

<p style="text-align: center;"><b>APPROVAL</b></p> <p style="text-align: center;"><i>slw</i></p>	<p style="text-align: center;"><b>REQUEST FOR COUNCIL ACTION</b></p>	<p style="text-align: center;"><b>MEETING DATE</b></p> <p style="text-align: center;">11/19/13</p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;"><b>STANDARDS, FINDINGS AND DECISION OF THE CITY OF FRANKLIN COMMON COUNCIL UPON THE APPLICATION OF ANDREW A. PETTY AND AMANDA E. PETTY, FOR A SPECIAL EXCEPTION TO CERTAIN NATURAL RESOURCE PROVISIONS OF THE CITY OF FRANKLIN UNIFIED DEVELOPMENT ORDINANCE</b></p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.12.</i></p>

At their meeting on September 11, 2013, the Environmental Commission recommended denial of a Special Exception to certain natural resource provisions of the Unified Development Ordinance. The Environmental Commission's Special Exception Application Review and Recommendation form, dated September 17, 2013, is attached.

At the regular meeting of the Plan Commission on September 19, 2013, following a properly noticed public hearing, Andrew J. and Amanda E. Petty granted the City a ninety (90) day time extension for review of their application for a Special Exception to Natural Resource Provisions for property located at 12149 West Shadwell Circle. In addition, the Plan Commission directed staff to work with the applicant and bring back the request within ninety (90) days (or by December 19<sup>th</sup>, 2013)

At the regular meeting of the Plan Commission on November 7, 2013, the following action was approved: move to recommend denial to the Common Council of the Andrew A. Petty and Amanda E. Petty Natural Resource Features Special Exception pursuant to the Standards, Findings and Decision recommended by the Plan Commission and Common Council consideration of any Environmental Commission recommendation.

**COUNCIL ACTION REQUESTED**

Deny the standards, findings and decision of the City of Franklin Common Council upon the application of Andrew J. Petty and Amanda E. Petty, for a special exception to certain natural resource provisions of the City of Franklin Unified Development Ordinance.

Standards, Findings and Decision  
of the City of Franklin Common Council upon the  
Application of Andrew J. Petty and Amanda E. Petty  
for a Special Exception to Certain Natural Resource Provisions  
of the City of Franklin Unified Development Ordinance

Whereas, Andrew J. Petty and Amanda E. Petty, having filed an application dated July 29, 2013, for a Special Exception pursuant to Section 15-9.0110 of the City of Franklin Unified Development Ordinance pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature; a copy of said application being annexed hereto and incorporated herein as Exhibit A; and

Whereas, the application having been reviewed by the City of Franklin Environmental Commission and the Commission having made its recommendation upon the application, a copy of said recommendation dated September 17, 2013 being annexed hereto and incorporated herein as Exhibit B; and

Whereas, following a public hearing before the City of Franklin Plan Commission, the Plan Commission having reviewed the application and having made its recommendation thereon as set forth upon the report of the City of Franklin Planning Department, a copy of said report dated November 7, 2013 being annexed hereto and incorporated herein as Exhibit C; and

Whereas, the property which is the subject of the application for a Special Exception is located at 12149 West Shadwell Circle, zoned R-4 Suburban Single-Family Residence District, and such property is more particularly described upon Exhibit D annexed hereto and incorporated herein; and

Whereas, Section 15-10.0208B. of the City of Franklin Unified Development Ordinance, as amended by Ordinance No. 2003-1747, pertaining to the granting of Special Exceptions to Stream, Shore Buffer, Navigable Water-related, Wetland, Wetland Buffer and Wetland Setback Provisions, and Improvements or Enhancements to a Natural Resource Feature, provides in part: "The decision of the Common Council upon any decision under this Section shall be in writing, state the grounds of such determination, be filed in the office of the City Planning Manager and be mailed to the applicant."

Now, Therefore, the Common Council makes the following findings pursuant to Section 15-10.0208B.2.a., b. and c. of the Unified Development Ordinance upon the application for a Special Exception dated July 29, 2013 by Andrew J. Petty and Amanda E. Petty, pursuant to the City of Franklin Unified Development Ordinance, the proceedings heretofore had and the recitals and matters incorporated as set forth above, recognizing the applicant as having the burden of proof to present evidence sufficient to support the following findings and that such findings be made by not less than four members of the Common Council in order to grant such Special Exception.

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *The Common Council finds the conditions giving rise to the proposed special exception were self imposed by the applicants. The 50-foot wetland setback was in place on this lot prior to the applicants buying the property and moving in. The applicants should have done their due diligence and asked the City where a fence could be located prior to purchasing the lot*

2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:

a. be unreasonably burdensome to the applicant and that there are no reasonable practicable alternatives: *The Common Council finds a reasonable practicable alternative does exist. The applicant could erect a fence around a usable area of their rear-yard, without the need for a special exception; or*

b. unreasonably and negatively impact upon the applicant's use of the property and that there are no reasonable practicable alternatives:

3. The Special Exception, including any conditions imposed under this Section will:

a. be consistent with the existing character of the neighborhood: *The proposed special exception would not be consistent with the existing character of the neighborhood, as none of the adjacent neighbors have a fence; and*

b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: *Approving this special exception could set a precedent as lots with similar natural resource features exist within the Shadwell Neighborhood and the City; and*

c. be in harmony with the general purpose and intent of the provisions of this Ordinance proscribing the requirement: *The proposed special exception is not in harmony with the general purpose and intent of the provisions of Section 15-4.0102(I) of the City of Franklin Unified Development Ordinance; and*

d. preserve or enhance the functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback in co-existence with the development: *(this finding only applying to an application to improve or enhance a natural resource feature): N/A*

The Common Council considered the following factors in making its determinations pursuant to Section 15-10.0208B.2.d. of the Unified Development Ordinance.

1. **Characteristics of the real property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks:** *The existing single-family residence located at 12149 West Shadwell Circle meets the setbacks of the R-4 Suburban Single-family Residence District.*
2. **Any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district:** *The conditions applying to Lot 15 are not exceptional or extraordinary. Lot 16 of the Shadwell Subdivision also has a portion of the 30-foot wetland buffer and 50-foot wetland setback on it.*
3. **Existing and future uses of property; useful life of improvements at issue; disability of an occupant:** *The property is currently used as a single-family residence by Andrew J. and Amanda E. Petty.*
4. **Aesthetics:** *The opacity of the proposed aluminum fence would limit impacts to the aesthetics of the area.*
5. **Degree of noncompliance with the requirement allowed by the Special Exception:** *The applicant is requesting approval to erect a six-foot high aluminum fence within a portion of the 50-foot wetland setback and installation of a turf grass lawn within approximately 2,229 square feet of wetland setback, on single-family residential property located at 12149 West Shadwell Circle.*
6. **Proximity to and character of surrounding property:** *Single-family residential to the north, Outlot 1 of Shadwell Subdivision (wetland) to the south, single-family residential and Outlot 1 of Shadwell Subdivision (wetland) to the east and single-family residential and Outlot 1 of the Shadwell Subdivision (stormwater pond) to the west.*
7. **Zoning of the area in which property is located and neighboring area:** *R-4 Suburban Single-Family Residence District.*

8. Any negative effect upon adjoining property: *Granting the proposed special exception could set a precedent and lead to more neighbors requesting impacts to natural resource features within the subdivision.*

9. Natural features of the property: The property has portions of a 30-foot wetland buffer and 50-foot wetland setback on it. The 30-foot wetland buffer is part of a conservation easement.

10. Environmental impacts: *The applicant is requesting approval to erect a six-foot high aluminum fence within a portion of the 50-foot wetland setback and installation of a turf grass lawn within approximately 940 square feet of wetland setback, on single-family residential property located at 12149 West Shadwell Circle.*

11. A recommendation from the Environmental Commission as well as a review and recommendation prepared by an Environmental Commission-selected person knowledgeable in natural systems: *The Environmental Commission recommendation and its reference to the report of September 17, 2013 is incorporated herein.*

12. The practicable alternatives analysis required by Section 15-9.0110C.4. of the Unified Development Ordinance and the overall impact of the entire proposed use or structure, performance standards and analysis with regard to the impacts of the proposal, proposed design solutions for any concerns under the Ordinance, executory actions which would maintain the general intent of the Ordinance in question, and other factors relating to the purpose and intent of the Ordinance section imposing the requirement: *The Plan Commission recommendation and the Environmental Commission recommendation address these factors and are incorporated herein.*

#### Decision

*Upon the above findings and all of the files and proceedings heretofore had upon the subject application, the Common Council hereby denies a Special Exception for such relief as is described within Exhibit C.*

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.

APPROVED:

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

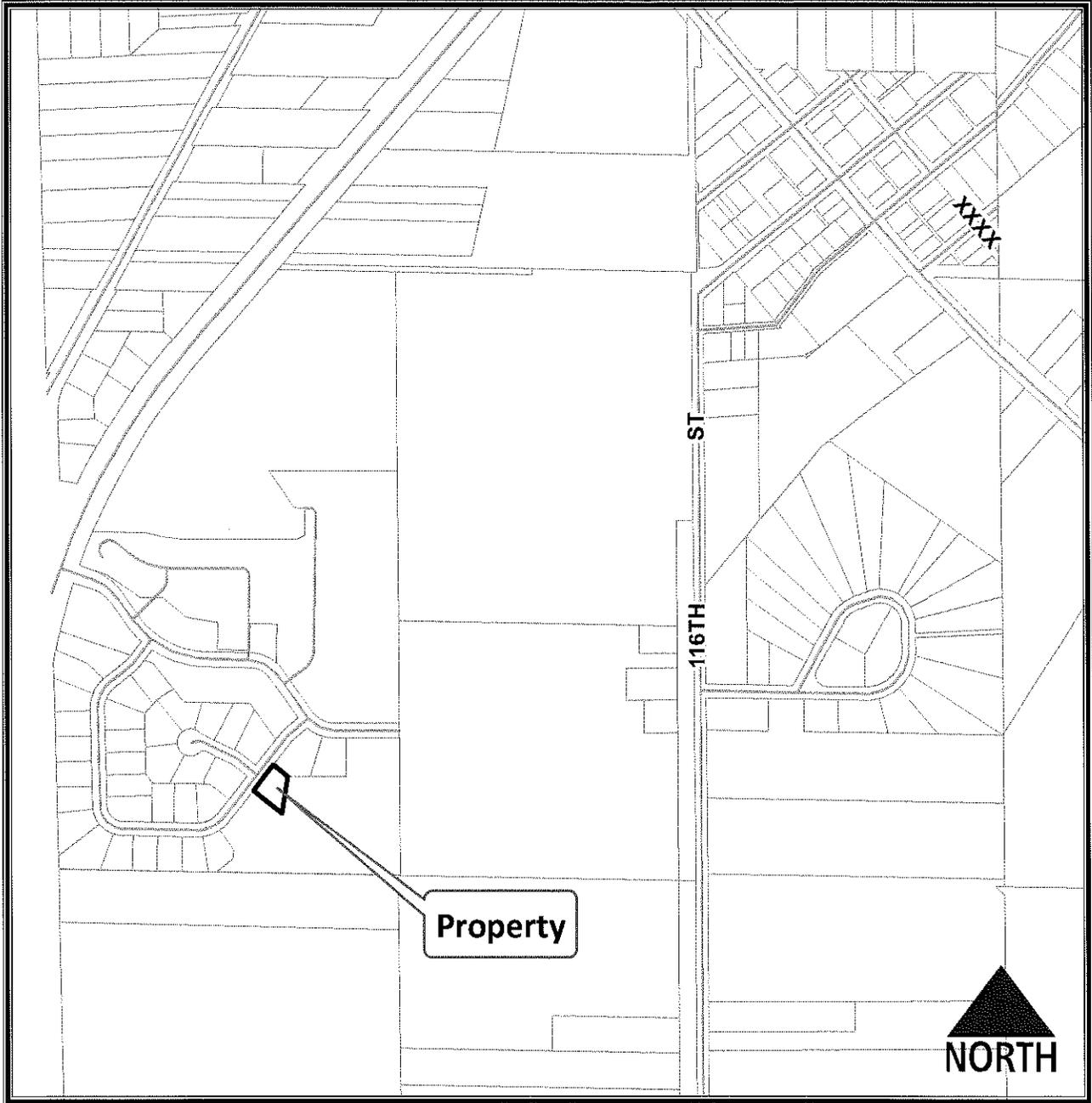
ATTEST:

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

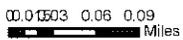
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSENT \_\_\_\_\_



# 12149 W. Shadwell Circle



Planning Department  
(414) 425-4024



*This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.*

## Exhibit A

### Project Narrative

We are seeking permission to fence in our backyard. We are looking to fence up to the 30 foot Wetland Buffer, as opposed to the 50 foot Wetland Setback that the city of Franklin is requiring. We would also like to plant turf grass within the 50 foot Wetland Setback that we are looking to fence in. Outside of the fenced in area, we plan to plant a "no mow" fescue mix, or other native planting as requested.

We have chosen to utilize aluminum fencing due to its low impact, high opacity and other eco benefits. There will be a 6 foot run between each pole, meaning that only 23 poles will be inside the 50 foot buffer. Due to the open concept of the fencing, water will be able to filter through with ease, but our children and pets will be safely contained. The safety of our children and pets from not only the wetland, but the retention pond, are of the most importance to us.

Fencing in with a 50 foot Wetland Setback will drastically decrease the size of the yard that is fenced in, decreasing the amount of play space. With a 50 foot Wetland Setback it is almost not worth fencing in at all since most play, such as tag, kickball or baseball, requires a larger area for play.

No heavy equipment will be utilized for the installation of the fence. A post-hole digger will be the only tool.

Due to the impact you feel we would be making to the Wetland Buffer, we are more than willing to contribute to the wetland through additional plantings of trees, shrubbery or other resources.

Franklin

SEP 13 2013

City Development

**Applications for a Special Exception to stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback provisions, and for improvements or enhancements to a natural resource feature of this Ordinance shall include the following:**

A. Name and address of the applicant and all abutting and opposite property owners of records.

Applicant: Andrew J Petty, Amanda E Petty  
12149 Shadwell Circle Franklin, WI 53132

Surrounding property owners:  
Mr & Mrs Ripple  
12125 W Shadwell Cir., Franklin, WI 53132

Jerry & Cynthia Mankfe  
12152 N Edgehill Ct., Franklin, WI 53132

Rudy & Karissa Will  
12164 W Shadwell Cir., Franklin, WI 53132

Curtis & Amal Leren  
12221 Shadwell Cir., Franklin, WI 53132

Franklin

SEP 13 2011

City Development

B. Plat of survey. Plat of survey prepared by a registered land surveyor showing all of the information required under §15-9.0102 of this Ordinance for a Zoning Compliance Permit.

Attached

C. Questions to be answered by the applicant. Items on the application to be provided in writing by the applicant shall include the following:

1. Indication of the section (s) of this Ordinance for which a Special Exception is requested. City of Franklin Unified Development Ordinance

Section 15-4.0102(I) of the City of Franklin Unified Development Ordinance.

2. Statement regarding the Special Exception requested, giving distances and dimensions where appropriate.

We are seeking permission to fence in our backyard. We are looking to fence up to the 30 foot Wetland Buffer, as opposed to the 50 foot buffer that the City of Franklin is requiring. We have chosen to utilize aluminum fencing due to its low impact, high opacity and eco friendly benefits. There will be a 6 foot run between each post, allowing only 23 posts inside the 50 foot buffer. The area of the 50 foot Wetland Setback to be enclosed by the proposed 6 foot aluminum fence would be approximately 1,943 square feet. We would also like to plant turf grass within the 50 foot Wetland Setback that we are looking to fence in. Outside of the fenced area, we plan to plant a "no mow" fescue mix, or other native plantings as requested.

**3. Statement of the reason (s) for the request.**

The reason for this request is to create a safe and protected play area for our children and pets. Fencing in this area would secure them from the wetland and retention pond, which could be life threatening, as well as to protect the purity of the wildlife and wetland.

**4. Statement of the reasons why the particular request is an appropriate case for a Special Exception, together with any proposed conditions or safeguards, and the reasons why the proposed Special Exception is in harmony with the general purpose and intent of the Ordinance. In addition, the statement shall address any exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district, including a practicable alternative analysis as follows:**

**a. Background and purpose of the Project.**

**i) Describe the project and its purpose in detail. Include any pertinent construction plans.**

We are in process of completing a patio and play area in our back yard, having purchased the house as new construction completed in May of 2013. We have planned for a patio, 3 section play set and grass area. We are looking to fence up to the 30 foot Wetland Buffer, as opposed to the 50 foot buffer that the City of Franklin is requiring. We have chosen to utilize aluminum fencing due to its low impact, high opacity and eco friendly benefits. There will be a 6 foot run between each pole, meaning that only 23 poles will be inside the 50 foot buffer.

**ii) State whether the project is an expansion of an existing work or new construction.**

New construction and landscaping. Home purchased in May 2013.

**iii) State why the project must be located in or adjacent to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback to achieve its purpose.**

The backyard butts up to wetland on the north and east property line, and retention pond on the south. The safety of our children and pets from not only the wetland and retention pond, but also the protection of wildlife and wetland are of the most importance to us. Fencing within a 50 foot buffer will drastically decrease the size of the yard that is fenced in, limiting areas for pets and child play. Most games such as tag, kickball or baseball need an area to run. Placing the fence on the 30 foot buffer would allow for a useable and protected play area, decreasing the need for anyone to go outside the fenced area, disturbing the wetlands.

**b. Possible Alternatives**

**i) State all of the possible ways the project may proceed without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback as proposed.**

We could fence within the 50 foot buffer, but it would leave little usable space for the children and pet play area. Fencing according to our plan allows for the 30 foot buffer by Unified Development Ordinance specifications.

With a 50 foot buffer, our quality of life would be drastically affected as we would no longer have a large enough area where children, parents, friends and family could gather for family functions and celebrations.

ii) State how the project may be redesigned for the site without affecting the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

There is no way to redesign the fencing project, and still provide a functional gathering/play space, that won't effect the 50 foot Wetland Buffer that the City requires.

iii) State how the project may be made smaller while still meeting the project's needs.

Due to the survey of the property and placement of the home, there is no other area within our property line for the project to be made smaller, while still achieving our goal of a safe, usable play area for our children and pets.

iv) State what geographical areas were searched for alternative sites.

N/A

v) State whether there are other, non-stream or other non-navigable water, non-shore buffer, non-wetland, non-wetland buffer, and/or non-wetland setback sites available for development in the area.

Not that we own

vi) State what will occur if the project does not proceed.

The possibility of injury or even the death of our children or pets, and damage to the purity of the wetland area.

c. Comparison of Alternatives.

2. State the specific costs of each of the possible alternatives set forth under sub. b., above as compared to the original proposal and consider and document the cost of the resource loss to the community.

We don't see how the alternative (a 50 foot buffer) would provide a reasonably sized protected play area. The cost changes only by the purchase of less fencing.

3. State any logistical reasons limiting any of the possible alternatives set forth under sub. b., above.

We don't own other property nearby.

We specifically purchased this house on this land because of the location and size of lot in the

City of Franklin, as well as the lot itself being bordered by wetland and a retention pond. It was the beauty of nature and serene environment we had searched for.

4. State any technological reasons limiting any of the possible alternatives set forth under sub. b., above.

We don't own any other property and there is not any available.

5. State any other reasons limiting any of the possible alternatives set forth under sub. b., above.

We don't see any possible alternatives. Fencing in a smaller area would provide very little play space for our children and pets, increasing the need for play outside of the protected area.

d. Choice of Project Plan. State why the project should proceed instead of any of the possible alternatives listed under sub. b., above, which would avoid stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback impacts.

We purchased our home with the intention of creating a beautiful, usable, outdoor space to enjoy; with beautiful views and wildlife watching. We are not looking to ruin the purity and beauty of this space, but to compliment it. We have chosen to utilize aluminum fencing due to its low impact, high opacity and eco friendly benefits. Due to the open concept of the fencing, water will be able to filter through with ease, but our children and pets will safely be contained. Due to the impact you feel we would be making to the Wetland Buffer, we are more than willing to contribute to the wetland through additional plantings of trees, shrubbery or other resources.

e. Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Description. Describe in detail the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback at the site which will be affected, including the topography, plants, wildlife, hydrology, soils and any other salient information pertaining to the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback.

