market it to similarly situated communities. The good news is that we do not have a contractual commitment to them so have not had to tie up the resources. Our hope is that their development will be completed before the third quarter of 2014. As such, I will be requesting to carry those funds over because even though significant work has been completed on the project there are no funds encumbered.

The "second" project referenced above is budgeted at \$17,320, which is a hard number as presented by Govern. This funding was budgeted for the purpose of upgrading the Govern software system to their "OpenForms" version. The significance of this upgrade is that it is the first step in positioning the City for the migration to a ".net" version of the software from the current Visual Basic version. This becomes significant because this version is expected to ultimately need to be functioning by the 2015 deadline. Significant training and testing on a test database will be required before that can occur. Following acquisition, the software will be set up as a test database running a full replication of the current database on a segmented or "virtual" portion of one of our servers. This will enable cross-testing of the .net version against the GIS system and the current EditApp functionality, while at the same time allowing us to train ourselves for the new product development discussed above. (As you can see from that timeline, this project and project three, above, will hopefully both be ready for joint implementation at some point in the third quarter of 2014.) As such, this enables us to prepare for the future while, at the same time, testing and prepping for a backup strategy should the Govern development project not achieve its expected results in the required timeframe. Given the expanse of the functionality served by Govern and the number of departments using it as part of their core operation, it is essential that we prepare for both this migration in software development that is occurring and for a backup plan, which is exactly why the project is budgeted and funded.

The purchase will not be a development proposal requiring a detailed contract, but rather a software package purchase more like buying a copy of a Windows operating system. A final purchasing agreement version has not been completed and parsed out from the package proposal that was used as the basis for the budget (I need to break it out because, as noted above, we are not contracting for the third portion at this time and the first portion was broken out and approved at the last meeting.). If the Common Council needs to see the actual purchase order document then it will be necessary to carry the project forward to 2014 and execute a budget modification at that time. It simply wasn't possible for Govern to provide in time for this meeting, the last of 2013. However, given the straight forward nature of the purchase, I would request authorization to execute the purchase order agreement for the "OpenForms" upgrade, which will be in a format similar to that which was approved at the last meeting (a copy of which is attached for your recollection). I can have that completed before the end of the year and have the funds encumbered as budgeted.

### **COUNCIL ACTION REQUESTED**

Motion to authorize the director of Administration to execute a purchase order agreement with MSGovern for the purchase of the "OpenForms" upgrade to the City's permitting software for an amount not-to-exceed \$17,320.

EXAMPLE



1600 Rene-Levesque West  
Suite 620, Montreal, QC  
H3H 1P9  
Phone: (800) 561-8168  
Fax: (514) 876-4569

424 South Woods Mill Rd.  
Suite 310, Chesterfield, MO  
63017  
Phone: (800) 383-6029  
Fax: (314) 275-8776

Quote

Customer: Franklin, City of, WI  
Contact Name: Fred Baumgart

Quote #: MSGOV2293  
Suite: Govern

**SUBJECT: Cornerstone Permit Data Conversion**

**Description:**

**Total Price: \$16,500.00 (USD)**

Convert historical permit data from Cornerstone software dbf files (appears to be a Clipper-based application) into current Govern system.

Services to be provided total up to 100 hours with an approximate breakdown as follows:

- a) Data mapping of legacy permit data to existing Govern fields – 24 hours. MS Govern will provide statistical information regarding the Cornerstone data and the City and MS Govern staff will jointly review and map the data to Govern fields. A data mapping document will be prepared clearly identifying the status of every data field in the Cornerstone database and the resulting data to be converted into the Govern system.
- b) Govern Configuration to accommodate legacy data if needed – 16 hours. MS Govern staff will identify any fields that need to be added to the Govern database in order to provide a location for the Cornerstone data to reside, and will assist the City in creating those fields if necessary.
- c) Data Conversion – 60 hours. MS Govern will provide SQL tables and routines to convert and migrate the Cornerstone data into the Govern Test database. The City will validate the converted data and identify any defects that need to be resolved. MS Govern will modify the routines as needed and re-run the routines to correct the defects. Once the City approves the conversion, the routines will be run once again in order to migrate the converted data into the Production system.

Total: 100 hours x \$165/hr = \$16,500 (Not to exceed)

- No fee transactional data will be converted from the Cornerstone database. However final fee values for permits and their component values (for example, impact fee versus permit fee) will be converted.
- No configuration data will be converted from the Cornerstone database as this information should already be in Govern.
- The "License" permit type will not be converted from the Cornerstone database
- All services will be provided remotely. No travel costs are anticipated for this work.
- Services will be billed monthly as rendered, net due 30 days.
- No increase to the Annual Maintenance will occur as a result of the services provided herein.