The Wetland Buffer of 50ft will be impacted on the northwest side of the wetland, by 23 posts that would be put into the ground to anchor the fence.

f. Stream or Other Navigable Water, Shore Buffer, Wetland, Wetland Buffer, and Wetland Setback Impacts. Describe in detail any impacts to the following functional values of the stream or other navigable water, shore buffer, wetland, wetland buffer, and/or wetland setback:

i) Diversity of flora including State and/or Federal designated threatened and/or endangered species.

No foreseeable effect

ii) Storm and flood water storage.

No foreseeable effect. With the open concept of the fencing, water will be able to filter through with ease.

iii) Hydrologic functions.

No foreseeable effect

iv) Water quality protection including filtration and storage of sediments, nutrients or toxic substances.

No foreseeable effect, as there is no standing water in the section of wetland close to our property.

v) Shoreline protection against erosion.

No foreseeable effect

vi) Habitat for aquatic organisms.

No foreseeable effect

vii) Habitat for wildlife.

No foreseeable effect

viii) Human use functional value.

No foreseeable effect

ix) Groundwater recharge/discharge protection.

No foreseeable effect

x) Aesthetic appeal, recreation, education, and science value.

No foreseeable effect

xi) Specify any State or Federal designated threatened or endangered species or species of special concern.

None

xii) Existence within a Shoreland.

None

xiii) Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time.

None

g. Water Quality Protection. Describe how the project protects the public interest in the waters of the State of Wisconsin.

Giving us permission to fence up to the 30 foot Wetland Buffer will ensure that my children and pets will not enter the wetland area. The wetland area and the wildlife/nature it contains, therefore, will not be negatively affected in any way. It will also help to keep any other people from entering that section of wetland as well.

5. Date of any previous application or request for a Special Exception and the disposition of that previous application or request (if any).

None

D. Copies of all necessary governmental agency permits for the project or a written statement as to the status of any application for each such permit.

**SECTION 15-9.0111 OTHER REQUIRED PERMITS**

It is the responsibility of the permit applicant to secure all other necessary permits required by any state, federal, or local agency. This includes, but is not limited to, a water use permit pursuant to Chapters 30 or 31 of the Wisconsin Statutes or a wetland fill permit pursuant to Section 404 of the Federal Water Pollution Control Act, and highway access permits.

**PLAT OF SURVEY**

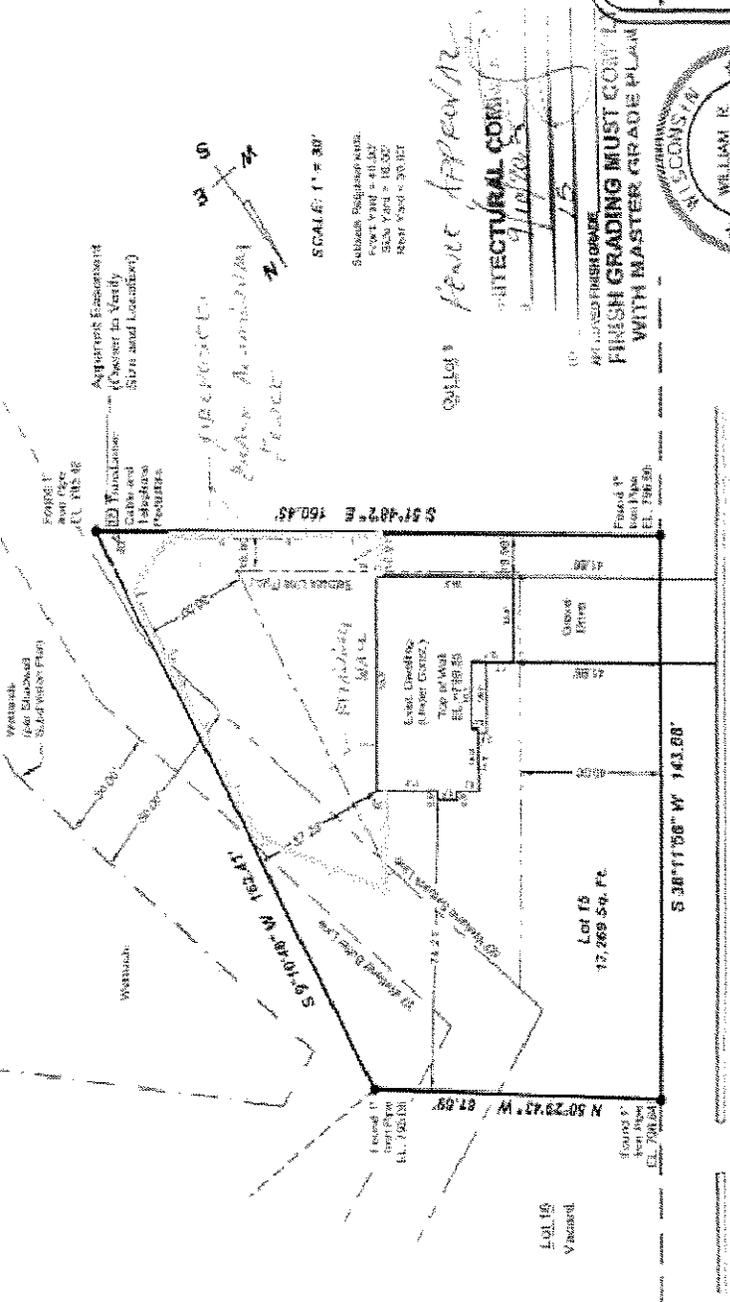
Survey No. 12014AR  
2/11/02 1200  
The Burdick Company

February 5, 2013

LOCATION: 12143 West Shadwell Circle, Franklin, Wisconsin

**LEGAL DESCRIPTION**

Lot 15 in SHADWELL, Parcel 4 and part of Parcel 3 of Certified Survey Map No. Z364, being in the Southeast 1/4 of the Northwest 1/4 of Section 16, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin

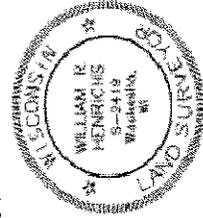


SCALE: 1" = 30'

Subsidiary English Units:  
Foot = 12 in  
Yard = 36 in  
Mile = 5,280 ft



**ARCHITECTURAL COMPANY**  
FRESH GRADING MUST COMPLY WITH MASTER GRADE PLAN



**WEST SHADWELL CIRCLE**  
(80' R.O.W.)

DRAWING BY: ST  
FIELD ENGINEERING

**DAAR ENGINEERING, INC.**  
ENGINEERS PLANNERS SURVEYORS  
178 WEST CENTER STREET, WISCONSIN, WI 53014  
PHONE: 262.464.4444 FAX: 262.464.4447  
www.daar-engineers.com

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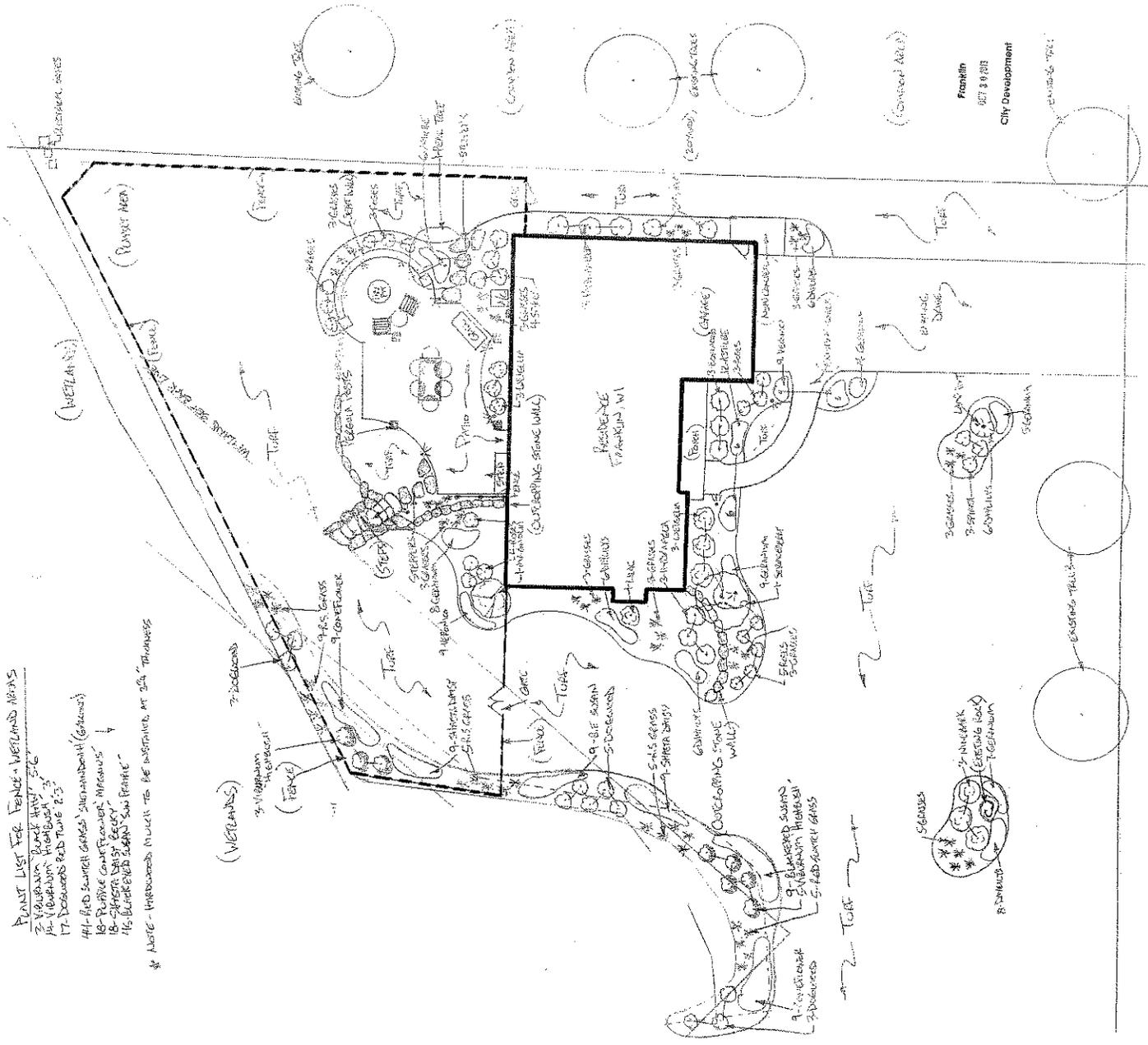
*William R. Henrichs*  
WILLIAM R. HENRICHS, LICENSED PROFESSIONAL ENGINEER  
STATE OF WISCONSIN, LICENSE NO. S-2419

**PLANT LIST FOR FENCE & WETLAND NEWS**

- 1- Yellow Back Bay 2'6"
- 1- Yellow Front Bay 2'6"
- 17- Desmodium Red Top 2'3"
- 4-1- Bird Swamp Grasses (Sagittaria)
- 18- Purple Cow Peas (Mimosa)
- 18- Yellow Nuts For Grass
- 16- Blueberry Swamp Saw Prairie

\* NOTE - HARDWOOD MULCH TO BE INSTALLED AT 24" THICKNESS

- Plant List**
- 1- Cowslip 2'6"
  - 1- Yellow Back Bay 2'6"
  - 1- Yellow Front Bay 2'6"
  - 1- Desmodium Red Top 2'3"
  - 2- Arrowwood Green Velvet 2'6"
  - 4- Small Little Princes 1'6"
  - 6- Blueberry Swamp Saw Prairie 2'6"
  - 6- Purple Cow Peas (Mimosa) 2'6"
  - 6- Yellow Nuts For Grass 2'6"
  - 1- Blueberry Swamp Saw Prairie 2'6"
  - 2- Arrowwood Green Velvet 2'6"
  - 20- Black Swamp Grasses (Sagittaria)
  - 15- Red Swamp Grasses (Sagittaria)
  - 16- Yellow Back Bay 2'6"
  - 18- Purple Cow Peas (Mimosa) 2'6"
  - 18- Yellow Nuts For Grass 2'6"
  - 22- Desmodium Red Top 2'3"
  - 22- Desmodium Red Top 2'3"



Franklin  
 OCT 8 9 2001  
 City Development

**City of Franklin Environmental Commission**

TO: Common Council  
DATE: September 17, 2013  
RE: Special Exception application review and recommendation  
APPLICATION: Andrew J. Petty and Amanda E. Petty, Applicants, dated:  
September 13, 2013

**I. §15-9.0110 of the Unified Development Ordinance Special Exception to Natural Resource Feature Provisions Application information:**

1. Unified Development Ordinance Section(s) from which Special Exception is requested: *Section 15-4.0102(D) of the City of Franklin Unified Development Ordinance.*
2. Nature of the Special Exception requested (description of resources, encroachment, distances and dimensions): *The applicant is requesting approval to erect a six-foot high aluminum fence within a portion of the 50-foot wetland setback and installation of a turf grass lawn within approximately 940 square feet of wetland setback, on single-family residential property located at 12149 West Shadwell Circle.*
3. Applicant's reason for request: *The reason for this request is to create a safe and protected play area for our children and pets. Fencing in this area would secure them from the wetland and retention pond, which could be life threatening, as well as to protect the purity of the wildlife and wetland.*
4. Applicant's reason why request appropriate for Special Exception: *We are looking to fence up to the 30-foot Wetland Buffer, as opposed to the 50-foot wetland setback that the City of Franklin is requiring. We have chosen to utilize aluminum fencing due to its low impact, high opacity and eco friendly benefits. There will be a 6-foot fin between each pole, meaning that only 16 poles will be inside the 50 foot buffer. The safety of our children and pets from not only the wetland and retention pond, but also the protection of the wildlife and wetland are of the most importance to us. Placing the fence up to the 30-foot wetland buffer would allow for a usable and protected play area,*

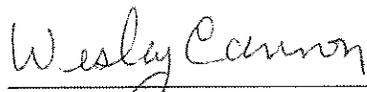
13. Existence within a Primary or Secondary Environmental Corridor or within an Isolated Natural Area, as those areas are defined and currently mapped by the Southeastern Wisconsin Regional Planning Commission from time to time: *Approximately 7.57 acres of wetland are located southeast of the subject property within Outlot 1 of the Shadwell Subdivision. This wetland is part of a larger wetland complex associated with Ryan Creek and is part of a Southeastern Wisconsin Regional Planning Commission identified Secondary Environmental Corridor.*

**III. Environmental Commission review of the §15-10.0208B.2.d. factors and recommendations as to findings thereon:**

1. That the condition(s) giving rise to the request for a Special Exception were not self-imposed by the applicant (this subsection a. does not apply to an application to improve or enhance a natural resource feature): *The Environmental Commission finds the conditions giving rise to the proposed special exception were self imposed by the applicants. The 50-foot wetland setback was in place on this lot prior to the applicants buying the property and moving in. The applicants should have done their due diligence and asked the City where a fence could be located prior to purchasing the lot.*
2. That compliance with the stream, shore buffer, navigable water-related, wetland, wetland buffer, and wetland setback requirement will:
  - a. be unreasonably burdensome to the applicants and that there are no reasonable practicable alternatives: *The Environmental Commission finds a reasonable practicable alternative does exist. The applicant could erect a fence around a usable area of their rear-yard, without the need for a special exception.* ; or
  - b. unreasonably and negatively impact upon the applicants' use of the property and that there are no reasonable practicable alternatives:
3. The Special Exception, including any conditions imposed under this Section will:
  - a. be consistent with the existing character of the neighborhood: *The Environmental Commission finds the proposed special exception would not be consistent with the existing character of the neighborhood, as none of the adjacent neighbors have fences.* ; and
  - b. not effectively undermine the ability to apply or enforce the requirement with respect to other properties: *The Environmental Commission is concerned that approving this special exception could set a precedent as*

The above review and recommendation was passed and adopted at a regular meeting of the Environmental Commission of the City of Franklin on the 11th day of September, 2013.

Dated this 17th day of September, 2013.

  
\_\_\_\_\_  
Wesley Cannon, Chairman

Attest:

  
\_\_\_\_\_  
Curtis Bolton, Vice-Chairman



## CITY OF FRANKLIN



## REPORT TO THE PLAN COMMISSION

Meeting of November 7, 2013

## Natural Resource Special Exception

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**RECOMMENDATION:** City Development Staff recommends denial of the Natural Resource Special Exception for Andrew J. and Amanda E. Petty for property located at 12149 West Shadwell Circle.

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<b>Project Name:</b>	Petty Natural Resource Special Exception (NRSE)
<b>Project Address:</b>	12149 West Shadwell Circle
<b>Applicant:</b>	Andrew J. and Amanda E. Petty
<b>Property Owner:</b>	Andrew J. and Amanda E. Petty
<b>Current Zoning:</b>	R-4 Suburban Single-Family Residence District
<b>2025 Comprehensive Plan:</b>	Residential and Areas of Natural Resource Features
<b>Use of Surrounding Properties:</b>	Single-family residential to the north, Outlot 1 of Shadwell Subdivision to the south, single-family residential and Outlot 1 of Shadwell Subdivision to the east, and single-family residential and Outlot 1 of Shadwell Subdivision to the west
<b>Applicant's Action Requested:</b>	Recommendation to the Common Council for approval of the proposed Natural Resource Special Exception (NRSE)

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**HISTORY:**

At the September 19, 2013, Plan Commission meeting, Andrew J. and Amanda E. Petty granted the City a ninety (90) day time extension for review of their application for a Special Exception to Natural Resource Feature Provisions for property located at 12149 West Shadwell Circle. In addition, the Plan Commission directed staff to work with the applicant and bring back the request within ninety (90) days (or by December 19<sup>th</sup>, 2013). [Please bring your packet materials from the September 19<sup>th</sup> Plan Commission meeting.]

On September 23, 2013, Alderman Skowronski, Commissioner Fowler and Alderman Wilhelm met the applicant at 12149 W. Shadwell Circle. During the site visit, red flags were placed to mark the location of proposed planting beds for native landscaping to filter pollutants from the Petty's lawn from entering the adjacent wetland.

On September 27, 2013, at the request of Alderman Skowronski, Engineering Department Staff used their Global Positioning System (GPS) equipment to map the location of the red flags at 12149 W. Shadwell Circle. During the site visit, Staff discovered the proposed turf grass lawn had already been installed within the wetland setback and used their GPS equipment to map its location as well. According to Staff's calculations, there is approximately 2,229 square feet of

turf grass within the wetland setback. This is 286 square feet more than the approximately 1,943 square feet of turf grass installation within the wetland setback as stated in the public hearing notice for the Natural Resource Special Exception Application. However, this is a minor discrepancy, and according to the City Attorney, it is covered by the "approximately" in the public hearing notice.

Staff also discovered approximately 232 square feet of fill (with turf grass planted on it) encroaching into the wetland buffer at 12149 West Shadwell Circle. This encroachment was not part of the applicant's original request and therefore was not included in the original public hearing notice. According to the applicant, the fill was there when he purchased the lot, which indicates it likely took place during the rough grading of the lot by the home builder. The wetland buffer is protected by a conservation easement, the standard terms of which prohibit filling. Mr. Petty has agreed to remove the illegal fill from the wetland buffer and is working with Staff to correct the violation.

On October 30, 2013, the applicants submitted a Landscape Plan for their property located at 12149 West Shadwell Circle. The plan proposes native landscaping in planting beds near the top of a slope, which directs water from the Petty's lawn towards the adjacent wetland. The plan also indicates proposed plantings within the wetland buffer. On the landscape plan, a portion of the proposed fence and some turf grass are located within the wetland buffer on the property. If the Plan Commission recommends approval of the requested Natural Resource Special Exception, then staff recommends the applicant submit a revised Landscape Plan, which depicts the proposed fence and turf grass outside of the wetland buffer for review and approval by staff prior to the issuance of a fence permit by the Building Inspection Department.

### **INTRODUCTION:**

The applicant is requesting approval of a Special Exception to Natural Resource Feature Provisions for the purpose of erecting a six-foot high aluminum fence within the 50-foot wetland setback area and installation of a turf grass lawn within approximately 2,229 square feet of the wetland setback area, on single-family residential property located at 12149 West Shadwell Circle. The existing single-family residence is located on Lot 15 of the Shadwell Subdivision, which has an area of approximately 17,269 square feet.

Approximately 7.57 acres of wetland are located south of the subject property within Outlot 1 of the Shadwell Subdivision. This wetland is part of a larger wetland complex associated with Ryan Creek and is part of a Southeastern Wisconsin Regional Planning Commission identified Secondary Environmental Corridor. A portion of the 30-foot wetland buffer associated with this wetland is located on the Petty's property. The wetland within Outlot 1 and its 30-foot wetland buffer are encompassed by a conservation easement. A portion of the 50-foot wetland setback associated with the subject wetland is also located on the Petty's property, but is not part of the conservation easement.

**PROJECT DESCRIPTION/ANALYSIS:**

According to the applicant, the reason for the request is to create a safe and protected play area for their children and pets. The decorative aluminum fence comes in six (6) foot sections, which according to the applicant means approximately 17 fence-poles would be located within the 50-foot wetland setback. In the Special Exception Question and Answer Form, the applicant states, "we are more than willing to contribute to the wetland through additional plantings of trees, shrubbery or other resources". However, the applicant has not proposed any specific enhancement plantings.

According to Section 15-4.0102(I)1 of the City of Franklin Unified Development Ordinance,

- I. Wetland Setbacks. Wetland Setbacks are defined in Division 15-11.0100 of this Ordinance. If construction or disturbance occurs in that area of land which lies between the landward edge of the required wetland buffer and the required wetland setbacks then:
1. Permanent vegetative cover shall be established or reestablished and maintained throughout the remaining area (or adjacent to that area, as applicable in the case of the construction of stormwater management facilities and stormwater quality ponds) in which the construction or disturbance is located. The vegetative cover required under this Section shall be sufficient to provide filtering of pollutants from up slope overland flow areas. Seeding of non-aggressive vegetative cover shall be used and native vegetation is preferable. Turf grasses are prohibited. The vegetative cover within such area of the wetland setback which is outside of the wetland buffer may be mowed and otherwise similarly maintained.

In summary, the applicant is requesting approval to plant turf grass within the following natural resource feature:

- Approximately 0.0512 acres (2,229 square feet) of wetland setback;

The Wisconsin Department of Natural Resources (WDNR) and U.S. Army Corps of Engineers (USACOE) do not claim jurisdiction over the 50-foot wetland setback, which is a protection standard required by the city of Franklin Unified Development Ordinance. Therefore, no permits are required from either the WDNR or the USACOE.

City Development Staff finds the property, in its current condition, allows for a usable backyard, which could be planted with turf grass and fenced-in (the September 19<sup>th</sup> Plan Commission packet materials included a Plat of Survey labeled Alternative 1 identifying this area). The fenced area of the Petty rearyard could be approximately 3,721 square feet without the requested Natural Resource Special Exception. If the requested Natural Resource Special Exception is approved, then the fenced area of the rearyard would be approximately 4,877 square feet. In addition, staff does not find the conditions applying to this lot to be exceptional, extraordinary, or unusual as there are many similar lots within the City encumbered by conservation easements and wetland setbacks. For the aforementioned reasons staff does not feel that the proposed special exception is in harmony with the general purpose and intent of the ordinance.

**STAFF RECOMMENDATION:**

City Development Staff recommends denial of the Natural Resource Special Exception for Andrew J. and Amanda E. Petty for property located at 12149 West Shadwell Circle. However, if the Plan Commission recommends approval of the requested Natural Resource Special Exception, then staff suggest the following conditions of approval:

- The applicant shall submit a plan to the Building Inspector to demonstrate the fence installation will not disturb or impact the conservation easement on 12149 West Shadwell Circle, including any short term disruption or impact during the period of construction, prior to issuance of a fence permit by the Building Inspection Department.
- The applicant shall submit a revised Landscape Plan, which depicts the proposed fence and turf grass outside of the wetland buffer for review and approval by staff prior to the issuance of a fence permit by the Building Inspection Department.
- The applicant shall provide a two-year landscape guarantee for the enhancement plantings.

# Alternative 1

July 11, 2012

LOCATION: 12149 West Shadwell Circle, Franklin, Wisconsin

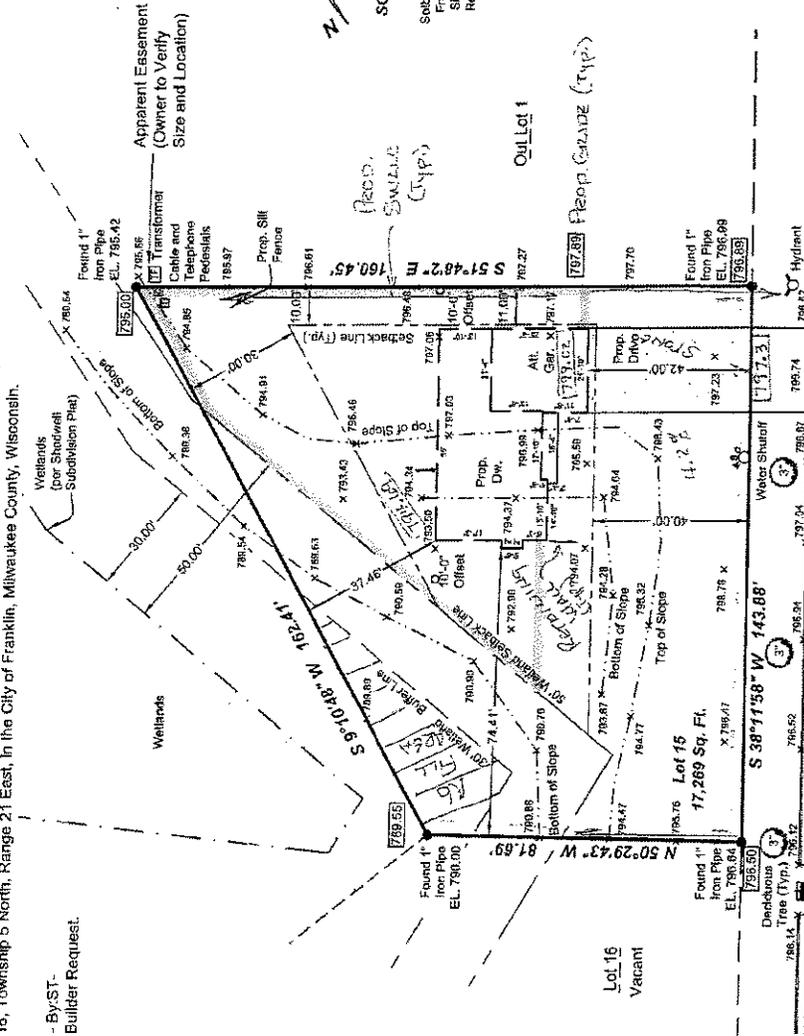
LEGAL DESCRIPTION:

Lot 15 in SHADWELL, Parcel 4 and part of Parcel 3 of Certified Survey Map No. 7364, being in the Southwest 1/4 of the Northwest 1/4 of Section 18, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

REVISED: July 16, 2012 - By: ST-  
Revised Plan per City/Builder Request.

## PLAT OF SURVEY

### Allowable Fence Location (without NRSE)



APPROVED		PLANS, GARAGE
FINISHED GRADE ELEVATION = 794.02		ELEV. = 794.02
AT GARAGE FLOOR		CITY OF FRANKLIN DATUM
CITY ENGINEER	PER	DATE
		7/23/12

794.69	798.69
Prop. Finish Yard Grade	

Proposed Grades per Grading Plan:  
Prop. Top of Wall EL = 798.05  
Prop. Garage Floor EL = 798.02  
New Slope = 4.0%

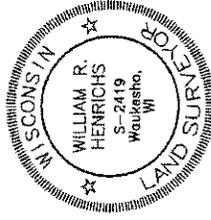


NOTE: Proposed finished yard as shown on this drawing is a suggested grade and should be verified by the owner and/or the builder and approved by the building inspector. Erosion control measures are suggested and must be verified/justified by the builder and/or building inspector based on site conditions.

**DAAR ENGINEERING, INC.**  
ENGINEERS PLANNERS SURVEYORS  
618 West Cherry Street, Milwaukee, WI 53212  
PHONE (414) 884-0874 FAX (414) 864-0677  
www.daarecorp.com

METREY CHECKY HAS LUNGE IN THE REAR OF THE PROPERTY AND THAT THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXISTING AND PROPOSED BOUNDARIES, EASEMENTS, ENCUMBRANCES, AND ALL PRINCIPAL BUILDINGS, TYPICAL BOUNDARY VICES, APPROPRIATE EASEMENTS AND ROADWAYS AND VARIOUS ENCUMBRANCES, IF ANY. THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNER OF THE PROPERTY, AND ALSO FOR THE PURPOSES OF PURCHASE, MORTGAGE, OR REFINANCING THE TITLE THEREIN WITHIN ONE YEAR FROM THE DATE HEREOF.

SIGNED: *William R. Henrichs*  
William R. Henrichs, Registered Land Surveyor S-2419



DRAWING BY: ST  
FIELD WORK BY: RT

## Orrin Sumwalt

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**From:** Nick Fuchs  
**Sent:** Thursday, November 07, 2013 11:49 AM  
**To:** 'Sue Rothering'; Joel Dietl  
**Cc:** Orrin Sumwalt  
**Subject:** RE: NRSE Criteria Shadwell Circle & Tonights meeting

Your letter and the email below will be distributed to Plan Commissioners at tonight's meeting. Thanks.

Nick Fuchs  
Senior Planner  
Department of City Development  
9229 W. Loomis Road, Franklin, WI 53132  
Phone: (414) 425-4024  
Fax: (414) 427-7691

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**From:** Sue Rothering [<mailto:suerothering@yahoo.com>]  
**Sent:** Thursday, November 07, 2013 11:46 AM  
**To:** Nick Fuchs; Joel Dietl  
**Subject:** NRSE Criteria Shadwell Circle & Tonights meeting

*HI Nick and Joel,*

*I am unable to attend the meeting tonight and I appreciate you making sure my letters are there to discuss.*

*If this email could also be printed out and given to each member that would be great.*

***My last question/comment regarding this NRSE fence at 12149 W Shadwell is that the homeowner has put up a very large lannon stone deck and so this is a self imposed situation. It is my understanding that legally with the NRSE if it is self imposed situation it does not meet the criteria of granting a NRSE.***

*Please confirm that my email will also be presented to the Plan commission.*

*Best Regards,*

*Sue Rothering*

October 30, 2013

To: City of Franklin Plan Commission

Regarding: NRSE 12149 W. Shadwell Circle

We live at 12258 W. Shadwell Circle and had sent a letter on September 5, 2013 which was included in the packet for the September 19, 2013 Plan meeting regarding our opposition to the NRSE at 12149 W. Shadwell Circle. We were unable to attend the meeting due to being out of the state at that time.

First of all, sincere thanks to all of the Plan members who took the time to leave messages or discuss the special exception meeting when I had left follow up messages with them at home which was greatly appreciated.

To topline our letter from September 5, 2013 regarding our opposition to the NRSE fence:

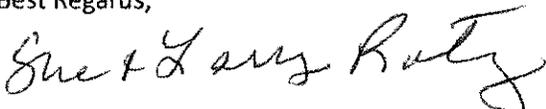
- Our neighbor purchased the home at 12149 W Shadwell Circle in June of 2013 which already had an existing and very apparent challenging yard for child safety with the wetlands/subdivision drainage pond next door and ten foot drop off on north west side of the yard
- We understand safety issues with children and with the owner already having a two year old, there were other homes for sale in the subdivision and in Franklin if he was that concerned about child safety.
- Our neighbor did not do his due diligence when it came to have a clear understanding of how the yard could be used and how it would "drastically affect" their family life prior to purchasing the home.

**Our subdivision is two lots away from the developer giving up control to the single family owners governing ourselves and making decisions.** If the Plan Commission decides to approve any kind of a fence other than what is allowed by the fence rules by the City, **the Plan Commission will be setting a poor precedent for the homeowners in Shadwell Single Family Subdivision as we move forward to govern ourselves.** The standard will be set and home owners will question the validity of following subdivision rules when someone does not want to follow the rules. How would it look in our subdivision if everyone wanted a fence larger than what was approved by the City of Franklin? Our subdivision would look like a mess! FYI, the home owners association that spoke at the September 19 meeting was from the condo association. They have nothing to do with the Shadwell single family homes.

One of the plan commission members mentioned to me in a phone discussion he wanted a "buy in" from the homeowner at 12149 West Shadwell but what about our "buy in" six years ago when we bought a lot in Franklin during a really bad economy and had decided to build in Franklin? We bought in because we knew there were some high standards plus rules and regulations. We have a ten foot drainage easement in our back yard which cut into our yard and landscaping but we were well aware of it when we purchased our lot and have abided by the rules.

From our understanding our developer PJ Burbach has been involved and the Environmental Commission has ruled against it. We do not quite understand why the Plan Commission would not follow the Natural Resource rules set up by the City of Franklin and not follow the high standards the City has set? Again, rules should not be changed for this one homeowner who did not do his due diligence and the rest of us have played by the rules. In our opinion any kind of a fence is bad neighborly business! If there has to be a fence the rules need to be followed set by the City.

Best Regards,



Sue and Larry Rothering

Franklin

NOV 4 2013

262-506-4506

City Development

## Exhibit D

### Legal Description:

Lot 15 in Shadwell, Parcel 4 and part of Parcel 3 of Certified Survey Map No. 7364, being in the Southwest 1/4 of the Northwest 1/4 of Section 18, Township 5 North, Range 21 East, in the City of Franklin, Milwaukee County, Wisconsin.

APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE
<i>slw</i> Reports & Recommendations	<b>SUBJECT:</b> Review of costs for the extension of sanitary sewer on S. 76 <sup>th</sup> Street from a point 3,000 feet south of W. Ryan Road to a point 900 feet north of W. Ryan Road and on W. Ryan Road from S. 76 <sup>th</sup> Street to a point 1,235 feet west of S. 80 <sup>th</sup> Street	11/19/13  <b>ITEM NO.</b> <i>G. 13,</i>

**BACKGROUND**

Pursuant to the direction of the Common Council relative to the decision to proceed with the extension of the subject sanitary sewer project, based on the survey of the property owners surveyed. The estimate cost of the sanitary sewer extension is \$2,111,000 including the cost of design and inspection where the return from special assessments is estimated to be \$1,313,000, giving a shortfall of \$798,000 (use \$800,000).

**ANALYSIS**

The policy for the extension of sanitary provides for a connection/impact of \$2,928.00 for an equivalent residential unit. The connection/impact was established to cover the non-assessable costs of sanitary sewer extensions. It will be necessary to temporarily fund in the southwest area impact fee account until funds start coming in from development and/or connection of existing structures. The proposed sanitary sewer extension will open the undeveloped area at the intersection of S. 76<sup>th</sup> Street and W. Ryan Road, but it will take some time before the development occurs.

**OPTIONS**

It is staff's recommendation that the non-assessable portion of the funding of this sanitary sewer project be referred to the Finance Committee for recommendation.

**FISCAL NOTE**

Policy decision.

**RECOMMENDATION**

Motion to recommend funding to the Finance Committee for the non-assessable portion of the sanitary sewer extension on S. 76<sup>th</sup> Street from a point 3,000 feet south of W. Ryan Road to a point 900 feet north of W. Ryan Road and on W. Ryan Road from S. 76<sup>th</sup> Street to a point 1,235 feet west of S. 80<sup>th</sup> Street.

JMB/sg

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<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>November 19, 2013</p>
<p><b>REPORTS AND RECOMMENDATIONS</b></p>	<p>A Resolution Accepting the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.14.</i></p>

Attached is a draft of the above-entitled resolution. City staff and its engineering consultant and the Milwaukee Metropolitan Sewerage District have performed their final inspections and accepted the project as complete as is set forth in the attached resolution. The Council Action Requested is in response to a request from the Wisconsin Department of Natural Resources that it take such action for the record.

**COUNCIL ACTION REQUESTED**

A motion to adopt A Resolution Accepting the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project.

STATE OF WISCONSIN

CITY OF FRANKLIN

MILWAUKEE COUNTY

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

A RESOLUTION ACCEPTING THE PUBLIC CONSTRUCTION OF THE RYAN CREEK INTERCEPTOR SEWER PUBLIC SANITARY SEWER FACILITY PROJECT

WHEREAS, on September 20, 2011, the Common Council adopted Resolution No. 2011-6750 A Resolution Awarding Contracts to The Lowest Responsible Bidders for the Public Construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project; and

WHEREAS, the construction of the Project was completed and the Ryan Creek Interceptor Sewer became operational on June 3, 2013, and final inspections of the Project were performed and completed by the City of Franklin and the Milwaukee Metropolitan Sewerage District, with the construction engineering inspection reports thereon providing acceptance of the Project as completed, subject to all terms and conditions of the contracts and applicable laws; and

WHEREAS, the Wisconsin Department of Natural Resources has requested that the Common Council formally adopt this Resolution accepting the Project for the record.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Common Council of the City of Franklin, Wisconsin, that the public construction of the Ryan Creek Interceptor Sewer Public Sanitary Sewer Facility Project be and the same is hereby accepted as complete, subject to all terms and conditions of the contracts and applicable laws.

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.

APPROVED:

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

ATTEST:

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

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

<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>11/19/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Professional Services Agreement Between the City of Franklin and Racine County for Services to Verify a Certified Soil Tester's Soil &amp; Site Evaluation</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G,15.</i></p>

Attached is a Professional Services Agreement between the City of Franklin and Racine County to cover the authorization and payment of fees for Racine County to provide services to the City for the year 2014 to verify a certified soil tester's soil and site evaluation at designated properties when needed. This agreement mirrors the current agreement in place for 2013. Racine County will once again provide this service at a cost of \$200 for up to the first 3 soil borings reviewed, plus \$50 for each subsequent soil boring review done, per property. The minimum site visit charge will be \$50 per occurrence, to cover the cost of staff time and travel to a property (for example, if weather or lighting conditions or equipment breakdown of the contractor does not allow staff to conduct a soil morphological evaluation, and if staff has traveled to the site, a minimum \$50 fee will be charged.)

These soil services are not significantly used and only produce a nominal expenditure throughout the year. For example, only 2 soil verification services were provided in 2011 (\$300 total expenditure) and 2012 (\$400 total expenditure) and only 1 so far in 2013 (\$200 expenditure).

It is the recommendation of the Building Inspector and Director of Administration to use Racine County for these soil testing services.

**COUNCIL ACTION REQUESTED**

Motion to approve the 2014 Professional Services Agreement between the City of Franklin and Racine County for services to verify a certified soil tester's soil and site evaluation at designated properties when needed and to authorize the Director of Administration to execute such agreement.

**CITY OF FRANKLIN – RACINE COUNTY  
PROFESSIONAL SERVICES AGREEMENT**

This Contract made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Franklin, Wisconsin, a municipal corporation (hereinafter referred to as "CITY") and Racine County, a Wisconsin quasi-municipal corporation, (hereinafter referred to as "COUNTY"). This contract is to be effective from the period January 1, 2014 through December 31, 2014. This agreement is renewable upon acceptance by all parties.

**WITNESSETH:**

**FOR GOOD AND VALUABLE CONSIDERATION**, the parties agree that this contract shall cover the authorization and payment of fees to provide to the CITY services to verify a Certified Soil Tester's (hereafter referred to as "CST") soil and site evaluation. The parties agree to the following:

1. All CST's soil and site evaluations for Private Onsite Wastewater Treatment Systems (hereafter referred to as "POWTS") must be scheduled with a minimum 24 hours notice to the County, excluding Saturdays, Sundays and holidays, to ensure proper staffing.
2. All CST appointments must be scheduled by calling the COUNTY Development Services Department at 262-886-8440 between the hours of 8am –12:00 noon and 12:30pm – 4:30pm Monday through Friday, excluding holidays.
3. COUNTY will provide one properly licensed and credentialed staff to verify the required soil and site evaluation conducted by a CST.
4. The COUNTY reserves the right to require that CST's provide soil backhoe dug pits of adequate size, depth, and construction to enable COUNTY staff to safely enter and exit the soil pit for verification of soil profile evaluation data.
5. Soil color evaluations shall be performed on days when light conditions permit accurate color determination.
6. Frozen soil material shall be thawed prior to conducting evaluations for soil color, texture, structure, and consistence.
7. The cost of this service will be \$200 for up to the first three soil borings reviewed, plus \$50 for each subsequent soil boring review done, per property. The minimum site visit charge will be \$50 per occurrence, to cover the cost of staff time and travel to a property. For example, if weather or lighting conditions or equipment breakdown of the contractors does not allow staff to conduct a soil morphological evaluation, and if staff has traveled to the site, a minimum \$50 fee will be charged.
8. If staff is required to contact a State of Wisconsin Onsite Wastewater Specialist to make a soil determination, a minimum of \$50 will be charged for this service, in addition to other soil and site evaluation fees referenced herein.