**Prices are valid for 180 days from proposal date. All other terms and conditions stipulated in Customer and MS Govern's Agreements remain in force.**

Prepared by:	Bill Koperski	Prepared on:	October 31, 2013
Accepted by:	<i>[Signature]</i>	Approval Date:	12-7-13
Project #:		Work Order #:	
Internal Approval:		P.O. #:	

EXAMPLE

**BLANK PAGE**

<b>APPROVAL</b> <i>Slw</i> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE 12/17/2013</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>2014 Information Technology Services Agreement between Heartland Business Systems and the City of Franklin</b>	<b>ITEM NUMBER G.19.</b>

Heartland Business Systems (HBS) has served as the service agent for the City of Franklin's Information Services for the past three years after having absorbed Connection Strategies Enterprises, Inc and its staff, which had served the City since 2004. Staff and the Technology Commission have remained very pleased with their service, competencies, and responsiveness.

The contract continues the use of the "Dual Technician" option which was created and incorporated in 2010. The "Dual Technician" requires the caliber of a Level II Technician but recognizes that they will perform both Level I and Level II work, and as such the hourly rate was blended. One Dual Technician is housed primarily at City Hall and one at the Police Department; however, there is a lot of coordination and cross-training between the two. This option ensures the City routinely has two Level II caliber individuals at its immediate access and continues to better address the service level requested by the Police Chief. The contract also continues to include an emergency, after-hours rate for the SQL Database Administrator, if one were called in during a crisis, access to field engineers on an "as needed" basis, and fixed rates for regular staff to perform special projects, as separately identified and authorized in writing, on a non-emergency basis.

Staff seeks authority to execute a 2014 contract with HBS which would be very similar to the current contract, except for the following change:

-Adjust the rates by 2% effective January 1, 2014. HBS rates were last increased in 2013 by 2%. The requested adjustment is in line with budgeted City employee wage adjustments.

A red-lined version of the 2013 contract incorporating the above change is attached. The new rates were anticipated in the 2014 budget, so funding within the Information Services budget is available for the current service level. Staff recommends approval.

### **COUNCIL ACTION REQUESTED**

Motion to authorize the Director of Administration to execute the attached Information Technology Services Agreement between Heartland Business Systems and the City of Franklin effective January 1, 2014.

# HEARTLAND BUSINESS SYSTEM INFORMATION TECHNOLOGY SERVICES AGREEMENT

**CUSTOMER:** City of Franklin, Wisconsin  
(hereafter referred to as "CITY")  
**PROJECT:** Information Technology Services

## **PREAMBLE**

Whereas, the CITY had contracted with Connection Strategies Enterprises, Inc. (CSEI) since 2003 for the provision of computer and network services, which contract was assigned by CSEI to Heartland Business Systems (hereafter referred to as HBS). The CITY and HBS then mutually entered into a contract providing for HBS to provide certain Information Technology Services.

Whereas the parties (the CITY and HBS) desire to modify the contract to provide for a rate increase and an extension of the term.

Therefore, the parties agree that this contract shall serve as the stipulation of the services, service levels, pricing, and other such terms as mutually agreed to between HBS and the CITY; acknowledgement by the parties of the prior assignment of the CSEI contract to HBS; the acceptance by HBS of all the terms and conditions included and incorporated herein; and the establishment of a contract between the CITY and HBS. As such, throughout this contract "HBS" shall be understood to continue to incorporate CSEI's contractual obligations as previously assigned to HBS.

## **CITY NEEDS**

The CITY needs technical services with respect to its Local Area Network ("LAN"), Wide Area Network ("WAN"), desktop support, communications systems, and Information Technology ("IT") functions. Specifically, the CITY has a need for regularly scheduled Level I and Level II on-site technical support and such additional technical support as requested, on an on-call basis and on a scheduled part time basis with respect to the CITY'S LAN and WAN.

## **DESCRIPTION OF SERVICES**

HBS will provide qualified technical personnel as necessary to complete designated objectives agreed upon with CITY, as described in the CSEI Proposal dated October 31, 2003 (incorporated herein and as previously attached to prior contracts), as described in the City of Franklin Request for Proposal dated October 2003 and as both are specifically modified herein. Service records will be provided to the CITY for each visit, as appropriate.

- A. **Level I Support:** HBS will provide full-time desk top support technicians ("Level I Technician") to provide IT support to CITY'S staff with respect to the software and hardware on the work stations and printers connected to CITY'S LAN and WAN and communications systems. The Level I Technicians will be available on premises between the hours of 8:30 A.M. and 5:00 P.M., Monday through Friday, as requested by the CITY and as mutually scheduled, averaging 60 hours per week, except on days and for weeks when the CITY'S offices are closed and on regularly scheduled holidays of the CITY. The Level I Technicians will be available to work non-scheduled hours, as mutually agreeable between CSEI and the CITY and if such non-scheduled hours would result in an individual Level I Technician working more than 40 hours in any particular Monday through Friday work week, the Level I Technician will be allowed a reduction in the regularly scheduled hours for such week such that the total hours worked during such week by the Level I Technician will not exceed 40 hours, unless otherwise mutually agreed to.

Additionally, the Level I Technician shall provide hardware support involving the rebuilding, upgrading, and maintaining of workstations and be responsible for communications with software and hardware vendors.