9. The CITY will be invoiced directly for these services.
10. COUNTY will review the applicable Soil and Site Evaluation Form (SBD-8330), which must be forwarded to the COUNTY, and will convey all reports back to the CITY for their files and permit issuance. A copy of the test will be kept on file in this office, but the original tests will be sent to the CITY.
11. The CITY will issue all permits for POWTS, and the CITY will oversee the construction and follow-up on all POWTS, as outlined in Chapter SPS 383 (Private Onsite Wastewater Treatment Systems) and Chapter SPS 385 (Soil and Site Evaluations).
12. Any other work not anticipated in this contract, but relative to soil and site evaluations, will be charged at a rate of \$50 per hour.
13. Each party is responsible for their own acts and omissions under this agreement. COUNTY agrees that it will at all times during the existence of this contract indemnify CITY against any and all loss, damages and cost or expenses which CITY may sustain, incur or be required to pay as a result of any of the services provided by COUNTY under this contract. CITY agrees that it will at all times during the existence of this contract indemnify COUNTY against any and all loss, damages and cost or expenses which COUNTY may sustain, incur or be required to pay as a result of any of the services provided by the CITY under this contract.
14. CITY or COUNTY may, without prejudice to any other rights it may have, terminate this contract for convenience and without cause by giving thirty (30) days written notice. COUNTY shall be paid for services rendered up to the time of termination.

**CITY OF FRANKLIN**

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

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

**RACINE COUNTY**

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

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

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APPROVAL	REQUEST FOR COUNCIL ACTION	MTG. DATE
<i>slw</i> Reports & Recommendations	<b>SUBJECT:</b> Resolution authorizing certain officials to execute a development agreement with the People's Choice Corporation for the development agreement for Hampton Inn & Suites Milwaukee/Franklin to be located north of W. Rawson Avenue and west of S. 76th Street	11/19/13  <b>ITEM NO.</b>  <i>6,16.</i>

**BACKGROUND**

Pursuant to the approval of Hampton Inn & Suites Milwaukee/Franklin, it is necessary to enter into a development agreement at an estimated cost of \$340,961.40.

**ANALYSIS**

The approval of the site plan for Hampton Inn & Suites Milwaukee/Franklin was conditioned on the approval of a development agreement and this agreement meets said conditions.

**OPTIONS**

It is recommended that the Common Council approve the enclosed standard form of the Development Agreement with specific items contained in Exhibit "E" attached.

**FISCAL NOTE**

Developer pays all costs including a plan review cost of \$7,216.82.

**RECOMMENDATION**

Motion to adopt Resolution No. 2013- \_\_\_\_\_ a resolution authorizing certain officials to execute a development agreement with the People's Choice Corporation for the development agreement for Hampton Inn & Suites Milwaukee/Franklin to be located north of W. Rawson Avenue and west of S. 76th Street.

JMB/db

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

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

A RESOLUTION AUTHORIZING CERTAIN OFFICIALS  
TO EXECUTE A DEVELOPMENT AGREEMENT  
WITH THE PEOPLE'S CHOICE CORPORATION  
FOR THE DEVELOPMENT AGREEMENT  
FOR HAMPTON INN & SUITES MILWAUKEE/FRANKLIN  
TO BE LOCATED NORTH OF W. RAWSON AVENUE AND WEST OF S. 76TH STREET

---

WHEREAS, the Common Council at its regular meeting on November 19, 2013 recommended approval of the development subject to the execution of a Development Agreement, and

WHEREAS, it is in the best interest of the City of Franklin to provide an orderly planned development of the development known as Hampton Inn & Suites Milwaukee/Franklin, and

WHEREAS, the developer of the development is willing to proceed with the installation of the improvements provided for in the development agreement.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City with the developer of the development.

BE IT FURTHER RESOLVED that the City Clerk is directed to record the Development Agreement with the Register of Deeds for Milwaukee County.

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

Passed and adopted by the Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Thomas M. Taylor - Mayor

ATTEST:

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

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

JMB/db

Resols\DA Hampton Inn & Suites Milwaukee-Franklin 2013 S394-3

**CITY OF FRANKLIN**

**WISCONSIN**

**DEVELOPMENT AGREEMENT**

**FOR**

**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

**October 2013**

**DEVELOPMENT AGREEMENT  
FOR  
HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

ARTICLES OF AGREEMENT (THIS "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between People's Choice Corporation, hereinafter called the "Developer" as party of the first part, and the City of Franklin, a municipal corporation of Milwaukee County, Wisconsin, party of the second part, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Developer desires to improve and develop certain lands located in the City as described on attached Exhibit "A" (the "Development"), and for that purpose cause the installation of certain public improvements, hereinafter described in this Agreement and the exhibits hereto (the "Improvements"), and

WHEREAS, Sections 236.13(2)(a), 236.13(2)(b) and 236.13(2)(c), Wis. Stats. and Chapter 15-9.0300 of the City of Franklin Municipal Code, provide that as a condition of approving the Development, the governing body of a municipality may require that the Developer make and install, or have made and have installed, any public improvements reasonably necessary, that designated facilities be provided as a condition of approving the Development, that necessary alterations to existing public utilities be made, and that the Developer provide a Letter of Credit approved by the City Attorney guaranteeing that the Developer will make and install, or have made and installed, those improvements within a reasonable time, and

WHEREAS, the public works schedule and budget of the City does not now include the Improvements for the Development and normally there would be a considerable delay in the installation of the Improvements unless this Agreement is entered into by the parties, and

WHEREAS, the City believes that the orderly planned development of the Development will best promote the health, safety and general welfare of the community, and hence is willing to approve the Development provided the Developer proceed with the installation of the Improvements in the Development, on the terms and conditions set forth in this Agreement and the exhibits attached hereto.

NOW, THEREFORE, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration to each in hand paid by the other, receipt of which is hereby acknowledged and in consideration of the mutual covenants herein contained, the parties agree:

1. The legal description of the Development is set forth on attached Exhibit "A".
2. The Improvements aforementioned shall be as described in Exhibit "B" except as noted in Exhibit "E".
3. The Developer shall prepare plans and specifications for the aforesaid Improvements, under direction of the City Engineer, and to be approved by the City Engineer. After receiving the City's approval thereof, the Developer shall take bids, and award contracts (the "Improvements Contracts") for and install all of the Improvements in accordance with standard engineering and public works practices, and the applicable statutes of the State of Wisconsin. The Improvements shall be based on the construction specifications stated in attached Exhibit "F".
4. The full cost of the Improvements will include all labor, equipment, material, engineering, surveying, inspection and overhead costs necessary or incidental to completing the Improvements (collectively the "Improvements costs"). Payments for Improvements are completed as provided on the Improvements Contracts. The total estimated cost of the Improvements is (IN WORDS) Three Hundred Forty Thousand, Nine Hundred Sixty One and 40/100 Dollars as itemized in attached Exhibit "D".

5. To assure compliance with all of Developer's obligations under this Agreement, prior to the issuance of any building permits, the Developer shall file with the City a Letter of Credit (the "Letter of Credit") in the initial amount of \$340,961.40 representing the estimated costs for the Improvements as shown in attached Exhibit "D". Upon the written approval of the City Engineer, the amount of the Letter of Credit may be reduced periodically as the Improvements are paid for and approved by the City so that following each such reduction, the Letter of Credit equals the total amount remaining for Improvements Costs pertaining to Improvements for which Developer has not paid as set forth in the Improvements Contracts for the Improvements or which remain unapproved by the City. The Letter of Credit shall be issued by a bank or other financial institution (the "Surety Issuer") reasonably satisfactory to the City (the "Beneficiary") in a form satisfactory to the City Attorney. Failure to file the Letter of Credit within ten (10) days after written demand by the City to the Developer shall make and render this Agreement null and void, at the election of the City. Upon acceptance by the City (as described below) of and payment by Developer for all the completed Improvements, the Letter of Credit shall be surrendered by the City to the Developer, and thereafter the Developer shall have no further obligation to provide the Letter of Credit to the City under this Paragraph 5, except as set forth under Paragraph 13 below.
  
6. In the event the Developer fails to pay the required amount for the Improvements or services enumerated herein within thirty (30) days or per contract after being billed for each improvement of each stage for any Improvements Costs at the time and in the manner provided in this Agreement, and if amounts remain unpaid after an additional thirty (30) days written notice to Developer, the City may notify the Surety Issuer in writing to make the said payments to the Contractor within five (5) days after receiving a written demand from the City to make such payment. Demand shall be sent by registered letter with a return receipt requested, addressed to the Surety Issuer at the address indicated on the Letter of Credit, with a copy to the Developer, described in Paragraph five (5) above. It is understood between the parties to this Agreement, that billings for the Improvements Costs shall take place as the various segments and sections of the Improvements are completed and certified by the City Engineer as complying with the approved plans and applicable provisions of the Franklin Municipal Code.

In addition, the City Engineer may demand that the Letter of Credit be extended from time to time to provide that the Letter of Credit be in force until such time that all improvements have been installed and accepted through the one (1) year guarantee period. Demand for said extension shall be sent by registered letter with a return receipt, with a copy to the Developer. If said Letter of Credit is not extended for a minimum of a one (1) year period prior to expiration date of the Letter of Credit, the City may send written notice to the Surety Issuer to make payment of the remaining balance of the Letter of Credit to the City to be placed as an escrow deposit.

Any funds remaining in such escrow deposit after all of the Developer's obligations hereunder have been fully paid for, satisfied and completed, shall be returned to the Developer upon the City's receipt of the written consent of the Surety Issuer.

7. The following special provisions shall apply:
  - (a) Those special provisions as itemized on attached Exhibit "C" and attached Exhibit "E" are hereby incorporated by reference in this Agreement and made a part hereof as if fully set forth herein.
  - (b) The laterals mentioned in Exhibit "B" are to be installed before street surfacing mentioned in Exhibit "B" is commenced.
  - (c) Gas Company is to install all necessary mains before the street surfacing mentioned in Exhibit "B" is commenced. Also, any other underground work by any other utilities which may affect the street surfacing activities is also to be completed before said street surfacing is commenced.

- (d) To the extent necessary to accommodate public utilities easements on the Development easements will be dedicated for the use of the Electric Company, the Telephone Company and Cable Company to provide utility services to the Development. All utilities shall be underground except for any existing utility poles/lines.
  - (e) The curb face to curb face width of the roads in the Development shall be as determined by the City Engineer.
  - (f) Fee title to all of the Improvements and binding easements upon lands on which they are located, shall be dedicated and given by the Developer to the City, in form and content as required by the City, without recourse, and free and clear of all monetary liens or encumbrances, with final inspection and approval of the Improvements and accompanying title and easement documents by the City constituting acceptance of such dedication. The Improvements shall thereafter be under the jurisdiction of, the City and the City shall maintain, at the City's expense, all of the Improvements after completion and acceptance thereof by the City. Necessary permits shall be obtained for all work described in this Agreement.
8. The Developer agrees that it shall be fully responsible for all the Improvements in the Development and appurtenances thereto during the period the Improvements are being constructed and continuing until the Improvements are accepted by the City (the "Construction Period"). Damages that may occur to the Improvements during the Construction Period shall be replaced or repaired by the Developer. The Developer's obligations under this Paragraph 8 as to any Improvement terminates upon acceptance of that Improvement by the City.
9. The Developer shall take all reasonable precautions to protect persons and property of others on or adjacent to the Development from injury or damage during the Construction Period. This duty to protect shall include the duty to provide, place and maintain at and about the Development, lights and barricades during the Construction Period.
10. If the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the work of the Developer or its subcontractors or materialmen in their performance of this Agreement or from its failure to comply with any of the provisions of this Agreement or of applicable law, the Developer shall indemnify and hold the City harmless from any and all claims and judgments for damages, and from reasonable costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof, provided; however, that the City shall provide to the Developer promptly, in writing, notice of the alleged loss, damage or injury.
11. Except as otherwise provided in Paragraph 12 below, the Developer shall indemnify and save harmless the City, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:
- (a) the negligent or willfully wrongful performance of this Agreement by the Developer or any subcontractor retained by the Developer,
  - (b) the negligent or willfully wrongful construction of the Improvements by the Developer or by any of said subcontractors,
  - (c) the negligent or willfully wrongful operation of the Improvements by the Developer during the Construction Period,

- (d) the violation by the Developer or by any of said subcontractors of any applicable law, rule, regulation, order or ordinance, or
  - (e) the infringement by the Developer or by any of said subcontractors of any patent, trademark, trade name or copyright.
12. Anything in this Agreement to the contrary notwithstanding, the Developer shall not be obligated to indemnify the City or the City's officers, agents or employees (collectively the "Indemnified Parties") from any liability, claim, loss, damage, interest, action, suit, judgment, cost, expenses or attorneys fees which arise from or as a result of the negligence or willful misconduct of any of the Indemnified Parties.
13. The Developer hereby guarantees that the Improvements will be free of defects in material and/or workmanship for a period of one (1) year from the date of acceptance of the Improvements by the City. To secure the Developer's obligations under said guaranty upon acceptance of the Improvements by the City, the Developer will provide to the City a Letter of Credit equal to 10% of the sub-total in Exhibit "D" of the total Improvements Costs, which Letter of Credit shall expire one (1) year after the Improvements have been accepted by the City or continue the existing base Letter of Credit maintaining a minimum of 10% of the sub-total in Exhibit "D" of the total Improvements Costs for one (1) year after the improvements have been accepted by the City. This Letter of Credit shall be a partial continuation of, and not in addition to, the Letter of Credit described in Paragraph 5 above.
14. (a) The Developer shall not commence work on the Improvements until it has obtained all insurance coverages required under this Paragraph 14 and has filed certificates thereof with the City:

- (1) **COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE** - Coverage shall protect the Developer and all subcontractors retained by the Developer during the Construction Period and all persons and property from claims for damages for personal injury, including accidental death as well as claims for property damages, which may arise from performing this Agreement, whether such performance be by the Developer or by any subcontractor retained by the Developer or by anyone directly or indirectly employed by either the Developer or any such subcontractor. The City shall be named as an additional insured on all such insurance coverage under this Paragraph 14(a)(1) and Paragraph 14(a)(2). The amounts of such insurance coverage shall be as follows:

Bodily Injury	\$1,000,000 Per Person \$1,000,000 Per Occurrence \$1,000,000 Aggregate
Property Damage	\$ 500,000 Per Occurrence \$ 500,000 Aggregate

- (2) **COMPREHENSIVE AUTOMOBILE LIABILITY AND PROPERTY DAMAGE** - Insurance coverage for the operation of owned, hired and non-owned motor vehicles shall be in the following amounts:

Bodily Injury	\$1,000,000 Per Person \$1,000,000 Per Occurrence
Property Damage	\$ 500,000 Per Occurrence

- (b) The Developer shall file a certificate of insurance containing a thirty (30) day notice of cancellation to the City prior to any cancellation or change of said insurance coverage which coverage amounts shall not be reduced by claims not arising from this Agreement.

15. The Developer shall not be released or discharged of its obligations under this Agreement until the City has completed its final inspection of all the Improvements and the City has issued its written approval of all of the Improvements, which approval shall not be unreasonably withheld or delayed, and Developer has paid all of the Improvements Costs, at which time the Developer shall have no further obligations under this Agreement except for the one (1) year guaranty under Paragraph 13.
16. The Developer and the City hereby agree that the cost and value of the Improvements will become an integral part of the value of the Development and that no future lot assessments or other types of special assessments of any kind will be made against the Development by the Developer or by the City for the benefit of the Developer, to recoup or obtain the reimbursement of any Improvement Costs for the Developer.
17. Execution and performance of this Agreement shall be accepted by the City as adequate provision for the Improvements required within the meaning of Sections 236.13(2)(a), 236.13(2)(b), and 236.13(2)(c) Wis. Stats.
18. Penalties for Developer's failure to perform any or all parts of this Agreement shall be in accordance with Section 21.40 of Franklin Municipal Code, as amended from time to time, in addition to any other remedies provided by law or in equity so that the City may obtain Developer's compliance with the terms of this Agreement as necessary.
19. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, excepting that the parties hereto do not otherwise intend the terms or provisions of this Agreement to be enforceable by or provide any benefit to any person or entity other than the party of the first part and the party of the second part. Developer shall not convey or assign any of its rights or obligations under this contract whatsoever without the written consent of the City, which shall not be unreasonably withheld upon a showing that any successor or assignee is ready, willing and able to fully perform the terms hereof and the Developer remains liable hereunder.

[The remainder of this page is intentionally left blank. Signatures are on the following page.]

WITNESS WHEREOF, the said party of the first part has set its hand and seal and the said parties of the second party have caused these presents to be duly executed by Thomas M. Taylor, Mayor, and Sandra L. Wesolowski, City Clerk, and its corporate seal to be hereunto affixed as of the day and year first above written.

SEALED IN PRESENCE OF: PEOPLE'S CHOICE CORPORATION

No Seal

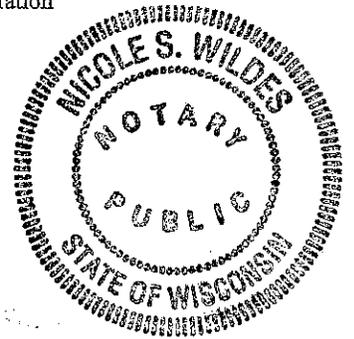
By: Edward W. Eldridge  
Name: Edward W. Eldridge  
TITLE: President

Party of the First Part

STATE OF WISCONSIN )ss.  
Milw COUNTY)

Personally came before me this 27th day of October, 2013, the above named Edward W. Eldridge, as President of People's Choice Corporation and acknowledged that he executed the foregoing instrument as such officer as the deed of said People's Choice Corporation by its authority.

Nicole S. Wildes  
Notary Public, Milw County, WI  
My commission expires: 12/11/16



CITY OF FRANKLIN

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

COUNTERSIGNED:

By: \_\_\_\_\_  
Name: Sandra L. Wesolowski  
Title: City Clerk

Parties of the Second Part

STATE OF WISCONSIN )ss.  
MILWAUKEE COUNTY)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 the above named Thomas M. Taylor, Mayor and Sandra L. Wesolowski, City Clerk, of the above named municipal corporation, City of Franklin, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged that they had executed the foregoing instrument as such officers as the Deed of said municipal corporation by its authority and pursuant to Resolution File No. \_\_\_\_\_, adopted by its Common Council on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, Milwaukee County, WI  
My commission expires: \_\_\_\_\_

This instrument was drafted by John M. Bennett, City Engineer for the City of Franklin

Form approved:

\_\_\_\_\_  
Jesse Wesolowski, City Attorney

**INDEX OF EXHIBITS  
TO  
DEVELOPMENT AGREEMENT  
FOR  
HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

Exhibit A	Legal Description of Development
Exhibit B	General Description of Required Development Improvements
Exhibit C	General Development Requirements
Exhibit D	Estimated Improvement Costs
Exhibit E	Additional Development Requirements
Exhibit F	Construction Specifications

**EXHIBIT "A"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

Lot 1 of Certified Survey Map No. 8467 in the southeast ¼ of Section 4,  
Township 5 North, Range 21 East in the City of Franklin,  
Milwaukee County, Wisconsin.

**EXHIBIT "B"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

<p>GENERAL DESCRIPTION  OF  REQUIRED DEVELOPMENT  IMPROVEMENTS</p>
--------------------------------------------------------------------------------

Description of improvements required to be installed to develop Hampton Inn & Suites Milwaukee/Franklin.

- \*D Denotes contract for improvements to be awarded, financed and paid for by the Developer in lieu of special assessments.
- \*C Denotes contract for improvements to be awarded by the City, but financed and paid for by the Developer in accordance with this agreement.
- (N.A.) Denotes improvement is not required to be installed in the Development.
- (1) Denotes that the City is to pay for a portion of the improvement, in accordance with this agreement, as computed by the City Engineer.

General Description of Improvements  
(Refer to additional sheets for concise breakdown.)

- |     |                                                                                                                                                                                                                                                                                               |    |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1.  | Grading of the total area within the Development in conformance with the approved grading plan.                                                                                                                                                                                               | *D |
| 2.  | Laterals and appurtenances from sanitary sewer main to the building.                                                                                                                                                                                                                          | *D |
| 3.  | Laterals, water main and fittings in the streets and/or easement in the Development or abutting the Development, to such size and extent as determined by the master water plan and/or the City Engineer as necessary to provide adequate service for the final Development and service area. | *D |
| 4.  | Water service and appurtenances from water main to the building as determined by the City Engineer together with stop cocks as specified by the City.                                                                                                                                         | *D |
| 5.  | Hydrants and appurtenances provided and spaced to adequately service the area and as the City shall require.                                                                                                                                                                                  | *D |
| 6.  | Engineering, planning and administration services as approved.                                                                                                                                                                                                                                | *D |
| 7.  | Drainage system as determined and/or approved by the City to adequately drain the surface water from the Development and drainage basin area in accordance with the master drainage plan and/or approved system plan.                                                                         | *D |
| 8.  | Title evidence on all conveyances.                                                                                                                                                                                                                                                            | *D |
| 9.  | Concrete driveways between the street line and curb and gutter as shown on the approved site plan.                                                                                                                                                                                            | *D |
| 10. | Street signs identifying the Development street in such locations and such size and design as determined by the City.                                                                                                                                                                         | *D |

**EXHIBIT "C"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

GENERAL DEVELOPMENT REQUIREMENTS

I. GENERAL

- A. The Developer shall prepare a plat of the land, plans for improvements, as-built drawings of the improvements and all other items in accordance with all applicable state laws and City ordinances and regulations.
- B. All improvements shall be installed in accordance with all applicable City specifications and ordinances.
- C. The entire Development as proposed shall be recorded as a lot within a certified survey map.

II. WATER SYSTEM

- A. Availability
  - 1. Each and every building in the Development shall be served by a water main.
  - 2. Water service shall be laid to each and every building. Size shall be approved by the City Engineer.
  - 3. Fire hydrants in the Development shall be available to the City's Fire and Public Works Departments, and said location shall be approved by the City's Fire Department, and both organizations shall have free and unlimited use of the water and shall be located in an easement granted to the City as approved by the City Engineer.
- B. Construction
  - 1. All construction shall be in accordance with the specifications of the City.
  - 2. Inspection of the work shall be at the Developer's expense.
  - 3. Mains and appurtenances including all pipe, hydrants, gate valves, water service and curb stop boxes shall be installed.

III. STORM DRAINAGE

- A. Components

Storm drainage through and within the Development shall be provided by means of storm sewer, culverts and ditches installed within the Development required as per approved system plan. It shall consist of, without limitation because of enumeration, sewers, culverts, pipes, manholes, catch basins, inlets, leads, open swales, retention basins and absorption ponds as determined by the City Engineer. The City, at the determination of the City Engineer, may have the storm drainage system reviewed by a consultant engineer at the Developer's cost.

B. Responsibility of Discharged Water

1. The Developer shall be responsible for the storm drainage until it crosses the exterior property line of the Development or until it reaches a point designated by the City outside of and adjacent to the property from which the water crosses over, under or through artificial or natural barriers. The water shall be brought to said point by an open ditch or other means as directed by the City Engineer.
2. However, if the Developer of the Development will, in the opinion of the City Engineer, cause major problems downstream from the Development which will require special consideration, the Developer shall comply with such terms as the City Engineer may require to prevent these problems. Said terms shall be made part of those documents under the section titled "Special Provisions".

IV. EASEMENTS

Drainage

All drainage easements dedicated to the public shall be improved as follows:

- a) Storm sewer or lined invert open channel, unless otherwise agreed upon by the Developer and the City.
- b) Side slopes no steeper than 4:1.
- c) Landscaped in accordance with the Special Use Resolution Landscaping Requirements or, in the case of storm sewer, as directed by the City Engineer.

V. DEED RESTRICTIONS

- A. A Letter of Credit approved by the City Attorney in the full amount of all non-assessable improvements not yet installed and approved as of the date of this Agreement shall be submitted to the City before any building permits are issued.
- B. Subject to the terms of this Agreement, the time of completion of improvements shall be as follows:
  1. The Developer shall take all action necessary so as to have all the improvements specified in this Agreement installed and approved by the City before two years from the date of this Agreement.
  2. Should the Developer fail to take said action by said date, it is agreed that the City, at its option and at the expense of the Developer, may cause the installation of or the correction of any deficiencies in said improvements.

VI. CHARGES FOR SERVICES BY THE CITY OF FRANKLIN

A. Fee for Checking and Review

1. At the time of submitting the plans and specifications for the construction of the Development improvements, a fee equal to two-and-one-fourth percent (2-1/4%) of the cost of the improvement plans and specifications, to partially cover the cost to the City of checking reviewing such plans and specifications provided that cost does not exceed \$250,000.00; a fee equal to one-and-three fourth percent (1-3/4%) of such cost, if the cost is in excess of \$250,000.00, but not in excess of \$500,000.00, and one-and-one-fourth percent (1-1/4%) of said cost in excess of \$500,000.00. At the demand of the Developer or City Engineer, the fee may be recomputed after the work is done in accordance with the actual cost of such improvements and the difference, if any, shall be paid by or remitted to the Developer. Evidence of cost shall be in such detail and form as required by the City Engineer.
- B. For the services of testing labs, consulting engineers and other personnel, the Developer agrees to pay the City the actual charge plus five (5%) percent for administration and overhead.

**EXHIBIT "D"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

ESTIMATED IMPROVEMENT COSTS
-----------------------------

All Improvement costs, including but not limited to preparation of plans, installation of facilities and inspection shall be borne by the Developer in accordance with Paragraph (4) of this Agreement.

Said costs for the Improvements are estimated to be as follows:

DESCRIPTION	COSTS
S. 76 <sup>th</sup> Street right-of-way construction	\$ 48,314.00
Water System	103,293.00
Storm Sewer Management Facilities	139,813.00
SUBTOTAL	\$291,420.00
Municipal Services (7% of Subtotal)	20,399.40
Contingency Fund (10% of Subtotal)	29,142.00
TOTAL:	\$340,961.40

Total: Three Hundred Forty Thousand, Nine Hundred Sixty One and 40/100 Dollars.

APPROVED BY: \_\_\_\_\_  
 John M. Bennett, City Engineer

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

**EXHIBIT "E"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

<b>ADDITIONAL DEVELOPMENT REQUIREMENTS</b>
------------------------------------------------

1. The Developer shall make every effort to protect and retain all existing trees, shrubbery, vines and grasses pursuant to the approved Natural Resource Protection Plan (the "NRPP"). Trees shall be protected and preserved during construction in accordance with sound conservation practices as outlined in section 15-8.0204 a-f of the UDO.
2. The Developer shall cause all grading, excavations, open cuts, side slopes and other land surface disturbances to be so mulched, seeded, sodded or otherwise protected that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications approved by the City Engineer as outlined in section 15-8.0203H 1-5 of the UDO.
3. The Developer shall be responsible for cleaning up the debris that has blown from buildings under construction within the Development. The Developer shall clean up all debris within twenty-four (24) hours after receiving written notice from the City Engineer.
4. The Developer shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The Developer shall clean the roadways within twenty-four (24) hours after receiving a notice from the City Engineer.
5. Prior to commencing site grading, the Developer shall submit for approval by the City Engineer an erosion and silt control plan consistent with applicable law. Said plan shall provide sufficient control of the site to prevent siltation downstream from the Development. The Developer shall maintain the erosion and siltation control until such time that vegetation sufficient to equal pre-existing conditions.
6. The Developer shall preserve the natural resource features as shown on the approved NRPP dated August 22, 2003 and shall install an orange snow fence outside the conservation easements as shown on Final Plat, and silt fence around the natural resources prior to land disturbing.
7. The Developer shall construct a facility as required in the Storm Water Management Plan in accordance with the plans and specifications approved by the City Engineer. Maintenance of said storm water management facilities shall be the responsibility of the Developer.
8. The Developer shall install a shared drive to S. 76<sup>th</sup> Street with the abutting property owner to the south and construct all improvements to S. 76<sup>th</sup> Street as required by Milwaukee County.
9. Prior to occupancy the developer shall construct the approved water main's serving the development including the hydrants required by the Fire Department in easements approved by the City Engineer.

**EXHIBIT "F"**  
**TO**  
**DEVELOPMENT AGREEMENT**  
**FOR**  
**HAMPTON INN & SUITES MILWAUKEE/FRANKLIN**

CONSTRUCTION SPECIFICATIONS

The following specifications shall be used for the construction of the various improvements.

ITEM	SPECIFICATION
Storm & Sanitary Sewer	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition CITY OF FRANKLIN
Water Mains	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition CITY OF FRANKLIN

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<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MTG. DATE</b> 11/19/13
<b>Reports &amp; Recommendations</b>	<b>SUBJECT:</b> Release of Letter of Credit for the development of the Sacred Heart at Monastery Lake Project located on the east side of S.T.H. 100 just south of W. Rawson Avenue	<b>ITEM NO.</b> 617

**BACKGROUND**

Pursuant to the development at the Sacred Heart at Monastery Lake project located on the east side of S. Lovers Lane Road (STH 100) and south of W. Rawson Avenue, please be advised that all conditions of the development agreement has been completed; therefore, the letter of credit can be released.

**ANALYSIS**

Staff recommends the release of the Letter of Credit for the Sacred Heart at Monastery Lake Project.

**OPTIONS**

Approve release  
or  
Table

**FISCAL NOTE**

None

**RECOMMENDATION**

Motion to release Letter of Credit No. 1556 from Tri-City National Bank dated December 15, 2009, for the development of the Sacred Heart at Monastery Lake development project as recommended by the Engineering Department.

JMB/db

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<b>APPROVAL</b> <i>slw</i> <i>CD</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>11/19/13</b>
	<b>City of Franklin Audit Agreement between Clifton Gunderson LLP and the City of Franklin for audit of the 2013 year</b>	<b>ITEM NUMBER</b> <i>G.18.</i>

Each year the City of Franklin engages an outside accounting firm to perform an audit of the City of Franklin annual financial statements. Clifton Gunderson LLP has provided that audit function under an RFP issued in 2009.

The Clifton Gunderson LLP engagement letter for 2013 is a contractual agreement. The City Attorney has reviewed prior year agreements and if there are any changes will be presented at the Common Council meeting.

The amount of the estimated audit fees of \$40,700 for the 2013 year has been included in the 2014 budgets.

The Director of Finance and Treasurer is recommending approval of the agreement.

**COUNCIL ACTION REQUESTED**

Motion to approve the Mayor, City Clerk and Director of Finance & Treasurer to execute the Audit Agreement between Clifton Gunderson LLP and the City of Franklin for audit of the City of Franklin for the 2013 year.



CliftonLarsonAllen

CliftonLarsonAllen LLP  
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Milwaukee, WI 53226  
414-476-1880 | fax 414-476-7286  
www.cliftonlarsonallen.com

October 16, 2013

Calvin A. Patterson  
City of Franklin, Wisconsin  
9229 West Loomis Road  
Franklin, WI 53132

Dear Mr. Patterson:

We are pleased to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the audit and nonaudit services CliftonLarsonAllen LLP (CLA) will provide for City of Franklin, Wisconsin ("you," "your," or "the entity") for the year ended December 31, 2013.

Renee Messing, CPA, is responsible for the performance of the audit engagement.

**Audit services**

We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of City of Franklin, Wisconsin, as of and for the year ended December 31, 2013, and the related notes to the financial statements. In addition, if applicable, we will perform a compliance audit in accordance with the *Department of Health Service Audit Guide*, issued by the State of Wisconsin of Health Services.

The Governmental Accounting Standards Board (GASB) provides for certain required supplementary information (RSI) to accompany the entity's basic financial statements. The following RSI will be subjected to certain limited procedures, but will not be audited.

1. Management's discussion and analysis.
2. GASB-required supplementary pension, and OPEB information.

The information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditors' report will not provide an opinion or any assurance on that information.

The following information other than RSI accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditors' report will not provide an opinion or any assurance on that information.

1. Introductory section
2. Statistical tables

#### **Nonaudit services**

We will also provide the following nonaudit services:

- Preparation of adjusting journal entries.
- Preparation of the Annual Report to be submitted to the Public Service Commission.
- Preparation of the Annual Report Form C to be submitted to the Department of Revenue.

#### **Audit objectives**

The objective of our audit is the expression of opinions about whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS) and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of your accounting records and other procedures we consider necessary to enable us to express such opinions. We will apply certain limited procedures to the RSI in accordance with U.S. GAAS. However, we will not express an opinion or provide any assurance on the RSI because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

We will issue a written report upon completion of our audit of your financial statements. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements caused by error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment prevent us from completing the audit or forming opinions on the financial statements, we retain the right to take any course of action permitted by professional standards, including declining to express opinions or issue a report, or withdrawing from the engagement.

We will also provide a report (which does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and compliance will include a paragraph that states that the purpose of the report is solely to describe the scope of testing of internal control over financial reporting and compliance, and the result of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance and that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control over financial reporting and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the entity is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit conducted in accordance with U.S. GAAS and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

#### **Auditor responsibilities, procedures, and limitations**

We will conduct our audit in accordance with U.S. GAAS and the standards for financial audits contained in *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements as a whole are free from material misstatement, whether due to fraud or error. An audit involves performing procedures to obtain sufficient appropriate audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements.

There is an unavoidable risk, because of the inherent limitations of an audit, together with the inherent limitations of internal control, that some material misstatements may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards*. Because we will not perform a detailed examination of all transactions, material misstatements, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity, may not be detected. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the basic financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting fraud or errors that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*. An audit is not designed to provide assurance on internal control or to identify deficiencies, significant deficiencies, or material weaknesses in internal control. However, we will communicate to you in writing significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we identify during the audit that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the entity's compliance with the provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

We will include in our report on internal control over financial reporting and compliance relevant information about any fraud; noncompliance with provisions of laws, regulations, contracts, or grant agreements; or abuse that may have occurred that are required to be communicated under *Government Auditing Standards*.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

To the fullest extent permitted by law, CliftonLarsonAllen shall defend, indemnify and hold harmless the City, City officers, employees, agents, boards, commissions and agencies from and against costs losses and damages (including but not limited to reasonable fees and charges of CliftonLarsonAllen, architects, attorneys, and other professionals, and reasonable court and/or alternative dispute resolution costs) caused by negligent or intentional and wrongful acts of CliftonLarsonAllen, its officers, directors, employees, agents and consultants with respect to this agreement.

CliftonLarsonAllen warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the services under this agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. CliftonLarsonAllen warrants that it will immediately notify the City if any actual or potential conflict of interest arises or becomes known to CliftonLarsonAllen. Upon receipt of such notification, the City's review and approval is required for CliftonLarsonAllen to continue to perform work under this agreement.

CliftonLarsonAllen shall not assign any of its rights, title, interest or obligations under this agreement without the permission of the City, which permission shall not be unreasonably withheld.

CliftonLarsonAllen shall during the term of the agreement, maintain insurance coverage with an authorized carrier acceptable to the City in amounts at least equal to the minimums set forth below:

- Limit of general/commercial liability – \$2,000,000
- Automobile liability; bodily injury/property damage - \$1,000,000
- Excess liability for general commercial or automobile liability - \$2,000,000
- Worker's compensation and employer's liability – per statute
- Professional liability - \$1,000,000

### **Management responsibilities**

Our audit will be conducted on the basis that you (management and, when appropriate, those charged with governance) acknowledge and understand that you have certain responsibilities that are fundamental to the conduct of an audit.

You are responsible for the preparation and fair presentation of the financial statements and RSI in accordance with U.S. GAAP. Management's responsibilities include the selection and application of accounting principles; recording and reflecting all transactions in the financial statements; determining the reasonableness of significant accounting estimates included in the financial statements; adjusting the financial statements to correct material misstatements; and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design, implementation, and maintenance of effective internal control, including evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. You are responsible for the design, implementation, and maintenance of internal controls to prevent and detect fraud; assessing the risk that the financial statements may be materially misstated as a result of fraud; and for informing us about all known or suspected fraud affecting the entity involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for implementing systems designed to achieve compliance with applicable laws and regulations; identifying and ensuring that the entity complies with applicable laws, regulations, contracts, and grant agreements; and informing us of all instances of identified or suspected noncompliance whose effects on the financial statements should be considered. You are responsible for taking timely and appropriate steps to remedy any fraud; noncompliance with provisions of laws, regulations, contracts, or grant agreements; or abuse that we may report.

You are responsible for ensuring that management is reliable and for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters, and for the accuracy and completeness of that information, and for ensuring the information is reliable and properly reported; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence. You agree to inform us of events occurring or facts discovered subsequent to the date of the financial statements that may affect the financial statements.

Management is responsible for providing us with a written confirmation concerning representations made by you and your staff to us in connection with the audit and the presentation of the basic financial statements and RSI. During our engagement, we will request information and explanations from you regarding, among other matters, the entity's activities, internal control, future plans, specific transactions, and accounting systems and procedures. The procedures we will perform during our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the representations that we receive in the representation letter and otherwise from you. Accordingly, inaccurate, incomplete, or false representations could cause us to expend unnecessary effort or could cause a material fraud or error to go undetected by our procedures. In view of the foregoing, you agree that we shall not be responsible for any misstatements in the entity's financial statements that we may fail to detect as a result of misrepresentations made to us by you.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the "Audit objectives" section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

You agree that City of Franklin, Wisconsin will indemnify CLA and our partners, principals and employees and hold us harmless from any claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of Management of City of Franklin, Wisconsin regardless of whether such person was acting in the best interests of City of Franklin, Wisconsin.

#### **Responsibilities and limitations related to nonaudit services**

For all nonaudit services we may provide to you, management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services.

The responsibilities and limitations related to the nonaudit services performed as part of this engagement are as follows:

- We will propose adjusting journal entries as needed. You will be required to review and approve those entries and to understand the nature of the changes and their impact on the financial statements
- We will prepare a draft of the Annual Report to be submitted to the Public Service Commission. Since the preparation and fair presentation of this report is your responsibility, you will be required to acknowledge in the representation letter our assistance with preparation of this report and that you have reviewed and approved this report prior to their issuance and have accepted responsibility for this report. You have a responsibility to be in a position in fact and appearance to make an informed judgment on this report.
- We will prepare a draft of the Annual Report Form C to be submitted to the Department of Revenue. Since the preparation and fair presentation of this report is your responsibility, you will be required to acknowledge in the representation letter our assistance with preparation of this report and that you have reviewed and approved this report prior to their issuance and have accepted responsibility for this report. You have a responsibility to be in a position in fact and appearance to make an informed judgment on this report.

#### **Use of financial statements**

The financial statements and our report thereon are for management's use. If you intend to reproduce and publish the financial statements and our report thereon, they must be reproduced in their entirety. Inclusion of the audited financial statements in a document, such as an annual report or an offering document, should be done only with our prior approval of the document. You are responsible to provide us the opportunity to review such documents before issuance.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the electronic site with the original document.

We may issue preliminary draft financial statements to you for your review. Any preliminary draft financial statements should not be relied on or distributed.

#### **Engagement administration and other matters**

We understand that your employees will prepare all confirmations, account analyses, and audit schedules we request and will locate any documents or invoices selected by us for testing. A list of information we expect to need for our audit and the dates required will be provided in a separate communication.