- B. Level II Support. HBS will provide to the CITY, as requested by the CITY and as provided for herein, Level II Technician(s) on premises between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday (normal work period), except for days when the CITY'S offices are closed and on regularly scheduled holidays of the CITY, but not to exceed an average of 28 hours per week. Such hours may be rescheduled, by mutual agreement, outside the normal work period if circumstances indicate or completion of the task is best performed outside the normal work period. The personnel providing such services (the "Level II Technicians") will perform and assist in the maintenance and administration of the CITY'S LAN, WAN, and on special projects as requested by the CITY. The Level II Technician(s) will also be available to support the Level I Technician.
- C. SQL Database Administration. HBS will provide to the CITY, as requested by the CITY, a database administrator to provide the following services relative to maintenance of the CITY'S SQL Databases:
- Check logs to ensure that the server is not having problems;
  - Ensure that back-ups are being completed successfully;
  - Periodically perform test restores of backups to ensure that disaster recovery needs are being met;
  - Evaluate long running queries to determine if there are performance issues and recommendations to fix those issues; and
  - Continually make recommendations to assure an integrated data based systems environment.
- D. Project Manager Support. HBS, at no additional cost, will provide Project Manager Support to CITY on an as requested basis, including but not limited to attendance at a twice-monthly status meeting. In accordance with "Additional Services" below, in special circumstances and with prior written agreement as to scope of services and the cost thereof, the Project Manager may work directly on special projects as requested in writing by the CITY.
- E. General Support Services. Level I Support, Level II Support, Dual Technician Support, and the Database Administrator shall do the following:
- Provide to the CITY on a weekly basis a description of work performed, listed by Department and End User.
  - Be available for emergencies and after hours support 24 hours per day / 7 days per week.
  - Provide reports, as requested, to the CITY'S Technology Commission or Common Council concerning IT recommendations, hardware and software updates, and new technology.
  - Perform special projects occurring outside of regular non-emergency hours (including those as otherwise scheduled), as separately identified and authorized in writing (including via email), on a non-emergency basis and typically with a "not-to-exceed" resource limitation. [Note: As special projects occur outside of regular non-emergency hours, including those as otherwise scheduled, such projects will typically involve research projects and lower priority projects and may more commonly occur with projects causing a work load in excess of 45-50 hours in a given week(s).]
- F. Dual Technician Support. A "Dual Technician" performs both Level I and Level II Support, as described in sections A. and B. above. A Dual Technician is provided as an alternative to using Level I and Level II Support personnel. The decision to select the Level I / Level II Technician alternative versus the Dual Technician alternative shall be the prerogative of the CITY. In the event that and during

a term where the CITY is using two full time Dual Technicians (generally 40 hours per week, 50 weeks per year each), the CITY may also contract for additional Level I Support personnel. Except by mutual agreement of the CITY and HBS, a determination by the CITY to switch to the alternative not then currently in place may not be altered for at least 6 months after implementation. Once HBS has been notified by the CITY of its determination to change alternatives, HBS has 4 weeks to implement the new alternative, which time may be extended at the discretion of the Director of Administration.

## TERMS AND CONDITIONS

### 1. SCOPE

HBS will provide the services (the "Services") specifically requested by CITY as set forth in "Description of Services" above, subject to the terms, conditions, limitations, and exclusions stipulated herein.

### 2. TERM OF AGREEMENT

This Agreement shall commence effective January 1, ~~2013~~—~~2014~~ and cover a period including all of calendar year ~~2013~~—~~2014~~ and shall continue thereafter on a month-to-month basis until such time that the agreement is terminated, as provided for herein, or modified or extended by a separate, future agreement.

### 3. PLACE OF SERVICE

Services provided for herein will be performed at the various CITY properties and facilities, unless otherwise agreed to in writing by the parties.

### 4. LIABILITY FOR SERVICES

CITY is relying upon HBS's expertise in the provision of services, materials, and products under this Agreement and HBS warrants that it will provide such services, materials, and products in a professional, timely, and efficient manner and as would a reasonable and prudent provider in the computer and related technology services industry in the Southeastern Wisconsin area. Any limitation of liability may be made subject to required insurance coverages.

### 5. LICENSES/COPYRIGHTS

HBS agrees that any software sold to CITY by HBS shall include a license authorizing CITY'S use of the software for its intended purpose. HBS agrees to indemnify and hold CITY harmless from any and all claims, liabilities, damages, costs and expenses, including but not limited to reasonable attorneys fees, arising out of or related to HBS's sale of software to the CITY without the appropriate license allowing CITY to use the software for its intended purpose.

### 6. REPRESENTATIONS

No employee or agent of HBS is authorized to make any representation or warranty binding upon HBS, unless contained within this Agreement. This Agreement may be modified only by written instrument signed by both parties hereto. In the event CITY has forms containing terms different than as contained herein, the terms contained herein shall prevail, and any terms contained on CITY'S forms shall not be deemed accepted by HBS. In the event HBS has forms containing terms different than as contained herein, the terms contained herein shall prevail, and any terms contained on HBS's forms shall not be deemed accepted by CITY.

### 7. INDEMNIFICATION

To the fullest extent permitted by law, HBS, its subcontractor, agents, servants, officers or employees shall indemnify and hold harmless the CITY, including, but not limited to, its respective elected and appointed officials, officers, employees and agents, from any and all claims brought by any person or

entity whatsoever, arising from any act, error, or omission of HBS during HBS'S performance of the Agreement or any other agreements of HBS entered into by reason thereof. HBS shall indemnify and defend the CITY including, but not limited to, its respective elected and appointed officials, officers, employees and agents, with respect to any claim arising, or alleged to have arisen from negligence and/or willful, wanton or reckless acts or omissions of HBS, its subcontractor, agents, servants, officers, or employees and any or all losses or liabilities resulting from any such claims, including, but not limited to, all damage awards, costs and reasonable attorney's fees.

8. NON-SOLICITATION OF EMPLOYMENT

HBS and CITY agree not to offer, promise, or engage in employment with personnel and/or contractors from the staff of the other for a period of six (6) months from the completion of the assignment and/or during the time that the assignment is in progress.

9. ASSIGNMENT/SUBCONTRACTORS

This Agreement shall not be assigned by either party without the express written consent of the other party. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their successors and permitted assigns. HBS agrees not to subcontract any of the Services without the prior written approval of the CITY, which shall not be unreasonably withheld.

10. TERMINATION/CANCELLATION

A. The agreement may be canceled by either party, for any reason, upon submission of a 30-day written notice of termination to the other party. HBS shall be responsible for continuation of services during the termination notice period and the CITY shall be responsible for payment for services performed according to the agreement during the termination period.

B. This Agreement may be terminated, at any time, by the mutual agreement of the CITY and HBS.

11. HARDWARE AND SOFTWARE PURCHASES

Any sales, excise, duty or other tax or fee imposed by any government authority on the Services shall be the responsibility of CITY. HBS and CITY agree to use their best efforts to allow CITY to make all hardware and software purchases directly if such direct purchases will allow for a reduction in cost and/or sales taxes to be paid by CITY.

12. EXTENSION

This Agreement may be extended by an agreement signed by both parties. The price for Services during any extension period shall be the HBS standard price at the time of extension, unless otherwise mutually agreed to in writing.

13. ENTIRE AGREEMENT

This Agreement represents and expresses the entire agreement between the parties as to the subject matter hereof, and supersedes all prior understandings or agreements, whether oral or written. No employee or agent of HBS is authorized to make any representation or warranty binding upon HBS, unless contained within this Agreement. This Agreement may be modified only by written instrument signed by both parties hereto. In the event CITY has forms containing terms different than as contained herein, the terms contained herein shall prevail, and any terms contained on CITY'S forms shall not be deemed accepted by HBS. In the event HBS has forms containing terms different than as contained herein, the terms contained herein shall prevail, and any terms contained on HBS'S forms shall not be deemed accepted by CITY.

14. **SEVERABILITY**  
If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in force and effect as if such invalid or unenforceable term had never been included.
15. **GOVERNING LAW**  
The terms of this Agreement shall be construed and enforced under the laws of the State of Wisconsin, and any action to challenge or enforce the provisions of this Agreement shall have as its venue the Circuit Court for Milwaukee County, Wisconsin. The prevailing party in any litigation commenced pertaining to this Agreement shall be entitled to its reasonable costs of litigation, including, without limitation, reasonable attorneys' fees, to be paid by the other party as part of the award or judgement resulting from such litigation.
16. **CONFLICT OF INTEREST**  
To the best of HBS'S knowledge, no employee of HBS presently has any interest which would conflict in any manner or degree with the performance of the Services. HBS shall not undertake, during the term of this Agreement, any activity which would conflict in any manner or degree, with the performance of the Services.
17. **INDEPENDENT CONTRACTOR**  
HBS and the CITY agree that HBS is not an employee of the CITY and that the relationship between the CITY and HBS is that of independent contractor. Neither HBS or CITY has the right or authority to assume or create any obligations or responsibilities, express or implied, on behalf of the other and may not bind the other in any manner whatsoever without the express written permission of the other as to such matter.
18. **AUDIT**  
HBS agrees to maintain all written records pertaining to the Services for a period of three (3) years from the performance date associated with the service provided HBS shall make such records available to CITY for review during such three (3) year term during normal business hours at HBS'S office upon CITY'S written request.
19. **CONFIDENTIALITY**  
HBS agrees that HBS and all of its employees shall maintain strict confidence regarding all privileged or confidential information received by or brought to the attention of its employees by reason of this agreement or in the performance of duties provided for herein. HBS acknowledges that violation of this section may, particularly with regard to confidential Police Department records, constitute a criminal violation, as well as a contract violation. This section shall in no way restrict HBS from acting in accordance with the laws of the City of Franklin, State of Wisconsin, or United States of America.
20. **PROJECT PERSONNEL**  
HBS shall designate qualified and responsible employees to perform the services provided for herein; however, the individuals so designated shall require approval by the CITY, which approval shall not unreasonably be withheld. Upon request by the CITY, HBS shall provide the CITY with a listing of the full name, residential address, and birth date of employees assigned to this project.

### **TERMS OF PAYMENT**

Invoices will be submitted monthly by HBS to the CITY for actual time charges incurred. The CITY will pay all non-disputed invoices promptly or within thirty (30) days of receipt thereof.