We will provide copies of our reports to the entity; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the sole and exclusive property of CLA and constitutes confidential and proprietary information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to Wisconsin Department of Health Services, or its designee, a federal or state agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of CLA personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the Wisconsin Department of Health Services. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Professional standards require us to be independent with respect to you in the performance of these services. Any discussion that you have with our personnel regarding potential employment with you could impair our independence with respect to this engagement. Therefore, we request that you inform us prior to any such discussions so that we can implement appropriate safeguards to maintain our independence and objectivity. Further, any employment offers to any staff members working on this engagement without our prior knowledge may require substantial additional procedures to ensure our independence. You will be responsible for any additional costs incurred to perform these procedures.

Our relationship with you is limited to that described in this letter. As such, you understand and agree that we are acting solely as independent accountants. We are not acting in any way as a fiduciary or assuming any fiduciary responsibilities for you. We are not responsible for the preparation of any report to any governmental agency, or any other form, return, or report or for providing advice or any other service not specifically recited in this letter.

*Government Auditing Standards* require that we make our most recent external peer review report publicly available. The report is posted on our website at [www.cliftonlarsonallen.com/Aboutus/](http://www.cliftonlarsonallen.com/Aboutus/).

### **Mediation and Termination**

Any disagreement, controversy, or claim ("Dispute") that may arise out of any aspect of our services or relationship with you, including this engagement, shall be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

For all purposes, we mutually agree that the laws of the State of Wisconsin will govern any disputes regarding this engagement, excepting those relating to choice of laws. In the event that any portion of this professional services agreement or the attached engagement letter is deemed invalid or unenforceable, that finding shall not invalidate the remainder of the engagement letter or professional services agreement.

The Venue for any disputes arising under this agreement shall be the Circuit Court for Milwaukee. The prevailing party shall be entitled to its costs, including its reasonable attorney fees, incurred for any litigation.

This agreement may be terminated upon written notice at the City's convenience or by either party in the event of substantial failure by the other party to perform in accordance with the terms of the agreement. CliftonLarsonAllen shall terminate performance of services on a schedule acceptable to the City, and the City shall pay CliftonLarsonAllen for all services performed prior to such termination.

#### **Fees**

Our fees for these services will be based on the time involved and the degree of responsibility and skills required, plus expenses including internal and administrative charges. Based on our preliminary estimates, the fee for the engagement will not exceed \$40,700 for the audit and will not exceed \$1,200 for the program audit. The fee estimate is based on anticipated cooperation from your personnel and their assistance with preparing confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, the estimated fee for services will likely be higher. If unexpected circumstances require significant additional time, we will advise you before undertaking work that would require a substantial increase in the fee estimate. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not issued our reports. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

### ***Unanticipated services***

We do not anticipate encountering the need to perform additional services beyond those described in this letter. Below are listings of services considered to be outside the scope of our engagement. If any such service needs to be completed before the audit can proceed in an efficient manner, we will determine whether we can provide the service and maintain our independence. If appropriate, we will notify you and provide a fair and reasonable price for providing the service. We will bill you for the service at periodic dates after the additional service has been performed.

### **Bookkeeping services**

Bookkeeping services are not audit services. Bookkeeping services include the following activities:

- Preparation of a trial balance
- Account reconciliations
- Bank statement reconciliations
- Capital asset accounting (e.g., calculating depreciation, identify capital assets for additions and deletions)
- Calculating accruals
- Analyzing transactions for proper recording
- Converting cash basis accounting records to accrual basis
- Preparation of financial statements and the related notes to the financial statements
- Processing immaterial adjustments through the financial statements
- Adjusting the financial statements for new activities and new disclosures

### **Additional work resulting from unanticipated changes in your organization or accounting records**

If your organization undergoes significant changes in key personnel, accounting systems, and/or internal control, we are required to update our audit documentation and audit plan. The following are examples of situations that will require additional audit work:

- Revising documentation of your internal control for changes resulting from your implementation of new information systems
- Deterioration in the quality of the entity's accounting records during the current-year engagement in comparison to the prior-year engagement
- Significant new accounting issues
- Significant changes in your volume of business
- New or unusual transactions
- Changes in audit scope or requirements resulting from changes in your activities
- Erroneous or incomplete accounting records
- Evidence of material weaknesses or significant deficiencies in internal control
- Regulatory examination matters
- Implementation or adoption of new or existing accounting, reporting, regulatory, or tax requirements
- New financial statement disclosures

### **Changes in engagement timing and assistance by your personnel**

The fee estimate is based on anticipated cooperation from your personnel and their assistance with timely preparation of confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, we will advise management. Additional time and costs may be necessary because of such unanticipated delays. Examples of situations that may cause our estimated fee to increase include:

- Significant delays in responding to our requests for information such as reconciling variances or providing requested supporting documentation (e.g., invoices, contracts, and other documents)
- Rescheduling our fieldwork
- Schedule disruption caused by litigation, financial challenges (going concern), etc.
- Identifying a significant number of proposed audit adjustments
- Schedules prepared by your personnel that do not reconcile to the general ledger
- Numerous revisions to information and schedules provided by your personnel
- Restating financial statements for accounting errors in the prior year
- Lack of availability of entity personnel during audit fieldwork

### ***Changes in accounting and audit standards***

Standard setters and regulators continue to evaluate and modify standards. Such changes may result in new or revised financial reporting and disclosure requirements or expand the nature, timing, and scope of the activities we are required to perform. To the extent that the amount of time required to provide the services described in the letter increases due to such changes, our fee may need to be adjusted. We will discuss such circumstances with you prior to performing the additional work.

### ***Other fees***

You also agree to compensate us for any time and expenses, including time and expenses of legal counsel, we may incur in responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings that we are asked to respond to on your behalf. You and your attorney will receive a copy of every subpoena or request we are asked to respond to. You can control the costs of any discovery process or document request by informing us which requests you would like us to act on.

### ***Finance charges and collection expenses***

You agree that if any statement is not paid within 30 days from its date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

### **HIPAA Business Associate Agreement**

To protect the privacy and provide for the security of any protected health information, as such is defined by the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the regulations and policy guidances thereunder (HIPAA), City of Franklin, Wisconsin and CLA shall enter into a HIPAA Business Associate Agreement (BAA) in the form attached hereto. If the attached HIPAA Business Associate Agreement is acceptable, please sign, date, and return it to us.

**Consent to use financial information**

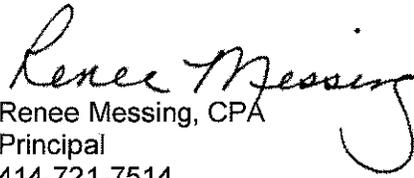
Annually, we assemble a variety of benchmarking analyses using client data obtained through our audit and other engagements. Some of this benchmarking information is published and released publicly. However, the information that we obtain is confidential, as required by ET Section 301 of the AICPA Code of Professional Conduct. Your acceptance of this engagement letter will serve as your consent to use of City of Franklin, Wisconsin's information in these cost comparison, performance indicator, and/or benchmarking reports.

**Agreement**

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between us. If you have any questions, please let us know. Please sign, date, and return the enclosed copy of this letter to us to indicate your acknowledgment and understanding of, and agreement with, the arrangements for our audit of your financial statements including the terms of our engagement and our respective responsibilities.

Sincerely,

**CliftonLarsonAllen LLP**

  
Renee Messing, CPA  
Principal  
414-721-7514  
renee.messing@CLAconnect.com

Enclosure

**Response:**

This letter correctly sets forth the understanding of City of Franklin, Wisconsin.

Authorized governance signature: \_\_\_\_\_

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

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

Authorized management signature: \_\_\_\_\_

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

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

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made by and between City of Franklin, Wisconsin (hereinafter referred to as "Client") and CliftonLarsonAllen LLP (hereinafter referred to as "CLA"). This Agreement is effective as of the date signed by Client.

### **RECITALS**

**WHEREAS**, Client is a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidances thereunder (the "HIPAA Standards") and wishes to disclose certain information to CLA, or, if applicable, to allow CLA to create or receive information on behalf of Client pursuant to the terms of this Agreement, some of which may constitute Protected Health Information as defined under the HIPAA Standards ("PHI"); and

**WHEREAS**, Client and CLA intend to protect the privacy and provide for the security of PHI disclosed to CLA in compliance with the HIPAA Standards, and other applicable laws; and

**WHEREAS**, the purpose of this Agreement is to satisfy certain standards and requirements of the HIPAA Standards, as the same may be amended from time to time.

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

### **TERMS OF AGREEMENT**

#### **1. Obligations of CLA.**

a. **Permitted and Required Uses and Disclosures.** CLA may use and/or disclose PHI received by CLA from the Client, or, if applicable, created or received by CLA on behalf of the Client (hereinafter collectively referred to as the "Client's PHI") to perform functions, activities, or services for, or on behalf of, the Client in accordance with the specifications set forth in this Agreement; provided that such use or disclosure would not violate the HIPAA Standards if done by the Client. CLA must disclose PHI received by CLA from the Client as required by the HIPAA Standards and other applicable laws. Notwithstanding any other provision herein to the contrary, CLA agrees to use or disclose only the "Minimum Necessary" amount of information, as such term is defined in the HIPAA Standards, required to conduct the authorized activities herein, except that CLA will limit disclosures to a limited data set as set forth in 45 CFR. 164.514(e)(2) as required by the HIPAA Standards.

b. **Uses and Disclosures Restricted.** CLA shall not use or further disclose the Client's PHI other than as permitted or required by this Agreement or as permitted or required by law. CLA shall not disclose Client's PHI in a manner that would violate any restriction thereof which has been duly communicated to CLA. Except as permitted by the HIPAA Standards, CLA shall not directly or indirectly receive remuneration in exchange for any of the Client's PHI unless a valid authorization has been provided to CLA.

c. Safeguards. CLA shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to protected health information, to prevent the use or disclosure of the Client's PHI other than as provided for by this Agreement.

i. Administrative Safeguards. CLA shall implement all required administrative safeguards pursuant to 45 CFR 164.308 as such are made applicable to business associates pursuant to the HIPAA Standards. Additionally, CLA shall either implement or properly document the reasons for non-implementation of all administrative safeguards of 45 CFR 164.308 that are designated as "addressable" as such are made applicable to business associates pursuant to the HIPAA Standards.

ii. Physical Safeguards. CLA shall implement all required physical safeguards pursuant to 45 CFR 164.310 as such are made applicable to business associates pursuant to the HIPAA Standards. Additionally, CLA shall either implement or properly document the reasons for non-implementation of all physical safeguards of 45 C.F.R. § 164.310 that are designated "addressable" as such are made applicable to business associates pursuant to the HIPAA Standards.

iii. Technological Safeguards. CLA shall implement all required technical safeguards pursuant to 45 CFR 164.312 as such are made applicable to business associates pursuant to the HIPAA Standards. Additionally, CLA shall either implement or properly document the reasons for non-implementation of all technical safeguards of 45 CFR 164.312 that are designated as "addressable" as such are made applicable to business associates pursuant to the HIPAA Standards.

d. Reporting of Disclosures. CLA shall report to Client in writing within 60 days any use or disclosure of the Client's PHI other than as provided for by this Agreement, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which CLA becomes aware.

e. CLA's Agents. CLA shall ensure that any agents, including subcontractors, to whom it provides the Client's PHI agree in writing to the same restrictions and conditions that apply to CLA with respect to such PHI and shall make such information available to the Client upon request. Upon CLA contracting with an agent for the sharing of the Client's PHI, CLA shall provide the Client written notice of any such executed agreement.

f. Availability of Information to the Client. CLA shall make available to the Client such information as the Client may require to fulfill the Client's obligations under 45 CFR 164.524 to provide access to and/or provide a copy (including an electronic copy) of PHI pursuant to the HIPAA Standards or, if requested by the Client or required by the HIPAA Standards, CLA shall make such information available (in electronic format as required by the HIPAA Standards) to the subject of such information or such subject's designee and shall confirm to the Client in writing that the request has been fulfilled.

g. Amendment of PHI. CLA shall make the Client's PHI available to the Client, upon the Client's request, to fulfill the Client's obligations to amend PHI pursuant to the HIPAA Standards, and CLA shall, as directed by the Client, incorporate any amendments to PHI provided to CLA by the Client into copies pursuant to 45 CFR 164.526 such PHI maintained by CLA.

h. Internal Practices. CLA shall make its internal practices, books and records relating to the use and disclosure of Client's PHI available to the Secretary of the United States Department of Health and Human Services or his or her designee for purposes of determining the Client's compliance with the HIPAA Standards.

i. Accountings. CLA agrees to document disclosures of Client's PHI and information related to such disclosures as required for the Client to promptly respond to a request by an individual for an accounting of disclosures of such individual's PHI by CLA in compliance with the HIPAA Standards. CLA agrees to provide to the Client information collected in accordance with the requirements of this Section 1.i to permit the Client to make a timely and prompt response to a request by an individual for such accounting as required by the HIPAA Standards. As required by applicable HIPAA Standards, CLA shall provide an accounting of disclosures made by CLA upon a request made by an individual directly to CLA for such an accounting.

j. Notification of Breach. During the term of this Agreement, CLA shall notify the Client within a reasonable time following the occurrence of any breach of security, intrusion or unauthorized use or disclosure of Client's PHI and/or any use or disclosure of Client's PHI not provided for by this Agreement. CLA shall notify Client, without unreasonable delay and in no case later than 60 calendar days, of the discovery of an unauthorized acquisition, access, or disclosure of "unsecured protected health information," as such term is defined in the HIPAA Standards. Such notice shall include all information required by the HIPAA Standards.

k. Policies and Procedures; Documentation. CLA shall develop appropriate policies and procedures relating to its compliance with the administrative, physical, and technical safeguards set forth in Sections 1.c of this Agreement and shall document, retain, and update such policies and procedures as required by 45 CFR 164.316.

**2. Specific Use and Disclosure Provisions.** Except as otherwise limited in this Agreement, CLA may: (a) use Client's PHI to perform certain functions for or on behalf of Client as requested by Client from time to time, subject to the requirements of the HIPAA Standards and the terms of this Agreement; (b) use Client's PHI for the proper management and administration of CLA or to carry out the legal responsibilities of CLA; (c) disclose Client's PHI for the proper management and administration of CLA, provided that disclosures are required by law, or CLA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies CLA of any instances of which it is aware in which the confidentiality of the information has been breached; and (d) use Client's PHI to provide Data Aggregation services to the Client as permitted by 45 CFR 164.504(e)(2)(i)(B).

**3. Client Obligations.** As required by the HIPAA Standards, Client shall: (a) provide CLA with the notice of privacy practices that Client produces in accordance with 45 CFR 164.520, as well as any changes to such notice; (b) provide CLA with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect CLA's permitted or required uses and disclosures; and (c) notify CLA of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR 164.522. Client shall not request CLA to use or disclose Client's PHI in any manner that would not be permissible under the HIPAA Standards if done by client, except that Client may request CLA to provide Data Aggregation services to the Client as permitted by 45 CFR 164.504(e)(2)(i)(B).

4. **Termination**. A breach by either party of any provision of this Agreement, as determined by the other party, shall constitute a material breach of the Agreement and shall provide grounds for termination of this Agreement and the services of CLA by the non-breaching party if the breaching party is unable to cure such breach within ten (10) days following written notice of such breach. CLA agrees to cooperate with the Client as necessary to mitigate the extent of any unauthorized disclosures of Client's PHI or any damages or potential damages and liability under the HIPAA Standards caused by any violation of this Agreement by CLA or other unauthorized use of Client's PHI.

5. **Treatment of Client's PHI after Termination**. Upon termination of the Agreement for any reason, including the cessation of services by CLA for any reason, CLA shall return or destroy all Client's PHI that CLA still maintains in any form, and shall retain no copies of such PHI. If the parties mutually agree that return or destruction is not feasible, this Agreement shall continue to apply to such information and, without limitation to the foregoing, CLA shall extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. A senior officer of CLA shall certify in writing to the Client within thirty (30) days after termination or expiration of this Agreement that all Client's PHI has been returned or disposed of as required above.

6. **Amendment to Comply with Law**. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties agree to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the HIPAA Standards or other applicable laws upon the written request of the other party. Notwithstanding any other provision herein, either party may terminate this Agreement and the services of CLA, without penalty, upon thirty (30) days' written notice in the event (i) the other party does not promptly enter into negotiations to amend this Agreement when requested pursuant to this Section; or (ii) the other party does not enter into an amendment to this Agreement providing assurances regarding compliance with the HIPAA Standards or any other applicable laws relating to the security or privacy of PHI.

7. **No Third Party Beneficiaries**. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Client, CLA, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8. **Indemnification**. Client shall indemnify, hold harmless and defend (with counsel of CLA's choosing) CLA from and against all claims, suits, administrative proceedings, demands, losses, damages or penalties, including reasonable attorneys' fees, arising out of Client's misuse or improper disclosure of PHI or CLA's possession, use or disclosure of PHI at the direction of Client.

CLA shall indemnify, hold harmless and defend (with counsel of Client's choosing) Client from and against all claims, suits, administrative proceedings, demands, losses, damages or penalties, including reasonable attorneys' fees, arising out of CLA's misuse or improper disclosure of PHI.

9. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with the HIPAA Standards. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Standards. There shall be no presumption for or against either party, by reason of one of the parties causing this Agreement to be drafted, with respect to the interpretation or enforcement of this Agreement.

10. **Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or mailed by registered or certified mail, as follows (provided that notice of change of address shall be deemed given only when received):

If to Client, to: City of Franklin, Wisconsin  
9229 W Loomis Road  
Franklin, WI 53132  
Attention: Calvin A Patterson, Finance Director

If to CLA, to: CliftonLarsonAllen LLP  
10700 W Research Drive, Suite 200  
Milwaukee, WI 53219  
Attention: Renee Messing, Principal

or to such other names or addresses as Client or CLA, as the case may be, shall designate by notice to the other in the manner specified in this Section 10.

IN WITNESS WHEREOF, the parties have signed this Agreement.

**City of Franklin, Wisconsin**

**CliftonLarsonAllen LLP**

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

By: Renee Messing  
Print Name: Renee Messing  
Title: Principal  
Date: 10/16/13

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<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>11/19/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Approval of a Job Description Revision for Police Patrol Officer</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G.19.</i></p>

The Police & Fire Commission and the Police Chief have both recommended removing the typing requirement from the Police Patrol Officer job description.

A few years ago a Police and Fire Commissioner requested that the job description for the Police Patrol Officer be updated to require being able to type 25 words per minute. The Police & Fire Commission agreed that this would be a good idea. The Personnel Committee and Common Council followed the recommendation and added the job requirement.

Since this time it has been noticed that everyone has passed the typing test. With as prevalent as the internet has become, it would be rare to find an individual that has obtained a college degree (a minimum of an Associate's Degree is required for the job) that cannot type 25 words per minute.

The hiring process for a police officer is a very long and tedious process with a lengthy application packet, a written exam, 3 oral interviews, an extensive background check, and medical/physical assessment testing. Both the Police & Fire Commission and the Police Chief have requested elimination of this unnecessary hurdle to be hired as a police officer.

This item is on the Personnel Committee agenda for Monday, November 18th. Their recommendation will be reported to the Common Council on November 19th.

**COUNCIL ACTION REQUESTED**

Motion to approve the revision to the Job Description for Police Patrol Officer.

CITY OF FRANKLIN  
Job Description

**Job Title:** Patrol Officer  
**Department:** Police  
**Appointing Authority:** Chief of Police/Fire and Police Commission  
**Reports To:** Sergeant of Police  
**Salary Grade:**  
**FLSA Status:** Non-Exempt  
**Prepared By:** Dana Zahn  
**Prepared Date:** November 13, 2013  
**Approved By:** Common Council  
**Approved Date:** November 19, 2013

Deleted: January 6, 2012

Deleted: Resolution 2012-

Deleted: January 10, 2012

**Summary**

The Patrol Officer performs a variety of law enforcement and social services work that enhances the safety, security, civil order, and stable atmosphere of the community. Duties include but are not limited to security and crime prevention patrols; traffic control and traffic law enforcement; investigation and first aid at accident scenes; response to calls for service including rescues, crimes, and community service; and detection, investigation, apprehension, and arrest of persons involved in crimes or misconduct.