HBS will provide Level I contractor services based on the requirements explained in Section 6.1 of the Request for Proposal (October 2003) and as set forth and specifically modified herein at the rate of ~~\$37.90~~\$38.66 an hour effective January 1, ~~2013~~2014.

HBS will provide Level II contractor services based on the requirements explained in Section 6.2 of the Request for Proposal (October 2003) and as set forth and specifically modified herein at the rate of ~~\$68.00~~\$69.36 an hour for non-emergency hours (7 a.m. to 5 p.m. Monday – Friday (excluding holidays) and as otherwise scheduled) and ~~\$80.38~~\$81.99 an hour for emergency reports, both effective January 1, ~~2013~~2014.

HBS will provide “Dual Technician Support services as set forth herein and consistent with and based on the requirements explained in Section 6.2 of the Request for Proposal (October 2003) at the rate of ~~\$51.50~~\$52.53 an hour for non-emergency hours (7 a.m. to 5 p.m. Monday – Friday (excluding holidays) and as otherwise scheduled), up to ~~\$69.50~~\$70.89 an hour for special projects occurring outside of regular non-emergency hours, and ~~\$80.38~~\$81.99 an hour for emergency reports, effective January 1, ~~2013~~2014.

When requested in writing, including via e-mail, HBS will provide Database Administration contractor services and the rate for such services shall be ~~\$80.38~~\$81.99 an hour for non-emergency hours (7 a.m. to 5 p.m. Monday – Friday, excluding holidays and as otherwise scheduled) and ~~\$144.44~~\$116.73 an hour for emergency reports, both effective January 1, ~~2013~~2014.

The above rates of service may be adjusted by mutual agreement of both parties at any time during this agreement.

### **ADDITIONAL COSTS**

In addition to amounts billed in accordance with the Terms of Payment section of this Agreement, CITY shall be responsible for certain additional technical support costs, such as specialty field engineers, as mutually agreed to in writing prior to performing such services requiring the additional technical support. Rates for such additional services shall be as mutually agreed to in writing prior to performing such services.

### **INSURANCE**

HBS shall, during the life of this Agreement, maintain insurance coverage with an authorized insurance carrier acceptable to the City in amounts at least equal to the minimum limits set forth below:

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

Upon the execution of this Agreement, HBS shall provide the CITY with certificates of insurance evidencing the above coverages and providing the CITY the right that they may not be cancelled or amended without 30 days prior written notice to the CITY.

### **MODIFICATIONS AND AMENDMENTS PROVIDED FOR HEREIN**

Where this Agreement provides for modifications or amendments by written mutual agreement, except for the extension or termination of the Agreement itself, said modifications or amendments may be made in writing and entered into under the signatures of Norb Kopka, Account Executive, (for HBS) and the Director of

Administration (for the CITY). Any such modification or amendment allowable under the terms of this Agreement and so entered into as provided for in this section shall automatically be incorporated into this Agreement by this reference and shall have the impact and effect as if originally set forth herein.

**NOTICE**

All notices or other communications required or permitted hereunder or necessary or convenient shall be in writing and shall be deemed to have been delivered when mailed by registered mail return receipt requested and as otherwise provided for by law, postage prepaid, or by fax or e-mail (except provided that such email receives an appropriate responding email), addressed as follows:

If to HBS: Heartland Business Systems  
N28 W23050 Roundy Drive, Suite 2A  
Pewaukee, WI 53072  
Phone No.: 262-650-6500  
Fax No.: 262-650-6530  
E-Mail: Norb Kopka [NKopka@hbs.net]

If to CITY: City of Franklin  
Attn: Mark W. Lubberda, Director of Administration  
9229 West Loomis Road  
Franklin, WI 53132  
Phone No.: (414) 858-1100  
Cell No.: (414) 659-3087  
Fax No.: (414) 427-7627  
E-Mail: mlubberda@franklinwi.gov

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the \_\_\_\_ day of \_\_\_\_\_, 2012/2013.

**HEARTLAND BUSINESS SYSTEMS (HBS)**

BY: \_\_\_\_\_  
Peter Helander, Principle Authorized Representative  
\_\_\_\_\_(Date)

**CITY OF FRANKLIN**

By: \_\_\_\_\_ (Date)  
Mark W. Lubberda, Director of Administration

By: \_\_\_\_\_  
Calvin A. Patterson Paul Rotzenberg, Finance Director/Treasurer  
(Date)

<p><b>APPROVAL</b></p> <p><i>slw</i> <i>mmw/1</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b></p> <p><b>12/17/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Geographic Marketing Advantage, LLC Agreement for Geographic Information System (GIS) Support and Database Maintenance Services for 2014</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G, 20.</i></p>

Geographic Marketing Advantage, LLC has served as the City's primary consultant on its GIS system. City staff is very pleased with the performance of this company and its employees and is interested in continuing this relationship for an additional year. The owner, Todd Niedermeyer, and his employee, Brian Fausel, have been very responsive in addressing our needs and very dedicated to continuing to move GIS forward.

Staff seeks authority to execute a contract extending the term through 2014 and adjusting the rates by 3% effective January 1, 2014. The requested 3% rate adjustment is in line with the adopted budget. Other than the rate adjustments, the 2014 contract would be in the same form as for the current year.

The contract would reflect the 2014 budget as approved and, in general, is funded approximately 80% by the General Fund with approximately 20% split between the Sewer and Water Funds. A marked-up copy of the current contract is attached for your convenience.

Staff recommends approval.

### **COUNCIL ACTION REQUESTED**

Motion to authorize the Director of Administration to execute a contract with Geographic Marketing Advantage, LLC for Geographic Information System Support and Database Maintenance Services in a form substantially equivalent to the 2013 contract but incorporating a 3% rate increase effective January 1, 2014.

## PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 2012, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "CLIENT") and Geographic Marketing Advantage, LLC, a Wisconsin Limited Liability Corporation (hereinafter "CONSULTANT"), whose principal place of business is 8757 W. Elm Ct, Franklin, WI 53132.

### WITNESSETH

WHEREAS, CONSULTANT is duly qualified and experienced as a consultant and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of CLIENT, it is necessary and advisable to employ CONSULTANT in connection with outsourcing the design, development, and operation of an enterprise GIS for the City of Franklin.

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, CLIENT and CONSULTANT agree as follows:

#### I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A. CONSULTANT shall provide services to CLIENT for the continuation of services for operation and support of the City of Franklin's GIS and for performing updates and maintenance to the GIS database. Services to be provided under this AGREEMENT are provided in Attachment A.
- B. CONSULTANT shall serve as CLIENT's professional representative in matters to which this AGREEMENT applies, and will give consultation and advice to CLIENT during the performance of said services. CONSULTANT may employ the services of outside consultants and subcontractors when deemed necessary by CONSULTANT to complete work under this AGREEMENT.
- C. CONSULTANT is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, CONSULTANT and not of CLIENT. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of CONSULTANT as employer. CLIENT understands that express AGREEMENTS may exist between CONSULTANT and its employees regarding extra work, competition, and nondisclosure.
- D. During the term of this AGREEMENT and throughout the period of performance of any resultant AGREEMENT, including extensions, modifications, or additions thereto, and for a period of one (1) year from the conclusion of such activity, the parties hereto agree that neither shall solicit for employment any technical or professional employees of the other without the prior written approval of the other party.

- E. CONSULTANT maintains certain copyrighted source documents that are subject to periodic independent evaluation and updates. CONSULTANT reserves the right to use copyrighted source documents and be compensated for such use, in an amount as mutually agreed upon, when it is necessary or convenient to accomplish the Basic Services covered by this AGREEMENT, and the fee for such use would be less than or equal to the cost of providing the same service through the creation of original source documents. For all copyrighted works provided to CLIENT, CONSULTANT grants CLIENT permission to reproduce such works in any manner; prepare derivative works; and lend, lease, rent, or transfer ownership to any private or public entity involved with the operation, financing, and use of the City of Franklin GIS. CLIENT agrees that the use of materials prepared from copyrighted source documents will be limited to the project needs encompassed by this AGREEMENT. Use of materials prepared from copyrighted source documents for other purposes shall be limited to reproduction for criticism, comment, news reporting, teaching, scholarship, research, or similar activities covered by the "fair use" principles of the copyright law. All copyrighted source documents will be clearly marked by the CONSULTANT.

## II. FEES AND PAYMENTS

CLIENT agrees to pay CONSULTANT, for and in consideration of the performance of Basic Services further described in Attachment A for a total not-to-exceed cost in the amount of ~~\$120,350~~\$124,300, in accordance with Attachment "B" and subject to the terms detailed below:

- A. CONSULTANT may bill CLIENT and be paid for all work satisfactorily completed hereunder on a monthly basis. CLIENT agrees to pay undisputed CONSULTANT's invoice within 30 days of invoice date for all approved work.
- B. CONSULTANT will invoice CLIENT on an hourly basis for tasks identified in Attachment A. Total cost will not exceed ~~\$114,128~~\$117,552 unless changes to the project budget are specifically agreed upon by CONSULTANT and CLIENT and documented in writing. For services rendered, invoices will clearly state the percentage of work completed and the fee earned.
- C. In consideration of the faithful performance of this AGREEMENT, the CONSULTANT will not exceed the fee for Basic Services and expenses without written authorization from CLIENT to perform work over and above that described in the original AGREEMENT.
- D. Should CLIENT find deficiencies in draft and final reports, it will notify CONSULTANT in writing within thirty (30) days of receipt of report and the CONSULTANT will remedy the deficiencies within thirty (30) days of receiving CLIENT's review.
- E. CONSULTANT shall not initiate any services prior to January 1, ~~2013~~2014 and shall complete all services covered by this AGREEMENT by December 31, ~~2013~~2014, excepting for delays caused through no fault of the CONSULTANT or except when continued month-to-month as provided for herein.