**Essential Duties and Responsibilities**

Essential duties and responsibilities include the following. Other duties may be assigned.

Enforce all City and State codes, ordinances, laws and regulations (both traffic and criminal) in order to ensure public safety, prevent crime, and promote security.

Perform security patrols, traffic control, investigation and first aid at accidents; detect, investigate, apprehend, and arrest persons involved in crimes or misconduct.

Use sound judgment in deciding course of action, handle difficult and emergency situations, with or without assistance, in a manner appropriate for the situation and exercises rational judgment in all job responsibilities

Carry out duties in conformance with Federal, State, County, and City laws and ordinances.

Work cooperatively with supervisors and coworkers, direct traffic, patrol City streets, parks, commercial and residential areas to preserve the peace and enforce the law, control vehicular traffic, prevent, detect and investigate misconduct involving ordinance violations, misdemeanors, felonies and other law violations and to otherwise serve and protect.

Job Description  
Police Patrol Officer

Respond to emergency radio calls and investigate accidents, robberies, civil disturbances, domestic disputes, fights, drunkenness, missing children, prowlers, abuse of drugs, etc. Take appropriate law enforcement action.

Interrogate suspects. Question witnesses and drivers. Gather and preserve evidence. Apprehend and arrest violators. Investigate and render assistance at scenes of vehicular accidents. Summon ambulances and other law enforcement vehicles. Take measurements, and photographs, document information, and draw diagrams of scenes.

Conduct follow-up investigations of crimes committed during assigned shift. Seek out and question victims, witnesses and suspects. Develop leads and tips. Search scenes of crimes for clues. Protect, collect, preserve and describe evidence. Analyze and evaluate evidence and apprehend/arrest offenders. Prepare thorough documentation. Prepare cases and testify in court proceedings.

Prepare a variety of reports and records in conformance with department policy, procedure and standards of accuracy including officers' daily logs, reports of investigation, field interrogation reports, alcohol reports, influence reports, intoximeter check list, bad check form, vehicle impoundment form, traffic hazard reports, etc.

Undertake community oriented police work, and assist citizens with such matters as locked or stalled vehicles, crime prevention, Drug Abuse Resistance Education (DARE), traffic safety, etc.

Coordinate activities with other officers or other City departments as needed; promptly notify and exchange information with officers in other law enforcement agencies, and obtain advice from the City Attorney, Court Administrator, and Municipal Prosecutor's Office regarding cases, policies and procedures, as needed and assigned.

Maintain contact with police supervisory personnel to coordinate investigation activities, provide mutual assistance during emergency situations and provide general information about Department activities.

Effectively communicate with suspects, witnesses, victims, the public and other law enforcement personnel.

The ability to maintain confidentiality of information.

Maintain departmental equipment, supplies and facilities.

Serve as a member of various committees as requested.

Regular, predictable and punctual attendance.

Ability to work extended or irregular hours.

Enforces all City and State codes, ordinances, laws and regulations (both traffic and criminal) in order to ensure public safety, prevent crime, and promote security.

Exercises rational judgment in all job responsibilities.

Maintains the confidence and trust of peers, subordinates, superiors, and citizens.

Thorough knowledge of modern law enforcement principles, procedures, techniques, and equipment.

Other duties as assigned by supervisors.

Any and all other duties as assigned by the Chief of Police.

**Supervisory Responsibilities**

Works under the close supervision of the Sergeant of Police.

**Qualifications**

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**Education and/or Experience**

Must have either a 2 year associate degree or a 4 year degree from an accredited college. Must have either completed a Wisconsin 520 hours basic law enforcement training course (certifiable) or another state's equivalent or must be certified as a Wisconsin Law Enforcement Officer or another state's equivalent. An applicant must be at least 21 years of age at time of application.

**Language Skills**

Ability to read, analyze, and interpret professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

**Mathematical Skills**

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to work with mathematical concepts such as probability and statistical inference. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations.

**Reasoning Ability**

Ability to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

**Computer Skills**

To perform this job successfully, an individual should have knowledge of Microsoft Word and other police department related software. Ability to work with various computer hardware and other computer related equipment.

**Deleted:** Must be able to type 25 words per minute.

**Certificates, Licenses, Registrations**

Valid Wisconsin Driver's License

Maintain a current Basic Law Enforcement Training Certification

Firearms Certification, and must qualify for firearms four times annually.

Ability to meet Department's physical standards.

Maintain Intoximeter Certification.

Maintain Preliminary Breath Test Certification.

Radar Certification.

Maintain CPR/First Responder Certification.

Firearms Certification, and must qualify for firearms, four times annually.

The following certifications are to be obtained as assigned:

- Wisconsin Drug Screen Test Kit
- Narcotics Identification Kit
- Canine Certification
- D.A.R.E. Certification
- Field Training Officer Certification

**Physical Demands**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel; reach with hands and arms and talk or hear. The employee is frequently required to stand; walk and sit. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl and taste or smell. The employee must frequently lift and/or move up to 10 pounds and occasionally lift and/or move more than 100 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and ability to adjust focus.

**Work Environment**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently exposed to fumes or airborne particles and outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions; moving mechanical parts; high, precarious places; toxic or caustic chemicals; risk of electrical shock; explosives and vibration. The noise level in the work environment is usually moderate. At certain times the noise level may be very loud (fire arms training and emergency vehicle response).

**Other Qualifications**

**Tools and Equipment:** Police car, police radio, handgun and other weapons as required, baton, handcuffs, first aid equipment, personal computer, telephone, fax, copy machine, calculator, typewriter, intoximeter, and oleoresin capsicum spray.

**Other Skills and Abilities**

Analyze and recommend improvements to equipment and facilities, as needed.

Schedule and conduct meetings.

Maintain liaison with community groups.

Confer with citizens and officials on law enforcement and community problems,

Job Description  
Police Patrol Officer

attempting to resolve problems and recommend appropriate programs and activities.

Answer telephone; provide information, advice and guidance; take and relay messages and/or direct calls to appropriate personnel; return calls as necessary. Prepare various reports, forms, invoices, correspondence, and other documentation; Process, complete, maintain, and/or forward, as appropriate; files and logs.

Attend meetings, training sessions and seminars as required to remain knowledgeable of City/departmental operations, to promote improved job performance, and to stay current with changing policies and procedures, codes, and criminal/civil case law.

Thorough knowledge of modern law enforcement principles, procedures, techniques, and equipment. Ability to learn the applicable laws, ordinances, and department rules and regulations

Skill in operating the tools and equipment listed above.

Ability to perform work requiring good physical condition and stable/balanced mental condition

Ability to establish and maintain effective working relationships with peers, and supervisors.

Ability to identify problems and opportunities, reviewing possible alternative course of action before selecting one, utilizing information resources available when making decisions, sometimes under extreme pressure or stress.

Ability to develop feasible realistic solutions to problems, recommending actions designed to prevent problems from occurring and referring problems to supervisions when necessary.

Ability to establish systematic methods of accomplishing goals.

Ability to effectively convey ideas and information both in written and oral form

Ability to effectively read and understand information contained in memos, reports, bulletins, etc.

Ability to evaluate or make independent decisions, based upon experience or knowledge, without supervision, sometimes under extreme pressure or stress.

Ability to follow instructions from supervisor, verbally or in written form.

Ability to set priorities in order to meet assignment deadlines

Any and all other duties as assigned by the Chief of Police.

**Miscellaneous**

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

<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>11/19/2013</b></p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p><b>Resolution to Amend the Civil Service System Personnel Administration Program Eliminating Overtime for Part-Time Library Assistants who Work on Sundays</b></p>	<p><b>ITEM NUMBER</b></p> <p><i>G, 20.</i></p>

Attached is a memo from Library Director Rachel Muchin Young to the Personnel Committee requesting the elimination of Section 3.4.2.2 of the City of Franklin's Civil Service System Personnel Administration Program that would thereby eliminate the overtime paid to part-time staff who work on Sundays.

The Library Board approved a staffing plan for 2014 which eliminates all overtime unless an employee works more than 40 hours in a week as delineated by the US Department of Labor in the Fair Labor Standards Act. This elimination will put the Franklin Library in line with current library personnel practices throughout Milwaukee County as well as provide a cost-savings to the City. The Library Director indicates the effective date should be January 1, 2014.

This item is on the City's Personnel Committee meeting agenda of November 18, 2013. The Director of Administration will report their action to the Common Council on November 19th.

**COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2013-\_\_\_\_\_, "A Resolution to Amend the Civil Service System Personnel Administration Program Eliminating Overtime for Part-Time Library Assistants who Work on Sundays".



memo

To: City of Franklin Personnel Committee  
From: Rachel Muchin Young *RMY*  
Date: November 8, 2013  
Re: Elimination of Overtime for Library Assistants

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The Franklin Public Library Board of Trustees approved a staffing plan for 2014 which eliminates all overtime unless an employee works more than 40 hours in a week as delineated by the United States Department of Labor in the Fair Labor Standards Act (FLSA). All library service hours (open hours as well as scheduled time before and after open hours) will be considered part of our normal work week.

By eliminating overtime for part time staff, Franklin Public Library will be in line with current library personnel practices throughout Milwaukee County and, indeed, the State of Wisconsin. This move will also help Franklin Public Library keep its personnel costs in check while providing the same standard of service the community deserves and has grown to expect from this essential community institution.

Therefore, we respectfully request the elimination of Section 3.4.2.2 of the City of Franklin's Civil Service Personnel Administration Program, as follows:

3.4.2.2 LIBRARY ASSISTANTS: Library Assistants, not hired for and regularly scheduled for Sundays, that work on a Sunday are paid at time and one-half their normal hourly rate.

Thank you for your attention to this matter.

A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

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

A RESOLUTION TO AMEND THE CIVIL SERVICE SYSTEM PERSONNEL  
ADMINISTRATION PROGRAM ELIMINATING OVERTIME FOR  
PART-TIME LIBRARY ASSISTANTS WHO WORK ON SUNDAYS

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WHEREAS, the Library Board approved a Library staffing plan for 2014 which eliminates all overtime unless an employee works more than 40 hours in a week as delineated by the US Department of Labor in the Fair Labor Standards Act; and

WHEREAS, Section 3.4.2.2 of the City of Franklin's Civil Service System Personnel Administration Program states as follows: "3.4.2.2 LIBRARY ASSISTANTS: Library Assistants, not hired for and regularly scheduled for Sundays, that work on a Sunday are paid at time and one-half their normal hourly rate"; and

WHEREAS, the Library Board and Library Director request the deletion of Section 3.4.2.2 of the City of Franklin's Civil Service System Personnel Administration Program thus eliminating overtime for part-time Library Assistants who work on Sundays, effective January 1, 2014.

NOW, THEREFORE, BE IT RESOLVED, that Section 3.4.2.2 of the Civil Service System Personnel Administration Program be deleted effective January 1, 2014, eliminating overtime for part-time Library Assistants who work on Sundays.

All resolutions and parts of resolutions in contravention to this resolution are hereby repealed.

Introduced at a regular meeting of the Common Council of the City of Franklin this 19th day of November, 2013 by Alderman \_\_\_\_\_.

Passed and adopted by the Common Council of the City of Franklin this 19th day of November, 2013.

APPROVED:

ATTEST:

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

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

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

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<b>APPROVAL</b> 	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>11/19/2013</b>
<b>REPORTS &amp; RECOMMENDATIONS</b>	<b>A RESOLUTION TO ADDRESS THE 2014 NON- REPRESENTED EMPLOYEE GENERAL WAGE ADJUSTMENT AND THE EMPLOYEE COST SHARE OF MONTHLY HEALTH INSURANCE PREMIUMS</b>	<b>ITEM NUMBER</b> <i>G.21.</i>

The attached resolution achieves the following two purposes which are generally addressed at this time of year following adoption of the annual budget.

1) 2014 Non-Represented Wage Increase: The 2014 budget as adopted provides sufficient funding for a total wage increase of 1.5% for non-represented employees, which was established anticipating continuing the recent practice of a 1% wage increase on the start of the pay period closest to, but on or after, January 1st and July 1st of the coming year, in this case, 2014. The budget, however, also provided funding for a classification and compensation study for 2014. As was indicated in the budget presentations and discussions, it was recommended that the increases, including the January 1st increase, not be immediately adopted and implemented in order to help ensure that there is funding available in the budget for the Common Council to be able to implement the results of the classification and compensation review once it is completed to the Council's satisfaction.

It is, however, important that employees have an understanding of what they can expect from their employer. The resolution therefore indicates the intent of the wage increase funding so that employees know that the resources are approved and established for the purpose of implementing the study. At the same time, it addresses a broad timeline for the study and indicates that if it is not completed and under review by the Common Council before at least the end of July, then staff should provide a recommendation to the Common Council as to whether or not to proceed with the July 2014, 1% wage increase based on the then current status of the study. As such, the current 2013 wage rates for non-represented employees would remain in place pending completion of the classification and compensation study and/or pending further action by the Common Council if said study gets delayed.

2) Employee Health Insurance Premium Share: The City's practice is that the Common Council sets the health insurance premium share percentage contribution which is incorporated into the Employee Handbook in a Compensation Plan Addendum. The premiums themselves are set as an administrative function by the Director of Finance and Treasurer, working with the Director of Administration, after reviewing the current self insurance health fund activity, projection, and fund balance and in conjunction with the projections within the adopted budget.

As noted in the budget presentation, staff was anticipating "stable changes in health plan design." It looks as though that will not, after all, be the case, but overall that is very good news. At their meeting of November 18th, the Personnel Committee will consider a recommendation to change

health insurance networks and third party administrators from Trilogy/HPS/Auxiant to Humana. Having finally gotten some separation from the adoption of Acts 10 and 32, from a total rewrite stabilizing to a single health plan document, and from the initial challenges of the Federal health care legislation, staff, lead by its consultant Diversified, was able to complete a more intensive review of health care alternatives and providers for our self-funded services. That review has yielded a recommendation of moving to Humana as the TPA and using their network and a more packaged plan design. The Personnel Committee's recommendation will be reported to you at the Common Council meeting and is the subject of a different Council Action item on this agenda. That item addresses the details of the potential savings involved.

**The net result is that I recommend that the applicable monthly health insurance premium share be increased from 12% to 12.5% for individuals (and the spouse, where applicable) who participate in the Health Risk Assessment and increased from 16% to 16.5% for those that do not participate in the Health Risk Assessment.** The increase to 12.5% is necessary to attempt to keep all HRA-participating employees at the same premium share (this is the premium share level set in the Police Association's labor agreement). If approved, unless otherwise directed by the Common Council, staff will set premiums at a level that holds the employee premium for an HRA-participating employee flat for 2014, as compared to 2013. This can be done with a 4% reduction in the current monthly premium. For example, the current monthly premium for a family plan (\$1,705) would be reduced to \$1,636.

Such an action will have multiple benefits. First, and most importantly, it fits within the budget and positions the City well for 2015. The 2014 General Fund operating EXPENSE budget is based on an estimated higher premium. Reducing the premium means the City's General Fund expenses will be under budget in 2014, which provides room within existing appropriations to absorb potential 2015 increases. In effect, it uses anticipated savings from 2014 to improve 2015's budget issues. Secondly, the health insurance fund is not harmed in this process. The flip side of reducing premiums is that there will be less revenue to the health insurance self insurance fund. The savings from the change to Humana, however, will more than offset the reduction in revenue paid by the General Fund to the health insurance fund. The net position, therefore, and as noted in the other action item, is that the health insurance fund will potentially still see as much as a \$350,000 savings but will, in the worst case, have a guaranteed protection of breaking roughly even, which is perfectly fine given the current healthy status of the fund. Third, it keeps closer to the stated intent to provide "stable changes" in the health plan. As noted in the other agenda item, the health plan design will be changing. The employees will bear the brunt and the benefits of the new plan design; some will have to change doctors; employees will have new office co-pays, but some will have reduced out-of-pocket maximums, etc. As such, there is some level of stability, and fairness, in holding employee premiums stable while they deal with the added confusions of a new health plan, health network, and health TPA. Fourth, it is also fair to employees to hold premiums stable as item 1 above has recommended delaying implementation of the January 1st wage increase. Employees are more likely to understand or accept no January 1st wage increase if it is paired with no increase in the health insurance premium. Lastly, staying with the issue of fairness, given that it fits within the overall budget and within the overall self insurance fund activity, it is appropriate to allow the employees to share in the savings that they will generate

through their move to a new health plan and health provider. The anticipated \$350,000 in savings to the fund doesn't include savings of around \$80,000 that won't have to be collected from all employees for previously anticipated premium increases. The only real drawback of such a strategy is the potential for a greater employee premium increase in 2015 if Humana can't generate the savings they contend.

#### **COUNCIL ACTION REQUESTED**

Motion to adopt Resolution No. 2013-\_\_\_\_\_, "A RESOLUTION TO ADDRESS THE 2014 NON-REPRESENTED EMPLOYEE GENERAL WAGE ADJUSTMENT AND THE EMPLOYEE COST SHARE OF MONTHLY HEALTH INSURANCE PREMIUMS".

A STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

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

A RESOLUTION TO ADDRESS THE 2014 NON-REPRESENTED EMPLOYEE  
GENERAL WAGE ADJUSTMENT AND THE EMPLOYEE COST SHARE OF  
MONTHLY HEALTH INSURANCE PREMIUMS

---

WHEREAS, the 2014 budget as adopted anticipated a January 2014 and July 2014 general wage adjustment of one percent (1%) for non-represented employees and anticipated employee health insurance premium contributions of 12.5% for those employees participating in the health risk assessment and 16.5% for those employees not participating in the health risk assessment, and

WHEREAS, the 2014 budget as adopted provides funding for a classification and compensation study to be performed in 2014, which studies commonly require appropriations for funding the results of the study, in particular the wage levels recommended therein, once approved by the Common Council, and

WHEREAS, it is, therefore, prudent to hold off on implementing the general wage adjustments pending the results of the classification and compensation study, provided such study results are not delayed, and

WHEREAS, the Compensation Plan Addendum – Salary Structures – 12-17-12, as previously adopted, sets forth the current wage rates and employee health insurance premium contribution rates, and

WHEREAS, it is important to inform employees of intended salary structure adjustments so that current employees and any new employees remain fully informed of the conditions of their employment.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Franklin that the Director of Administration is hereby directed to prepare and implement an amendment to the “Compensation Plan Addendum,” dated 12/17/12, amending Section “VI. Employee Share of Monthly Health Insurance Premium” for the purpose of eliminating information effective 1/1/12 and incorporating a like paragraph effective 1/1/14 with monthly health insurance premium shares of 12.5% for Health Risk Assessment participants and 16.5% for non-participants.

BE IT FURTHER RESOLVED by the Mayor and Common Council of the City of Franklin that the Director of Administration is hereby directed to inform non-represented general employees that the 2014 budget as adopted provides sufficient funding for a total wage increase of 1.5%, which was established anticipating a January and July general wage increase of 1%; but that said January increase is being held in abeyance pending the results of a classification and compensation study; and that he is further instructed that should such study not be completed and under review by the Common Council before at least the end of July, 2014, then he should provide a recommendation to the Common Council as to whether or not to proceed with the July 2014, 1% wage increase based on the then current status of the study.

Introduced at a regular meeting of the Common Council of the City of Franklin this 19th day of November, 2013 by Alderman \_\_\_\_\_.

Passed and adopted by the Common Council of the City of Franklin this 19th day of November, 2013.

APPROVED:

ATTEST:

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

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

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

<p style="text-align: center;"><b>APPROVAL</b></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>11/19/2013</b></p>
<p style="text-align: center;"><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p style="text-align: center;"><b>Wage Compression and Wage Increases for Police &amp; Fire Command Staff</b></p>	<p style="text-align: center;"><b>ITEM NUMBER</b></p> <p style="text-align: center;"><i>G.22,</i></p>

The General Non-Represented Employee wage increase for 2014 is addressed by a separate item on the Common Council's Agenda. There is one subset of non-represented employees that the Common Council may wish to treat in a different manner at this time: Police and Fire Department Command Staff. The Personnel Committee is discussing this issue at their meeting of 11/18/2013.