### **III. MODIFICATION AND ADDITIONAL SERVICES**

- A. CLIENT may, in writing, request changes in the Basic Services required to be performed by CONSULTANT under this AGREEMENT. Upon acceptance of the request of such changes, CONSULTANT shall submit a "Change Order Request Form" to CLIENT for authorization and notice to proceed signature and return to CONSULTANT. Should any such actual changes be made, an equitable adjustment as mutually agreed upon will be made to compensate CONSULTANT for any incremental labor or direct costs. Any claim by CONSULTANT for adjustments hereunder must be made to CLIENT in writing no later than forty-five (45) days after receipt by CONSULTANT of notice of such changes from CLIENT.
- B. CLIENT and CONSULTANT reserve the right to subsequently amend this AGREEMENT to include additional services. Compensation and schedule for completion for additional services will be as agreed by CLIENT and CONSULTANT prior to the start of work on said additional services and may be incorporated as an Addendum to this AGREEMENT.

### **IV. ASSISTANCE AND CONTROL**

- A. Todd Niedermeyer, or designee, will perform the work of the CONSULTANT, and be solely responsible for communication within the CLIENT's organization as related to all issues originating under this AGREEMENT.
- B. CLIENT will timely provide CONSULTANT with all available information concerning PROJECT as deemed necessary by CONSULTANT.
- C. CONSULTANT will appoint, subject to the approval of CLIENT, Todd Niedermeyer as CONSULTANT's Project Manager and other key providers of the Basic Services. Substitution of other staff may occur only with the consent of CLIENT.
- D. CONSULTANT shall maintain all records pertaining to this AGREEMENT until at least three (3) years following its completion of the services hereunder and CLIENT shall have the right to inspect and copy such records upon request.

### **V. TERMINATION**

- A. This AGREEMENT may be terminated by either party to this AGREEMENT upon thirty (30) days written notice. Upon such termination by CLIENT, CONSULTANT shall be entitled to payment of such amount as shall fairly compensate CONSULTANT for all work performed and expenses incurred up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential AGREEMENTs for services with other parties.

B. In the event that this AGREEMENT is terminated for any reason, CONSULTANT shall deliver to CLIENT all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to Basic Services that CONSULTANT may have accumulated. Such material is to be delivered to CLIENT whether in completed form or in process. CLIENT shall hold CONSULTANT harmless for any work that is incomplete due to early termination.

C. The rights and remedies of CLIENT and CONSULTANT under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.

## **VI. INSURANCE**

The CONSULTANT shall, during the life of the AGREEMENT, maintain insurance coverage with an authorized insurance carrier at least equal to the minimum limits set forth below:

A. Limit of General/Commercial Liability	\$1,000,000
B. Automobile Liability: Bodily Injury/Property Damage	\$1,000,000
C. Workers' Compensation and Employer's Liability	Per Statute
D. Professional Liability	\$1,000,000

Upon the execution of this AGREEMENT, CONSULTANT shall supply CLIENT with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days written notice to CLIENT.

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the CLIENT from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any negligent or intentional and wrongful act or omission of CONSULTANT.

## **VII. TIME FOR COMPLETION**

Subject to the conditions of Section II E., CONSULTANT shall commence immediately upon receipt of a Notice to Proceed to complete all work required herein. The CONSULTANT shall exert all reasonable effort to adhere to the services in Attachment A except that the services may be notified with the approval of CLIENT and shall be extended day for day for any delay introduced during CLIENT's review of products or in the general conduct of the project.

## **VIII. DISPUTES**

This AGREEMENT shall be construed under and governed by the laws of the State of Wisconsin. The venue for all actions arising under this AGREEMENT shall be the circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

**IX. CONFIDENTIALITY**

CONSULTANT shall keep confidential, except as may be required to perform its obligations under this AGREEMENT, any and all confidential information of the CLIENT of which the CONSULTANT has knowledge, possession, or to which the CONSULTANT has access. This confidentiality obligation shall survive the termination of this AGREEMENT.

**X. TERM**

This AGREEMENT shall cover a period including all of calendar year ~~2013~~ 2014 and shall continue thereafter on a month-to-month basis, at the fixed hourly rates provided for herein, until such time that the AGREEMENT is terminated, as provided for herein, or modified or extended by a separate, future AGREEMENT.

**XI. AMMENDMENTS TO THE AGREEMENT**

This AGREEMENT may only be amended by written instrument signed by both CLIENT and CONSULTANT.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

City of Franklin, Wisconsin

Geographic Marketing Advantage, LLC

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: Mark W. Luberd

PRINT NAME: Todd Niedermeyer

TITLE: Director of Administration

TITLE: President, Sole Member

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

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

## Attachment A

### Continued GIS Support and Services for ~~2013~~2014

#### On-Site Management and Technical Support of GIS Operation

- Monitor results of the GIS Rewrite Project EditApp to determine continued effectiveness and operability and to determine additional potential improvements and to participate, including testing and development review, in capital projects to join Govern and ESRI through a new Govern Interface.
- Continue communications and coordination with the City's Administration and Information Technology Support Providers
- Provide technical and programming services as needed by the City
- Setup login parameters for ArcGIS licenses
- Support database management
- Evaluate data quality and data errors
- Provide GIS user support
- Produce product to support special requests, including but not limited to map development
- Provide continued documentation, instruction and training
- Installation of software
- Load new and revised GIS data
- Provide other support as needed by the City
- Provide training on GIS applications and tools, including website tools
- Perform GIS database updates and maintenance, including related applications such as but not limited to Signview and Sewerview (Note: City staff will also continue to perform similar and related tasks. As such, Contractor will be evaluated on this aspect based upon their accuracy and productivity in performance of this contracted service.)
- Work with ESRI and Cartegraph Products and Services
- Help develop, support, and promote additional GIS applicability and use throughout City Departments.
- Maintenance and continued development, with approval of the Director of Administration, of the web-based GIS portal used for public access to mapping services.