The issue of the potential wage compression between represented and non-represented employees in the Police and Fire Departments was forwarded by the Common Council to the Personnel Committee in late 2011. Initial data was provided and reviewed. The Personnel Committee concluded that the topic should be addressed after the (then) upcoming labor negotiations were completed, as it was very difficult to anticipate what would happen in those labor negotiations (Acts 10 and 32 were still both very new). As of the last Common Council meeting, the Personnel Committee is now at that point where the issue of compression would again be considered given their prior discussion.

At the same time, the Common Council has incorporated a classification and compensation study in the 2014 budget. Given that detailed review is now immanent, I recommend having the issue of compression fully addressed within that study. Nonetheless, the data reviewed in 2011 did suggest there was a potential compression issue. **The Mayor and Police Chief recommend that the Common Council ensures that the Police and Fire Command Staff do not have their compression worsen, as a result of the recent labor agreements, while the City waits for the classification and compensation study to be completed.** The Police Chief will be in attendance to provide additional support for this position.

The Police and Fire agreements are slightly different but the effect is very similar when considering the timing of wage and WRS contribution actions. As such, reviewing the impact upon Police Officers, Detectives, and Sergeants provides an appropriate baseline for evaluating the impact on Police and Fire Command Staff. To that end, over 2013 and 2014, the Police Association agreement provides for total raises of 6% and by 2014 the employees will be contributing 7% toward their WRS pension. Police and Fire Command Staff received 1% wage increases in January and July of 2013, which puts them ahead of the game, so to speak; however, they will quickly fall behind as they are now required to contribute 7% toward WRS. I have run the numbers and, when considering the impact over 2013 and 2014 as compared to 2012 year-end wage rates, a 3% wage increase on January 1 of 2014 will have a net impact making Sergeants \$9 better off than Police Officers and \$88 ahead of Detectives. That difference is the total over the entire two year period. [Note that for simplicity this analysis is on base wages and WRS contributions and does not consider all benefits, payroll deductions, overtime, etc.]

Additionally, a 1% increase on 12/31/14 would be needed so that going forward into 2015 they do not fall behind. In the end this would mean both represented and non-represented Police and Fire sworn personnel would receive a 6% lift in wages and be making a 7% contribution to WRS.

**It is worth noting that this proposal does not attempt to address or solve the potential underlying compression issue itself. It only attempts to ensure that over the 2013 and 2014 period the net total impact of the new labor agreements has not worsened the compression problem. [If the classification and compensation study ultimately is adopted and resolves the compression issue, the December increase would become moot.]**

For efficiency, I recommend any pay raise being considered for 2014 be implemented January 12<sup>th</sup>. That is the start of a new pay period and avoids some of the year-end work onslaught that occurs in Finance and Payroll. The last pay period of 2014 will start on December 28<sup>th</sup>.

The Personnel Committee's recommendation will be reported to you at the meeting.

### **COUNCIL ACTION REQUESTED**

Per the recommendation of the Mayor and Police Chief, the following motion would be in order:

**"Move to approve a 3% wage increase effective January 12, 2014 and a 1% wage increase effective December 28, 2014, for Police and Fire Command Staff, recognizing that this action supersedes any Resolution on the general non-represented employee wage adjustments, and to direct the Director of Administration to incorporate such adjustments into the Employee Handbook in a form as he shall determine is appropriate."**

<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>11/19/13</p>
<p><b>REPORTS &amp; RECOMMENDATIONS</b></p>	<p>Changes to the Job Description for Sanitarian</p>	<p><b>ITEM NUMBER</b></p> <p><i>G.23.</i></p>

The approved 2014 budget incorporates a .6 FTE Sanitarian position. At its meeting of November 18, 2014, the Personnel Committee will be considering a recommendation from the Health Director for changes to the job description for the position. A copy of his memo and the revised job description are attached. This is the first step in the process of moving forward with hiring the newly authorized position.

The recommendation of the Personnel Committee will be forwarded to you at the meeting.

**COUNCIL ACTION REQUESTED**

Motion to approve the revised job description for the Sanitarian as recommended by the Personnel Committee.



# Memo

**To:** Personnel Committee  
**From:** William Wucherer, Director of Health & Social Services *WW*  
**Date:** 11/14/2013  
**Re:** Adjustment to the Salary Range and Revision to the Job Description of Sanitarian

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The Sanitarian job description was last approved by the Personnel Committee on April 20, 2009; however, the City of Franklin has not actually employed a sanitarian since updating this job description. For the past four years, intergovernmental agreements have provided sanitarian services to the city. From 2009-2011, the position was subcontracted with the City of Oak Creek. From 2011 to the present, the City of Greenfield has provided sanitarian services through an intergovernmental agreement. The 2014 city budget provides an opportunity to hire a sanitarian. **The purpose of this memo, therefore, is to recommend an adjustment to the sanitarian salary range and adopt minor updates in the job description.**

I have reviewed the 2009 approved job description and only minor corrections and changes were needed in the Peripheral Duties section. In addition, I have compared the City of Franklin sanitarian job description to the current sanitarian job descriptions in the Cities of Wauwatosa and West Allis as well as the job description for a State of Wisconsin employed registered sanitarian. I find that our job description accurately describe the duties and responsibilities of a registered sanitarian. Likewise the job description fully complies with our contractual agreement to provide sanitarian services as city agents for the WI Department of Health and WI Department of Agriculture, Trade, and Consumer Services which the City of Franklin Common Council enacted in 2009.

In order to recruit a city sanitarian, I am recommending an increase in the salary range which more accurately reflects sanitarian wages in the market area. As mentioned, during the past four years, the Franklin Health Department has not employed a sanitarian per se. Through intergovernmental agreements, the city has paid \$50.00 per hour for sanitarian services and premiums for overtime, weekend, and holiday assignments. Currently the hourly wage for sanitarian services through the City of Greenfield is \$30.08 per hour.

A table below displays comparable community salary ranges and actual hourly wages. The City of Franklin salary grade #17 for a sanitarian is significant less than comparable salary ranges and hourly pay. Further, salary grade #19 is recommended to establish a market-based wage for this part time position.

Comparable Salary Wages and Hourly Pay

Comparables	Minimum	Midpoint	Maximum	Current Hourly Pay
Oak Creek	\$29.26	\$30.87	\$32.50	\$31.85
South Milwaukee	\$26.27	\$30.03	\$33.78	\$33.78
Wauwatosa	\$23.95	\$28.85	\$33.73	\$33.40
West Allis	\$27.88	\$29.63	\$31.77	\$31.77
Average of Comparables	\$26.86	\$29.85	\$32.95	\$32.70
<b>FRANKLIN Salary Grade 17 Current</b>	<b>\$21.51</b>	<b>\$24.73</b>	<b>\$27.97</b>	
<b>Average Wage Comparison</b>	<b>Less \$5.35</b>	<b>Less \$5.12</b>	<b>Less \$4.98</b>	
<b>FRANKLIN Salary Grade 19 Recommended</b>	<b>\$24.98</b>	<b>\$28.72</b>	<b>\$32.47</b>	<b>\$30.15 Recommended</b>
<b>Average Wage Comparison</b>	<b>Less \$1.88</b>	<b>Less \$1.33</b>	<b>Less \$0.48</b>	

The 2014 city budget provides a 0.6 FTE sanitarian position, which is an additional one work day per week compared to previous intergovernmental agreements. An hourly wage of \$30.15 was used to establish salary and benefit projections. The annual salary for this position is projected at \$37,628. Benefits were estimated at \$5,669. However, health insurance (family or individual) could vary depending on the needs of the employee. Knowing that family health insurance is \$772.64 per month and single health insurance is \$319.44 per month, the table below projects the full cost (salary, benefits, and health insurance) of the part time sanitarian position under 3 potential situations—family, single, or no health insurance:

Salary	\$37,628	\$37,628	\$37,628
Benefits*	\$ 5,669	\$ 5,669	\$ 5,669
Health Insurance	\$ 9,272 Family	\$ 3,834 Single	\$ 0 None
<b>TOTAL</b>	<b>\$52,569</b>	<b>\$47,131</b>	<b>\$43,297</b>

\*The pension benefit was calculated in 2014 for only six months; it increases \$941 in 2015.

I am confident that our current licensing fees will fully fund this position with or without health insurance benefits. Below is a table which displays health department license/inspection revenues:

Year	Actual or Adopted	Amount
2011	Actual	\$55,945
2012	Actual	\$58,747
2013	Adopted	\$56,000

Based on the City of Franklin non-represented employee salary range, I recommend increasing the sanitarian position to salary grade #19. This recommendation is based on a market analysis of comparable positions as well as the overall affordability of this part time position based upon known revenues and expenses. In addition salary grade #19 establishes the starting wage of \$30.15, which is between the midpoint and maximum, and allows for future wage increases. The salary recommendation is made mindful that the 2014 city budget provides for a job classification study wherein this position would be further assessed and possibly changed or frozen in the future.

**CITY OF FRANKLIN**  
**Job Description**

Job Title: Sanitarian  
Department: Health  
Reports to: Director of Health and Human Services  
Appointing Authority: Mayor  
Salary Level: Non-Supervisory 19  
Prepared By: Dana Zahn, Human Resources Coordinator  
Prepared Date: November 13, 2013  
Approved By: Common Council  
Date Approved: November 19, 2013

Deleted: 17

Deleted: April 2009

Deleted: Resolution 2009-

**Summary:**

The Sanitarian performs specialized and technical services to protect human health and safety; enforces statutes, ordinances, regulations, and rules; investigates human health hazard complaints and citizen complaints; conducts food and waterborne outbreak investigations and coordinates interventions with public health staff; inspects and licenses all Agent City businesses and establishments regulated by the City of Franklin; obtains samples for testing; provides technical assistance and consultation on a variety of environmental issues; and coordinates certain public health department programs and services under the direct supervision of the Director of Health and Human Services.

**Essential Duties and Responsibilities:**

Conduct inspections of establishments under the operational, regulatory, or licensing control of the City of Franklin including but not limited to, permanent, temporary, and mobile restaurants; retail food establishments; hotels, motels, tourist rooming houses, bed & breakfast; public swimming pools; school kitchens; recreational campgrounds and educational campgrounds; tattoo and body piercing establishments; and food vending machines.

Review license applications and approve, as appropriate, licenses for all new, change-of-operator, and annual renewals for all City of Franklin businesses and establishments licensed by the City of Franklin Health Department or the City of Franklin, where appropriate.

Provide consultation, technical assistance, and training to licensed or inspected establishments and, in particular, food handlers and certified food managers.

Provide consultation, technical assistance, and training to the general public, City of Franklin elected officials and staff, other local health departments, and state agencies in areas of environmental health.

Investigate environmental complaints within the City of Franklin, including all inspected establishments, and take necessary actions to suppress, control, and prevent communicable diseases.

Coordinate and conduct investigations of suspected or actual food or waterborne outbreaks.

Prepare, organize, maintain, and file required and necessary reports, documents, and letters, including review and recommendation of Health Department related policies, procedures, plans, and fees.

Provide written reports of sanitarian activities to the Director of Health and Human Services or their designee.

Testify as an expert witness at administrative hearings and court proceedings.

Serve as an advocate for the City of Franklin in environmental health issues.

Act as a liaison between state agencies and the City of Franklin Health Department.

Participate in various committees, including the City of Franklin Board of Health, relating to public and environmental health issues.

**Peripheral Duties:**

As directed by the Director of Health and Human Services or their designee, provide services within other governmental boundaries as may be required through intergovernmental or other such mutual aid agreements.

Provide education and technical assistance on environmental health issues such as private wells, drinking water, septic systems, solid waste, waste disposal, pest control, indoor air quality, environmental tobacco smoke, radon, lead, asbestos, and fire safety.

Provided training, assistance, and consultation to Franklin Health Department staff in areas of environmental health.

Serve as the Health Officer for Communicable Disease for the City of Franklin when assigned, in the absence of the Director of Health and Human Services.

Other duties as assigned or requested by the Director of Health and Human Services.

**Desired Minimum Qualifications:**

**Education and Experience:**

Graduation from an accredited college or university with a Bachelor's degree, with academic credits in physical, biological, and environmental health areas; two years of employment in the field of environmental health; and current registration as a Wisconsin sanitarian; or an equivalent combination of related experience and education.

Certified Pool Manager preferred and required prior to the end of the probation period.

Certified Food Manager preferred and required prior to the end of the probation period.

**Necessary Knowledge, Skills, and Abilities:**

Considerable knowledge of applicable laws, rules, and regulations set forth in Wis. Stat. chapters 97, 125, 251, 254, ATCP 75, and SPS 390; applicable Wis. Adm. Code chapters including HFS 172, 173, 175, 178, 192, 195, 196, 197, 198; and applicable city ordinances.

Deleted: Comm. 90

Considerable knowledge of the Terms of Agreement as a City Agent with the Wis. Department of Health and Department of Agriculture, Trade, and Consumer Protection.

Considerable knowledge of the City of Franklin Policy Guidelines for Department of Health Services and Department of Agriculture, Trade, and Consumer Protection Agent Program.

Considerable knowledge of the Wisconsin Food Code.

Considerable knowledge of epidemiological techniques relative to sampling, interviewing, evaluating occurrences of food and waterborne disease outbreaks; biological and chemical sciences relative to cause and effect relationships; vector control techniques; and communicable diseases control techniques.

Considerable knowledge of the inspection standards, violations, and enforcement actions and the ability to recognize violations and take necessary actions.

Demonstrate professional oral, written, and computer communication skills such as Microsoft Word, PowerPoint, Excel, Health Space, and Wisconsin Electronic Disease Surveillance System.

Deleted: Access, and

Knowledge of professional standards (NSF and NAMA) and associations that represent the businesses and interests of licensed establishments within the City of Franklin.

Knowledge of Wisconsin state agencies (DNR, SPS, DHS, DATCP, Revenue, Administration) and their collaborative role for a local public health department.

Deleted: Commerce

Ability to work with the general public under varying conditions.

Ability to represent the City in a professional manner.

Ability to make independent judgments which have considerable impacts on the City of Franklin.

**Supervision Received:**

Works under general guidance and direction of Director of Health and Human Services.

**Supervision Exercised:**

None

**Responsibility for Public Contact:**

Continuous contact requiring courtesy, discretion, and sound judgment.

**Licensing and Regulations:**

Currently registered as a sanitarian under Wis. Adm. Rule, HFS 160.

Valid WI Driver's license.

**Tools and Equipment Used:**

Automobile; telephone; various thermometers; various chemical tests; flashlight, black light, and light meter; calculator; computer terminal; personal computer including tablet technology; fax machine; and copy machine and portable printer.

**Physical Demands:**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Work is performed mostly in field settings. Considerable outdoor work is required in the inspection of various facilities. Hand-eye coordination is necessary to operate testing instruments, collecting samples, operating a computer and various pieces of office equipment.

While performing the duties of this job, the employee is occasionally required to stand; walk; use hands and fingers to handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to sit, climb, balance, stoop, kneel, crouch, crawl, talk and hear.

The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

**Work Environment:**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee mostly works in outside weather conditions. The employee occasionally works in high, precarious places and is occasionally exposed to wet and/or humid conditions.

The noise level in the work environment is usually moderate.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

<b>APPROVAL</b> <i>slw</i>	<b>REQUEST FOR COUNCIL ACTION</b>	<b>MEETING DATE</b> <b>11/19/13</b>
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<b>LICENSES AND PERMITS</b>	<b>MISCELLANEOUS PERMITS</b>	<b>ITEM NUMBER</b> <b>H.1.</b>
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See attached list from meeting of November 19, 2013.

**COUNCIL ACTION REQUESTED**



# City of Franklin

9229 W. Loomis Road  
Franklin, WI 53132-9728

414-425-7500

## License Committee

### Agenda\*

#### Alderman's Room

November 19, 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>Class "A" Combination - New 2013-14 5:55 pm</b>	<b>Midtown Gas &amp; Liquor</b> 11123 W. Forest Home Avenue <b>Hardip Singh Bhatti, Agent</b>			
<b>Operator - New 2013-14 6:00 p.m.</b>	<b>Krosschell, David M</b> 2537 S Austin St Milwaukee, WI 53207 Hideaway Pub & Eatery			
<b>Operator - New 2013-14 6:05 p.m.</b>	<b>Bailey, Brett W</b> 4636 S Racine Ave New Berlin, WI 53146 Rock Sports Complex			
<b>Operator - New 2013-14 6:10 p.m.</b>	<b>Ormond, Mariah R</b> 1608 1/2 East St Upper Racine, WI 53402 Walgreen – S 27 <sup>th</sup> St			
<b>Operator - New 2013-14</b>	<b>Gjika, Enea</b> 1738 Hickory Street South Milwaukee, WI 53172 La Toscana Restaurant			
<b>Operator - New 2013-14</b>	<b>Lyons, Deborah E</b> 314 Luedtke Ave Racine, WI 53405 Hideaway Pub & Eatery			
<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><b>APPROVAL</b> <i>slw Paul</i></p>	<p><b>REQUEST FOR COUNCIL ACTION</b></p>	<p><b>MEETING DATE</b> 11/19/13</p>
<p><b>Bills</b></p>	<p><b>Vouchers and Payroll Approval</b></p>	<p><b>ITEM NUMBER</b> <i>I.1.</i></p>

Attached is a list of vouchers dated November 19, 2013 Nos. 149305 through Nos. 149312 and Nos. 150001 through Nos. 150151 totaling 589,039.24. Checks Nos. 149313 thru 150000 were not used. The change in software systems required new forms.

Included in this listing is, \$ 201,254.03 in payroll deductions and City matching payments on the November 15, 2013 payroll and \$10,000.00 additional requests approved at the previous Common Council meeting. That check is reported here – see 150002.

The net general checking account city vouchers for November 19, 2013 are \$377,785.21.

There were no property tax payments.

The net payroll dated November 15, 2013 is \$337,904.32 with payroll deductions of \$201,254.03.

The estimated net payroll dated November 29, 2013 is \$362,000.00 with estimated payroll deduction of \$183,000.00.

***COUNCIL ACTION REQUESTED***

Motion approving net general checking account City vouchers in the range Nos. 149305 through Nos. 149312 and Nos 150001 through 150151 in the amount of \$377,785.21 dated November 19, 2013.

Motion approving the net payroll dated November 15, 2013 in the amount of \$337,904,32 (estimate previously approved at \$343,000.00) and payments of the various payroll deductions in the amount of \$201,254.03 (estimate previously approved at \$203,000.00) plus any City matching payments, where required.

Motion approving the net payroll dated November 29, 2013 estimated at \$362,000.00 and payments of the various payroll deductions estimated at \$183,000.00 plus any City matching payments, where required.



## MEMORANDUM

Date: November 14, 2013

To: Mayor and Aldermen

From: Mark W. Luberda   
Director of Administration

RE: Impact Fee Payments for Ruckert-Mielke

Please be advised that included in the checks for approval Tuesday evening are various amounts for Ruckert-Mielke for work done on various impact fee related efforts. Included in the amount is the following:

1. Two invoices totaling \$1,255.40 related to the Southwest Area Impact Fee adopted earlier this year. The charges are related to an earlier 2010 contract executed with Ruckert-Mielke and charged to the Sewer Fund. Additionally, when they make an invoice correction from the impact fee update study, an additional charge of \$542.50 will apply. These charges all fit within the scope and authorization of the initial contract.
2. Charges of \$580 for various charges billed for impact fee advice and guidance provided during the year that was not directly related to the update of the Facility Needs Assessment. Nonetheless, they billed it out under the project. These charges will be applied against available professional services appropriations in the Administration budget.
3. \$7,500 towards the Needs Assessment Study that was authorized. This amount fits within the authorization currently in place. This project and additional related invoices are currently under review. The project, initially approved for up to \$16,100, is substantially over budget. Work has paused while the billing is being investigated. Some delay and costs were driven by the timing of the project, but some is still under investigation. The City has sufficient funding in the Administration portion of the impact fees, so, ultimately, sufficient funding is available from impact fee proceeds to ensure the project can be completed. Nonetheless, more investigation is necessary to determine the appropriateness of all of the charges. After the investigation is complete, a further report will be made to the Common Council so that any additional authorization required can be obtained and the project can continue.

**Note:** These vouchers are not on the initial voucher run included in your packet, but will be on the updated list that is provided at each meeting.