## Attachment B

**Geographic Marketing Advantage, LLC  
TOTAL "NOT TO EXCEED" BUDGET  
for  
Continued On-Site Support Services And  
GIS Database Updates and Maintenance**

Service	Approx. Number of Hours Per Week	Approx. Number of Weeks	Approx. Total Hours	Fixed Hourly Rate	Budget
On-Site Administrative and Project Management Support of GIS Operations (Project Manager)	16	50	800	\$84.00 <u>86.52</u>	\$67,200 <u>\$69,216</u>
Technical and Mapping Support	16	50	800	\$58.66 <u>60.42</u>	\$46,928 <u>\$48,336</u>
<b>Total Estimated Expenditure</b>					\$114,128 <u>\$117,552</u>
<b>Available for Additional Services Authorized in Writing</b>					\$6,222 <u>\$6,748</u>
<b>Total "Not to Exceed"</b>					\$120,350 <u>\$124,300</u>

<b>APPROVAL</b> <i>Slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>12/17/13</b>
<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS PERMITS</b>	<b>ITEM NUMBER</b> <b>H.1.</b>

See attached list from meeting of December 17, 2013.

**COUNCIL ACTION REQUESTED**



# City of Franklin

9229 W. Loomis Road  
Franklin, WI 53132-9728

414-425-7500

## License Committee

### Agenda\*

Alderman's Room

December 17, 2013 – 5:55 p.m.

<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>
<b>Operator - New 2013-14 6 p.m.</b>	<b>Proeber, Alexander J</b> 8405 Nicholson Road Caledonia, WI 53108 Hideaway Pub			
<b>Operator - New 2013-14</b>	<b>Markowski, Karen A</b> 11077 W Forest Home Ave, Apt 122 Hales Corners, WI 53130 Kwik Trip			
<b>Operator - New 2013-14</b>	<b>Ceron-Rodriguez, Jonathan</b> 1633 S 37 <sup>th</sup> St Milwaukee, WI 53215 Chili's Bar & Grill			
<b>People Uniting for the Betterment of Life and Investment in the Community (PUBLIC) Grant</b>	<b>Saint Paul's Lutheran School – Community Out Reach</b> Fee Waivers: Park Permit Date of the Event(s): 5/29/2014 Location: Vernon Barg Pavillion			
<b>People Uniting for the Betterment of Life and Investment in the Community (PUBLIC) Grant</b>	<b>Xaverian Missionaries – Annual Festival</b> Fee Waivers: Extraordinary Event License, Temporary Class B Beer and Wine License, Temporary Operator Licenses, Temporary Food License, and Sign Permits Date of the Event(s): 6/21-22/2014 Location: 4500 Xavier Dr			
<b>3.</b>	<b>Adjournment</b>	<b>Time</b>		

\*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.

<p style="text-align: center;"><b>APPROVAL</b></p> <p><i>Slw Paul</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>12/17/13</b></p>
<p style="text-align: center;"><b>Bills</b></p>	<p style="text-align: center;"><b>Vouchers and Payroll Approval</b></p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><b>I. 1.</b></p>

Attached is a list of vouchers dated November 29<sup>th</sup> through December 12, 2013 Nos. 150292 through Nos. 150432 totaling \$ 1,492,577.88. Included in this listing are EFT's Nos. 2478-2481 and Nos. 2487-2490 and Library vouchers in the amount of \$ 322.74.

The net payroll dated December 13, 2013 is \$321,125.68, previously estimated at \$318,000.00. Payroll deductions for the December 13, 2013 are \$210,165.17, previously estimated at \$211,000.00. Payments were made with Check Nos. 150433 through 150440 and EFT Nos. 2491 through 2493.

The estimated net payroll dated December 27, 2013 is \$ 354,000.00 with estimated payroll deduction of \$ 218,000.00.

There were no property tax payments.

***COUNCIL ACTION REQUESTED***

Motion approving net general checking account City vouchers in the range Nos. 150292 through Nos. 150432 in the amount of \$ 1,492,577.88 dated November 29 through December 12, 2013.

Motion approving the net payroll dated December 13, 2013 in the amount of \$321,125.68 (estimate previously approved at \$318,000.00) and payments of the various payroll deductions in the amount of \$210,165.17 (estimate previously approved at \$211,000.00), plus any City matching payments, where required.

Motion approving the net payroll dated December 27, 2013 estimated at \$354,000.00 and payments of the various payroll deductions estimated at \$218,000.00 plus any City matching payments, where required.